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KwaZulu-Natal Law Society

Regulatory Affairs Department

200 Hoosen Haffejee Street
P.O. BOX 1454
PIETERMARITZBURG 3200
DX 25
FAX: (033) 345 3028
TELEPHONE: (033) 345 1304
E-mail: complaints@lawsoc.co.za
Website: http://www.lawsoc.co.za

YOUR REF:

OUR REF : NH/SH/C4/412017

15 March 2017

Mr [redacted]
[redacted]
[redacted]
[redacted]
PIETERMARITZBURG
3201

Dear Sir

COMPLAINT AGAINST [redacted] & ASSOCIATES

Your complaint affidavit refers.

I enclose a copy of [redacted] & Associates' letter dated 24 February 2017 to which is attached his affidavit being the reply to your complaint. In order for the Complaints Committee to consider the matter properly as to whether there has been any unprofessional conduct will you please, by 3 April 2017, let me have any written comments **on affidavit** which you may wish to make on any aspect of the reply which you dispute.

Yours faithfully

MRS N HARRIPERSAD
DEPUTY MANAGER REGULATORY AFFAIRS

Please ensure that all correspondence addressed to our offices reflects our reference number. Failure to do so may result in your correspondence not being attended to timeously.

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Legal Aid South Africa

Your voice. For justice.

Independent and within reach.

Our Ref: P Hundermark/complaint/KZN

29 De Beer Street
Braamfontein
Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

30 November 2020

Mrs N Harripersad

Senior Legal Official

Disciplinary Department

Legal Practice Council

1st Floor,

200 Hoosen Haffejee Street

Pietermaritzburg

3201

Per e-mail: nadirah@lpc.org.za

COMPLAINT BY LEGAL AID SOUTH AFRICA (MR T V MTATI) AGAINST ADVOCATE A BRINK

Introduction

1. We acknowledge receipt of the letter dated 25 August 2020, which according to our records, only came to our attention on 28 September 2020.
2. We further acknowledge the email communication on the same date which gave a timeline to respond to the said letter by not later than 2 October 2020 as well as your further letter advising that you will assume that we no longer intend to pursue the complaint unless we respond by 19 November 2020.

Background

3. This matter has a long history and we were taken aback by the contents of the letter and the timelines given to respond and we find the contents thereof very concerning considering the delays from both the Society of Advocates of KwaZulu Natal and LPC.

4. Firstly, it is important to state the following-

   4.1. The complaint was lodged on 24 November 2015. This is more than 4 years and eight months before the date of your letter.

   4.2. The former CEO, Ms Vedalankar, in her capacity as the accounting officer authorised the lodging of the complaint.

   4.3. Thembile Mtati was authorised by the former CEO to lodge the complaint against Brink. Mr Mtati was acting in his official capacity as the duly authorised Executive responsible for corporate legal services at the time. He was competent to lodge the complaint at the time and thus the confirmation of his resignation is irrelevant.

   4.4. As the current CEO, having considered the original complaint, I have ratified the decision to proceed with the complaint as the accounting officer of Legal Aid South Africa for which I have the necessary authority in terms of Section 16 of the Legal Aid SA Act 39 of 2014 read with the Delegation of Authority. I also hereby delegate to our current Chief Legal Executive, Patrick Robert Hundermark, to attend to this complaint and any further issues that may arise.

5. Secondly, since lodging the complaint, various follows up were made with no positive outcomes. We have on record more than 15 calls and more than 19 emails which were dispatched to the Disciplinary Committee of the Society of Advocates Kwazulu Natal. We do not attach same to prevent unnecessary prolix but will provide the necessary records, if and when required.

6. Thirdly, section 116(1) of the Legal Practice Act 28 of 2014 requires that the Council takes over all obligations of its predecessor, and states

" Any enquiry in terms of any law repealed by this Act into the alleged unprofessional or dishonourable or unworthy conduct of a legal practitioner which has not been concluded at the date referred to in section 120(4), must be referred to the Council which must treat the matter as it deems appropriate"

7. We note for the record that the LPC took over this matter in September 2018 ? Feb 2020 in terms of the above provision but this was only communicated to Legal Aid SA when your letter was received on 28 September 2020, some 2 years later. It was imperative that both parties should have been informed of the referral in September 2018 and the decision taken in January 2020 that all investigations would commence *de novo*. Only Adv Brink was advised of this decision to the exclusion of Legal Aid SA.

Response to your request for Information

8. ***Ad Confirmation of Mr Mtati's resignation***: I confirm that Mr Mtati has resigned and is no longer in our employment since 31 March 2019.

9. ***Ad Does the current CEO of Legal Aid South Africa want to continue with the complaint. If yes, then who will be the complainant on behalf of Legal Aid SA:*** I confirm that Legal Aid SA is continuing with the complaint and as advised previously I have duly authorised the current Chief Legal Executive, Mr Patrick Hundermark, to act on behalf of the organisation.

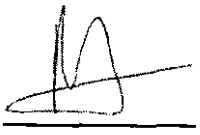
10. ***If the current Legal South Africa CEO wants to continue with the complaint, a copy of the resolution by the Legal Aid South Africa Board authorising the new CEO to resubmit the complaint to the Legal Practice Council***: As the CEO of Legal Aid SA, I do not require a resolution of the Board and this power falls within my authority as the accounting officer of the organisation. However, to remove any doubt, this matter and the response was referred to the Board for noting at its meeting held on 28 November 2020. The Board re-iterated my authority to deal with the matter and supported my decision to continue with this complaint.

Conclusion

11. I, as the CEO of Legal Aid SA confirm that the complaint must proceed to finality and request that same is attended to expeditiously.

12. In the 5 years since the complaint has been lodged, Adv Brink has, apart from what appears from the Labour Court record submitted with the original complaint continued to make incontrovertibly egregious and scandalous attacks against the Judiciary and Officials of Legal Aid SA in various matters before the Courts. The context in which these ongoing statements are made manifestly impugn the integrity of the judiciary as an institution and thus this matter requires the urgent attention of the LPC.

Yours Faithfully



Mantiti Kola

Chief Executive Officer

Legal Aid SA

Advocate A Brink
E-mail: anthonybrink.sa@gmail.com

YOUR REF:

OUR REF : NH/mg

Please Quote Our Reference

18 February 2021

Dear Advocate Brink

RE: COMPLAINT BY MR T V MTATI obo LEGAL AID SOUTH AFRICA

We refer to your letter dated 12 January 2021 and respond herewith as follows to your request for further information in so far as it relates to the Legal Practice Council: -

1. Ad paragraph 1 (page 2)

   We enclose herewith a copy of Ms Kola's letter dated 30 November 2020 and advise that the copy received is clear and legible.

2. Ad paragraph 2 (page 3)

   We confirm having received from the Society of Advocates your eight (8) complaints against the erstwhile LASA Board Chairperson, Mlambo J.P.

   We further confirm that we have copies of your following letters in our possession: -

   a) A copy of your letter addressed to Mossop SC dated 3 July 2017; and

   b) A copy of your e-mail addressed to Mossop SC dated 26 July 2017.

   We confirm that we are not in possession of your complaint to the JSC against Waglay J.P.

3. Ad paragraph 2 (page 7)

   1) As requested, please find attached a copy of the complaint by Mr T V Mtati obo the Legal Aid Board.

2) We enclose herewith a copy of Ms Kola's letter referred to above in para 1 in which she has supplemented the original complaint.

3) Attached herewith our correspondence between LASA and the LPC, relating to the revival of the complaint.

4) A copy of the report to the Bar Council by Advocate R G Mossop SC dated 17 February 2017 and 14 September 2017.

5) & 7) We enclose a copy of the LPC's minutes dated 7 March 2020.

6) The following items were considered by the LPC at its meeting held on 7 March 2020: -

   i) The complaint by T V Mtati obo LASA dated 24 November 2015.

   ii) Your letter dated 3 July 2017.

   iii) The Society of Advocate's report – September 2019.

   iv) Reports to the Bar Council by Advocate R G Mossop SC dated 17 February 2017 and 14 September 2017.

8) Please find attached a copy of our minutes from the LPC KZN Provincial Council stating that "all matter referred by the Society of Advocates must be investigated afresh as the latter ceased to have *locus standi* from 1 November 2018".

Yours faithfully

MRS N HARRIPERSAD
SENIOR LEGAL OFFICER - DISCIPLINARY DEPARTMENT

Encl.

R3

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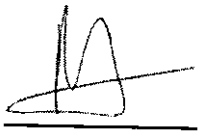
Yours Faithfully



Mantiti Kola

Chief Executive Officer

Legal Aid SA

R3

24 November 2015

29 De Beer Street
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Johannesburg 2017
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R B G Choudree SC

The Society of Advocates of KwaZulu Natal

3rd Floor, Durban Club Place

Durban,

KwaZulu-Natal, 4001

Email: kznbar@law.co.za;

Dear Choudree SC,

RE: COMPLAINT ON THE UNPROFESSIONAL CONDUCT OF ADVOCATE ANTHONY ROBIN BRINK

Please find the complaint which is self-explanatory.

Yours Faithfully,

Thembile Mtati

Attorney of Legal Aid South Africa

R3

THEMBILE VUYO MTATI

COMPLAINANT

AND

ANTHONY ROBIN BRINK

RESPONDENT

WRITTEN DECLARATION UNDER OATH INSTITUTING A COMPLAINT AGAINST ADVOCATE ANTHONY ROBIN BRINK

I, the undersigned

THEMBILE VUYO MTATI,

do hereby make oath and state as follows:-

1.

1.1 I am an adult male Attorney employed as the Corporate Services Executive by Legal Aid South Africa with its offices situated at Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg, and I am duly authorised to depose to this affidavit.

1.2 The facts contained herein fall within my personal knowledge and are both true and correct, except where it appears otherwise from the context.

2.

2.1. The purpose of this affidavit is to institute a complaint against Advocate Anthony Robin Brink, a major male Advocate of the High Court of South Africa currently employed in the capacity of an acting magistrate in Eshowe Magistrates Court.

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2.2. This complaint is brought in terms of section 7 (2) of the Admission of Advocates Act 74 of 1964 as amended.

2.3 The nature of the complaint deals with the manner in which Advocate Brink conducts his litigation, unwarranted, abusive and defamatory statements made against members of the bench including his colleagues and other officials.

2.4. The statements referred to above relate to, among others, Judge President Mlambo of North and South Gauteng Divisions of High Court, Judge President Waglay of the Labour Court Division and Judge Cele of the Labour Court.

2.5. I deal below with the specific causes of my complaint but deem it appropriate to start with the background of the matter.

3.

BCKGROUND

3.1 Advocate Brink applied for a vacant position of a Senior Litigator in our Pietermaritzburg Justice Centre. He was interviewed and recommended to proceed to the second round of interviews which was to be held at Johannesburg consisting of Senior Executives of Legal Aid SA including the Chairperson of the Board of Legal Aid SA, Judge President D. Mlambo.

3.2. The second round of interviews was not proceeded with as a result of budget uncertainties facing the organisation at the time. The budget uncertainties led to ultimate freezing of all recruitment of the Senior Litigators. All candidates recommended for the second round of interviews were duly informed of the position.

4.

ADVOCATE BRINK'S CASE

4.1. Advocate Brink wrote a number of letters through electronic mail enquiring of progress on his recruitment which were responded to. He then resorted to sending requests in terms of Promotion of Access to Information Act (PAIA) seeking certain information.

4.2. Every response given in terms of PAIA led to another until when Advocate Brink instituted action against Legal Aid SA in the Durban Labour Court. His case was briefly that he was not appointed to the position of Senior Litigator because of his stance against provision of anti-retrovirals and race. The statement of claim, which forms part of the complaint to which I will revert, is attached marked **"TVM1"**. All other annexures are separately binded and annexed to this affidavit.

4.3. Advocate Brink's claim was dismissed with costs at the Labour Court, Durban by Honourable Judge Cele. Application for Leave to Appeal was also dismissed. Advocate Brink filed a petition which was also dismissed.

4.4. Towards the end of September 2015, we received an urgent application from Advocate Brink seeking to interdict the Taxing Master from finalising taxation of the Labour Court case to enable us to get our *allocator.* In this urgent application, Advocate Brink made further unwarranted allegations against the Honourable Judge President Waglay.

4.5. The urgent application was dismissed with costs accompanied by concerns by Honourable Judge Pillay about the conduct of Advocate Brink.

4.6. Advocate Brink also sends his concerns about his non-appointment to the Office of the Public Protector, South African Human Rights Commission, Portfolio Committee on Justice and Constitutional Development (as it then was) and to every other person he thinks might agree with his view that he was discriminated against.

4.7. Without unnecessarily compounding this affidavit with all annexures, below we make reference to specific letters, record of the trial and pleadings and all these will be separately attached to this complaint. The annexures only are just over 2000 pages.

5.

COMPLAINT

5.1. It is my submission that the conduct of Advocate Brink is not befitting of an officer of the Court more so to act as a Magistrate. The language used is unprofessional, the manner he relates to colleagues and Judges requires sanction. Below is an extract of statements and language used against fellow Advocates, Judges, Attorneys and other professionals.

UNFOUNDED DEFAMATORY, DEMEANING AND INSULTING ALLEGATIONS MADE BY ADVOCATE BRINK IN HIS STATEMENT OF CASE AT THE LABOUR COURT UNDER CASE D529/11 AGAINST MLAMBO JP AND VEDALANKAR.

5.2. Advocate Brink, in his statement of case before the Labour Court, made several defamatory, derogatory, demeaning and insulting allegations including the following:

Paragraph Number	Excerpts
Par 4	*The applicant will show on a conspectus of the open facts weighed with the probabilities that following his selection and recommendation by the professional selection panel for appointment as Senior Litigator, Pietermaritzburg, the respondent's chairperson Dunstan Mlambo and Chief Executive*

	*Officer Vidhu Vedalankar, motivated by unlawful political(alternatively racial) prejudice aborted his appointment off the record and without announcing the fact; and that many months later, under pressure to account, Mlambo and Vedalankar attempted to camouflage their direct discrimination against the applicant on prohibited grounds by concocting and advancing a false cover story for it based on a fake financial justification- unsupported and contradicted by the respondent's business record; conflicting with Vedalankar's CEO report for 2009/10; conflicting with deliberately misleading statements Vedalankar made on two occasions to the Portfolio Committee on Justice and Constitutional Development (**as it then was**); and contradicting the express wishes of the Minister of Justice and Constitutional Development known to both Mlambo and Vedalankar.*
Par 5	*The Applicant will further show that in furtherance of Mlambo's and Vedalankar's scheme to cover up their unfair discrimination against the Applicant, Mlambo lied to the Minister on several scores in a "Confidential report to him Re: Adv Anthony Brink, which lies Mlambo repeated to the Chairperson of the Portfolio Committee and by so doing Mlambo deliberately misled the respondent's executive authority and Parliament in order to (a) allay their further enquiries into the complaints against the Respondent, which he had copied to the Minister and Committee Chairperson, of unfair discrimination against him and unlawful refusal to surrender material records duly requested under the Promotion of Access to Information Act and (b) to put them off discovering the falsity of the bogus financial justification for their abortion of the Applicant's recruitment dishonestly advanced by Vedalankar to the applicant and by Mlambo to the Minister and to the Committee chairperson."*
Par 31	*Because Vedalankar informed Nair that she did not agree with the applicant's recruitment as a political (or racial) undesirable, Nair never 'signed off' the Motivation to record 'RECOMMENDATION ACCEPTED' by him of the professional selection panel's selection and recommendation of the applicant for appointment, and the recruitment process to appoint the applicant was thus brought to an end.*
Par 33	*The first strategy adopted by Mlambo and Vedalankar to conceal from the applicant their unfair discrimination against him was deliberate inaction and silence.*
Par 34	*The reason Mlambo and Vedalankar opted for this initial simple strategy was because:*

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	(a) *it entailed the minimum possible risk that the applicant would discover their unfair discrimination against him; and,* (b) *they bargained that after being kept waiting in the dark for several months, the applicant would lose hope, conclude that he had been unsuccessful at his interview, give up pursuing the post for which he had applied, and withdraw himself from the recruitment process of his own accord, thus achieving Mlambo's and Vedalankar's objectives in shutting him out and concealing their decision to do so."*
Par 55	*Appreciating (a) that the applicant had not been put off by Mlambo's and Vedalankar's inaction and silence strategy, and that half a year after his interview he was still agitating for the finalisation of his appointment, and (b) that Mlambo's and Vedalankar's scheme to covertly discriminate against the applicant therefore needed elaboration, the complication posed by Mngadi's stalled internal promotion to the Durban Senior Litigator post was disposed of by Vedalankar's and Mlambo's decision to finally abort his appointment too; and in April/May 2010 Mngadi was notified seemingly by Brijlal by e-mail that the respondent had decided not to fill the post for which he had applied, alternatively that the respondent had decided not to fill its remaining vacant Senior Litigator posts, no reason given him (Mngadi assumed some 'internal restructuring' had taken place)."*

RECORD OF THE PROCEEDINGS UNDER CASE NUMBER: 529/11

5.3. It is worth mentioning that at the hearing of his case and under cross examination (**it is on record**), Advocate Brink withdrew all the defamatory, derogatory, demeaning, and insulting allegations against Mlambo JP and Vedalankar. His only explanation was that he was at all times under the impression that both Mlambo JP and V. Vedalankar were involved and had now (**in court**) realised that it was only Brian Nair(National Operations Executive).

5.4. For the purpose of convenience, I refer to the following relevant pages and paragraphs of the record:-

Page 133 Lines 2 to 5	***Mr Du Toit*** *"Then just by the way, Judge Mlambo you say is one of the top judges in the country is the person you called a liar about 30 times?"---* ***Mr Brink*** *"This is before I discovered that Nair was abusing his office, abusing his name to convey falsehoods to Parliament and to the Minister."*
Page 137 Lines 7 to 9	***Mr Du Toit*** *"What are you saying?"* ***Mr Brink*** *"I am saying that Judge Mlambo and I mean it with absolutely no disrespect and I really rule about my misconceptions about Judge Mlambo's role in this matter."*

Page 154 Lines 5 to 14	***Mr Du Toit*** *"Okay. By the way, Mr Brink, having called Mrs Vedalankar a liar and dishonest in concocting defenses, do you really think that you could possibly be appointed in an organisation where she continues to be the chief executive officer?"---* ***Mr Brink*** *"It is my conclusion from reading her two letters to me, that they were written by Brian Nair, consequently it is my relatively late conclusion, after the case began and consequently I believe that the CEO as Judge Mlambo was, the CEO's higher office and Gormy abused by Nair to convey lies to me. Sir I hold CEO Vedalankar clear in this matter."*
Page 158 Lines 3 to 8	***Mr Du Toit*** *"But you have said that it was the chief executive officer who was involved in this plot"---* ***Mr Brink*** *"But I thought so; I thought so, because of her letters to me. But later I discovered I faulted and I am sure it will be confirmed, but she did not write those letters, so I was misled."*
Page 159 Lines 1 to 24.	***Mr Brink*** *"In the early days for the better, before one discover that Judge Mlambo was innocent in this thing and I have since formed the conclusion that Vedalankar too. You see, I had her letters to me, full of lies. Judge Mlambo's report to the Minister, full of lies, what could I conclude, it was a nightmare, it was very shocking, so I had to draw what conclusion but that they are the authors, but now I know they are not the authors."---* ***Mr Du Toit*** *"Well let us clarify exactly what you are withdrawing now. You are saying firstly that Ms. Vedalankar not plot or struck your appointment, is that what you are saying?"---* ***Mr Brink*** *"This is my current conclusion in the fullness of the evidence."---* ***Mr Du Toit*** *"And you are saying that Judge Mlambo did not plot to obstruct your appointment"---* ***Mr Brink*** *"Correct"* ***Mr Du Toit*** *"That is right, okay. So she is out of the picture, she did not discriminate against you that is what you say now?"---* ***Mr Brink*** *"That is the look of it to me now, neither (**I think it meant Nair**) may well surprise us all and say, no, no, I neatly discussed it with Vedalankar and she agreed. He may tell us that, I do not know, but the look of it on the evidence before me, that I have assembled, the look of it now, that Vedalankar was not involved, not involved."*

Pages 172(Lines 1-25) Continue at Lines 1 to 2 page 173.	***Mr Du Toit*** *"But you now say this falls away?"---* ***Mr Brink*** *"It does. I hold her clear, unless Mr Nair implicates her, but we will have to see, but I have no knowledge here."---* ***Mr Du Toit*** *"And then in paragraph 17, you again say that the chairperson of the respondent's board, Dunstan Mlambo, supported and was partied to the decisions took, to abort the applicant's recruitment and thereafter to camouflage the true reason for doing so, under the cover of a lying alibi"---* ***Mr Brink*** *"That is right, and that conclusion was founded on my receipt from the chairperson, the portfolio of Judge Mlambo's updated report to parliament, a pack of lies, including the manifestly untruthful alibi."---* ***Mr Du Toit*** *"And this falls away as well?"---* ***Mr Brink*** *"Oh yes"---* *"Then"---(intervene)* *"Just about everything falls away in my first claim."* ***Mr Du Toit.*** *"I see---"* ***Mr Brink***- *"Ja"* ***Mr Du Toit*** *"Well, let's just get it clear, because I think it is necessary both for your sake and for the sake of Judge Mlambo at least to get this absolutely clear"---* ***Mr Brink*** *"Yes, yes"---* ***Mr Du Toit*** *"And then in paragraph 18, we refer to the grounds, Mlambo and Vedalankar rejected was because you were politically undesirable and well, if there was no plot, then this must fall away as well."---* ***Mr Brink*** *"Right. It falls away to the extent that they were not the actors, but Nair was."---* ***Mr Du Toit*** *"I see, okay. And then in 19 Mlambo's and Vedalankar's decision to reject the applicant's appointment on prohibited ground was taken, communicated to Nair behind the scenes and off the record and accordingly no record exists. Now if there was no decision by them, then it could not have been communicated."--* ***Mr Brink*** *"It is quite obvious."--*
Page 173 Lines 3 to 8	***Mr Du Toit*** *"Okay, so that falls away. I just want to make a note of these allegations that now are…Withdrawn?"---* ***Mr Brink*** *"Withdrawn, yes.* ***Mr Du Toit*** *"Then in paragraph 20 you have here at page 44, Mlambo neither consulted nor informed the rest of the board of his decision jointly, Ms. Vedalankar's discriminate, does that also fall away?"* ***Mr Brink*** *"Ja"*
Page 188 Lines 15 to 20	***Mr Du Toit*** *"Now why would Ms. Vedalankar who you have exonerated already from any participation and any unfair discrimination against you why would she tell you a lie?"--*

H.T

	Mr Brink *"Because she did not write the letter; I am pretty sure she did not write the letter. I could be surprised by this, but I do not think she wrote the letter; I think it was Nair who wrote the letter"*
Pages 205-206 Lines 21 to line 11 on page 206.	***Mr Du Toit*** *"Then you go on in paragraph 32 at page 49, not only had you expand on this, you say, Nair having been instructed as it were by Vedalankar, informed by Vedalankar, he then deliberately does not do something, because he is now carrying out his CEO's instruction. He is astute not to note, because appreciating the decision to abort was unlawful, so in other words he is now part of the plot, construed by Ms. Vedalankar."---* ***Mr Brink*** *"This is my conclusion, because I am many miles away, I am on the other end of the world and I am peacefully developing about bits and pieces that the American Right is taller than these things, bits and pieces. And the accumulation evidence, someone required quite recently as profoundly shifted my understanding of what actually happened in this matter. Now, sir, you can hammer away that my early statement declare but I tell you it was based on numerous fundamental misconceptions to which I had been led by Nair."*
Page 213 Lines 14 to 16	***Mr Du Toit*** *"But she could not have joined Vedalankar's scheme, because you already accepted that there was no scheme by Vedalankar."---* ***Mr Brink*** *"Correct."---*
Page 214 Line 4 to 5	***Mr Du Toit*** *"Paragraph 48 stands, paragraph 49 stands, 50 stands, 51 stands, save that is no longer Mlambo and Vedalankar's scheme, but Nair's"*
Page 215 Lines 18 to 20	***Mr Du Toit*** *"And then the heading, page 57, the scheme, that is also wrong."---* ***Mr Brink*** *"Ja, it was wrong to the extent that Mlambo and Vedalankar are named the Nair scheme."*
Page 219 Lines 23 to 24	***Mr Du Toit*** *"Right, and in paragraph 90, or 89 you attribute lies to Ms. Vedalankar."---* ***Mr Brink*** *"Ja."*
Page 220 Lines 1 to 2	***Mr Du Toit*** *"That must fall away?---* ***Mr Brink*** *"No you must reallocate the blame to Nair."*
Page 221 Lines 5 to 8	***Mr Du Toit*** *"In paragraph 99 on page 68, you describe to Judge Mlambo a desire to obstruct your efforts under the Promotional Access to Information Act. Do you stand by those contentions?"---* ***Mr Brink*** *"You know I do not."* ----------
Page 221 Lines 22 to 24	***Mr Du Toit*** *"You really are challenging, I asked you, are you still attributing falsity against Judge Mlambo?"---*

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	Mr Brink *"I have said it a hundred times, that I am not doing so, I am not attributing."*
Page 223 Lines 8 to 10	***Mr Brink*** *"Really, I have no quarrel with Judge Mlambo, I think he was misled, he was given a bad picture and that is the start of this irritable e-mail on the…"*
Page 224 Lines 3 to 5	***Mr Du Toit*** *"Now, in paragraph 108, page 73, you have accused Judge Mlambo of a blatant lie."---* ***Mr Brink*** *"Ja, it is Nair's blatant lie, it is so easy to show and indeed it is going to be retracted."*
Page 227 Lines 11 to 13	***Mr Brink*** *"I do not, do you want me to repeat bluntly, I do not think Judge Mlambo is a liar, and that is it, I used to I mean what else was there to conclude from the secret report?"*
Page 228 Lines 22 to 24	***Mr Du Toit*** *"You slandered a senior judge in a most disgraceful way."---* ***Mr Brink*** *"I agree, I agree, M'Lord, I agree and I tell you it was inadvertent and I regret it."*
Page 231 Lines 10 to 14	***Mr Du Toit*** *"You make the allegation that Judge Mlambo made a false allegation concerning the knowledge of the executives; do you attribute falsity against Judge Mlambo?"* ***Mr Brink*** *"I do not. But the rest of the paragraph is absolutely sound, to the actual extent that it is Nair's false allegation via Judge Mlambo."*
Page 241 Lines 23 to 24	***Mr Brink*** *"Well, we got over and over, but you know I hold Judge Mlambo clear…"*
Page 242 Lines11 to 13	***Mr Brink*** *"No. The financial cover story and the report were fake, but Judge Mlambo is not the author of that lie."*
Page 264 Lines 10 to 11 and lines 19 to 22.	***Mr Du Toit*** *"Paragraph 265, 122 and I imagine you do not attribute falsity to Judge Mlambo."---* ***Mr Brink*** *"That is right"* --- ***Mr Du Toit*** *"Well, just to save us the agony of going through the rest, can we assume that for the rest you have assume I think, exonerated Judge Mlambo and Mrs Vedalankar from any accusation of dishonesty and discrimination?"---* ***Mr Brink*** *"Yes"*
Page 269 Lines 1 to 3	***Mr Du Toit*** *"And you have attributed delinquency to persons involved in this matter."---* ***Mr Brink*** *"Correct. My scope was broaden, it was broader then than it is now. Because I thought Vedalankar was involved and so on."*

HF

UNFOUNDED DEFAMATORY, DEMEANING AND INSULTING ALLEGATIONS MADE BY ADVOCATE BRINK IN HIS PETITION FOR LEAVE TO APPEAL TO LABOUR APPEAL COURT UNDER CASE D529/11 AGAINST MLAMBO JP, CELE J, V. VEDALAKAR, AND B. NAIR.

Par 2	*"This is an extraordinarily serious matter with colossal implications extending way beyond my personal interest in its resolution. It concerns the personal and professional integrity of a sitting judge president, formerly of this court, and that of the most senior management executives of a major public entity. I speak of the perversion of separate Ministerial and Parliamentary enquiries by dint of multiple, objectively demonstrable lies, and different lies told to me, to the LASA Board, to the SAHRC, and to court(different lies told in the pleadings and interlocutory affidavits, and then at trial), and of the gross breakdown of proper corporate governance and the rule of law at LASA, all of which the trial judge looked past in his seemingly clear and definitive, but in fact deplorably inattentive, glib, crude and perfunctory judgement, riddled with the most basic legal and factual misdirection, omissions and non-sequiturs, and characterized by his failures over and over again to consider the radical contradictions and the ludicrously improbable, manifestly untruthful, and objectively contradicted evidence of LASA's single witness at trial, National Operations Executive Brian Nair"*
Par 3	*"I'll advert later in this affidavit to the capital misconduct and massive and pervasive corruption to which I allude here, as well as to the judge's own gravely prejudicial misconduct in the case that thwarted a full and proper ventilation of the issues that I looked to him and trusted him to try."*
Par 4	*"In his refusal the judge didn't treat the clear-cut new evidence surfaced after trial showing unequivocally that Nair had lied to him on oath in two respects. To the judge, Nair's categorically proven repeated mendacity in court made no difference to his assessment of the credibility of his evidence."*
Par 5	*"The judge elliptically conceded his fundamental legal misdirection, identified in my application, that in deciding the case he'd misallocated the final onus of proof, which he'd placed on me instead of on LASA. He then sought to avoid the fatal ramifications of the radical error by two means:"*
Par 6	*"The judge's response was to silently look away."*
Par 7	*"And second by asserting that even if I was right about the incidence of onus, irrespective of where it lay his decision wouldn't have been any different-notwithstanding that LASA relied on the mere say-so of its single witness Nair, unsupported by any records, and indeed contradicted by them, a witness the judge acknowledged I'd shown to have been 'not generous with the truth' on numerous scores. Instead of considering the implications of this for Nair's credibility as a witness, he took him at his word, mechanically reciting his evidence as gospel, without any endeavor to assay its veracity. It seems to have been*

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	inconceivable to the judge that such a high public officer could be a practiced, confident, spontaneously inventive, unctuous, bare-faced, abject liar."
Par 8	*"In his refusal, the judge failed utterly to address and deal with the rest of my attack on his judgment in my application, in which I demonstrated all his basic errors, too many to recite here, including the huge prejudice he caused me by refusing to allow me to cross-examine LASA's officers I'd subpoenaed for the purpose, thus depriving me of some major artillery I'd lined up; and he swept the whole thing-all 59 pages and 323 paragraphs-off the table in a single dismissive paragraph."*
Par 22	*"Nonetheless, in view of Nair's unbelievably foolish dissimulation at trial-he was a pathetic liar- contradicted by the documentary record and by LASA's pleaded case, that LASA's entry-level lower criminal court public defender posts were critical, and not its top professional echelon specialist Senior Litigator posts, I showed at trial and called the judge's attention in my heads to all the manifold evidence that Senior Litigator posts are indeed critical, and that the bottom-rung lower criminal court posts can't possibly be and aren't. The judge evidently didn't read that far."*
Par 24	*"And what they unequivocally show is that she* ***(Vedalankar)*** *lied to me in October 2010 about the reason my appointment was aborted. That is, to camouflage the true reason, she'd fed me a false cover-story, as very smooth and convincing as it sounded…The lies then multiplied chaotically in all directions in the classic dynamic of a disintegrating cover-up."*
Par 25	*"At trial I mentioned my conclusions from the evidence I'd found of this that Nair had ghost-written Vedalankar's letters, and Board chairperson Mlambo JP's subsequent false reports to the Minister and to Parliament to pervert their enquiries into my complaints, and for this reason I held them both clear.* ***(my underlining and this must be read with paragraph 13 above)****. But in his evidence, Nair denied any hand in Vedalankar's letters to me; and although in evidence he ultimately admitted writing Mlambo JP's reports, he could 'only assume the Judge personally wrote that' (having first insinuated it might have been Vedalankar and then again) i.e. that Mlambo JP had amplified the report for the Minister before sending it to Parliament, with its further lies added about LASA's compliance with my three PAIA requests, and the nature and scale of my claim I'd just referred to the CCMA for conciliation. (It's quite clear Nair lied to the judge about this, and that he, not Mlambo JP, amplified the report with these additional lies.) That is to say, after I'd told the Judge that I held them clear (more about this below), Nair went on to directly implicate Vedalankar and Mlambo JP in lying to me, to the Minister and to Parliament."*
Par 26	*"True to the Minister's assurance, the OSD money was indeed included in the mid-term budget in October 2010, as Vedalankar informed the Portfolio Committee on the 12th-but not me, from who she*

	concealed this hotly material fact in her letter to me six days later, the better to maintain her pretense that LASA was still too skint to hire me."
Par 28	*"In her second letter to me in January 2011, illegally refusing my second PAIA request testing her financial alibi for the abortion of my appointment, not only did Vedalankar conceal this payment from me, she positively lied to me, again and again, that LASA was still in a financial jam---------- (And Vedalankar, Nair and other national management executives took home magnificent, unprecedented bonuses.)*
Par 29	*"In March 2011, responding to my third PAIA application, Vedalankar, Nair and Clark all confirmed the lying budgetary excuse on affidavit. That is, LASA's CEO, NOE, and HRE all swore the lie was true."*
Par 30	*"Even though it was already obviously false, the financial alibi was inadequate to cover and explain Nair's inaction in finalizing my appointment in the initial three-and-a-half month period between the dates he received my recommendation on 26 November 2009 and when the OSD uncertainty arose on 10 March 2010. So to patch the gap he concocted another story-later twice retracted by him on affidavit as an obvious error, and consequently nowhere pleaded or alleged in any interlocutory affidavit, then contradicted with a different story he told the judge. Who didn't think to note any of this dismal shambles in his judgment"*
Par 31	*"In his reports written for Mlambo JP to sign and submit to pervert the ministerial and parliamentary enquiries I'd initiated, Nair now claimed that what initially held up the alleged next step in my recruitment-a so-called second round interview-was difficulty encountered in coordinating a date suitable for all members of this panel to meet. Another smooth and ostensibly convincing story. After I exposed and refuted it as an outright lie in my original statement of claim, Nair retracted it on oath as 'an error...palpably an error' that Mlambo JP had made. Except that Nair himself was the author of this brazen lie to the Minister and to Parliament; it was not Mlambo JP's 'error'.*
Par 32	*"But Mlambo JP knew full well that this new story was false, because as a member of this so-called second round interview panel he'd never been contacted for a date. At trial Nair claimed, quite absurdly, that he never opened the recommendation and CV email attachments that he'd specially telephoned for, not until more than a year later, when he did so out of simple curiosity. (The judge found this perfectly credible, even though Nair had told a different story on affidavit before trial, which destructive contradiction I pressed in my heads. The judge didn't note this, and accepted and believed Nair's childishly obvious, self-contradicted new lie told in court, which had featured nowhere in any correspondence, report, pleading or affidavit before trial, all justifying LASA's failure to proceed with my appointment. This was one of the fundamental failures of the judgment.)*
Par 33	*"So, contrary to his lie told to the Minister and Parliament in Mlambo JP's name about this, there was no difficulty fixing a date for it because*

	no attempt was ever made to do so…So Mlambo JP knew full well that the report, which Nair had written for him to sign and to give the Minister and the chairperson of the Portfolio Committee to put down my complaints and pervert their independent enquiries contained in a flagrant lie about why no steps were taken to finalise my recruitment in the first few months before the OSD uncertainty arose several months after my selection."
Par 34	*"Mlambo JP also knew full well that the budgetary justification Vedalankar had fed me to cover the true reason my appointment had been aborted, which Nair repeated in the reports he drew for him, was another lie, because he'd chaired the meeting of the Board in July 2010 at which it approved executive management's proposal to trim costs by temporarily freezing recruitment to some lower criminal court posts only…Deceptively silent about it, Vedalankar repeatedly falsely reported LASA's Strategic Plan 2009/12 to have been implemented and completed as regards the employment of Senior Litigators in her CEO report for 2011/12 to the Minister and the National Assembly."*
Par 35	*"My discoveries about Nair's authorship led me to inform the judge on the first day that I held them clear, and that I held Nair solely responsible for the lies these documents contained."(**my underlining and this statement must be read with paragraph 13 which he withdrew all allegations against Mlambo JP and Vedalankar**)*
Par 36	*"In his chambers on the second day, when I told the judge I still had a lot more evidence to lead, having already blown the fake budgetary pretext to pieces on the facts set out in my Timeline, he warned me: 'I don't want to tell you how to run your case, but don't make the mistake of throwing your net so far out that you catch more than you can bring in.' These were his exact words, spoken off the record, but contemporaneously recorded that evening in emailed reports of the court day to my family and friends. I understood the judge was giving me an indication, as we lawyers say, and a severe indication at that, namely to limit the spray of my case, and keep it fixed on Nair alone, as I'd indicated I intended doing at commencement, and not present any further evidence implicating the big fish; for if I dared make the dangerous mistake of doing so, this would be too much, and it would doom my prospects of succeeding in his court with my claim. It seemed clear to me that the judge wanted the evidence contained. He did not want me to lead more evidence beyond the smaller fry."*
Par 38	*"After I'd discredited the budgetary pretext fed me for not appointing me, and then the initial delay pretext fed to the Minister and Parliament for not immediately proceeding with my appointment, Nair cooked up and fed the Board two brand-new, totally different stories to justify his failure to finalise my appointment at Pietermaritzburg, an internal candidate's promotion at Durban, and another internal candidate's transfer to Mthatha, namely 'recruitment challenges' encountered in filling the posts, and alleged uncertainty that the six incumbent Senior Litigators were up to professional scratch. Both lies. Waffling feebly,*

	Nair was unable to support his first new story and radically changed his second, before which it was repeatedly exposed as a lie by LASA's records."
Par 40	*"It was a risible new lie, sharply contradicting LASA's pleaded and sworn version before trial, unsupported by any record, not alleged in any affidavit or pleading, and contradicted by LASA's recruitment/vacancy statistics for June 2010. But Nair's new lie in evidence made no impression on the judge, as said, he didn't mention it."*
Par 41	*"The LAC is also certain to treat an important aspect of the case, entirely disregarded by the judge (notwithstanding his fine grasp of the specifics of public service appointment procedure displayed in his Baxter judgment), namely Nair's incompetent and illegal so-called second round interview scheme for Senior Litigator candidates- unauthorised by the Board's Recruitment code and inconsistent with its Approval Framework. Unlike the judge, the LAC is certain to remark on the disgraceful breakdown of lawful recruitment procedure at LASA, in blatant disregard of the Board's said regulatory instruments which precisely govern this, and on Mlambo JP's participation in a grossly irregular, prejudicial, and unlawful recruitment practice."*
Par 42	*"His lies proliferating in court as he was trying to shore up his collapsing story about why he never signed his approval (or disapproval) of my recommendation by the selection panel as the Approval Framework required of him, and as provided at the foot of the document (with its legal nonsense, at his instance, about a further interview), Nair claimed in court that he didn't have to-a lie repeatedly and squarely contradicted by LASA's pleadings and interlocutory affidavits. The judge didn't note this; again the LAC is sure to."*
Par 43	*"Unlike the judge who accepted and believed it, the LAC is also sure to find stupidly ridiculous and manifestly false Nair's evidence, building on his just-mentioned lie, but again explicitly contradicted by LASA's pleadings and interlocutory affidavits…"*
Par 44	*"The LAC is certain to find Nair's evidence to have been obviously untruthful just about whenever he opened his mouth…It failed to do so, because its various explanations given were obviously untrue. So what?"*
Par 47	*"I did not expect the judge to be nodding off during the afternoon sessions, and finally claiming perversely, but revealing to his negative animus, that I ought rather to have taken LASA's abortion of my appointment on 'review'. As if I shouldn't have come bothering him to deliver the justice I craved, and had laboured bitterly year after year before trial to achieve, in the face of every obstacle corruptly placed in my way, viciously defamed all the while, contemptuously redoubled when I complained of it. In a matter of such enormous importance, and with so much on the line extending far beyond my personal interest in the case, and with so much fact to traverse and complex argument to present, including relevant, applicable international labour law*

	jurisprudence mentioned in my opening address, I did not expect the judge to prescribe that our heads shouldn't exceed a manifestly insufficient 'fifteen to twenty pages' suggesting that he'd already made up his mind to toss my case. I did not expect that five months after I filed my replying argument the judge hadn't troubled himself to read our heads, and was hearing our oral argument without having prepared for it ten months after the evidence, and relying only on his fading and defective memory of it presented in the course of a nine-day trial concluded the best part of a year earlier. In giving judgment, I did not expect the judge to misstate my case, omitting critical facts and including irrelevant matter, and portray as maladroit and whimsical my precisely considered tactical and strategic decisions taken, wrongly forced by him on the record and improperly pressed by him off it. I did not expect the judge to sugar Nair's lies for his judgment, by stretching and exaggerating them to help them go down. And that besides getting the final onus wrong, he should also have placed on me an impossible, pivotal, evidential onus I very obviously didn't bear and couldn't possibly have discharged."
Par 48	*"Professional and personal networks and loyalties being what they are in the real world, I appreciated from the outset that I was up against very long odds, and that notwithstanding his oath of office it would be no easy thing for a judge to impeach the conduct of his own (then) court president, and now president of the biggest, most important high court in the country, and thereby trigger a gargantuan scandal. But the truth must be out, and justice needs doing fearlessly."*
Par 49	*"An unattended splinter, so easily removed, has led to a widespread gangrene at the top of a major public entity, generally perceived to be the jewel in the crown of the Justice cluster, and a model of good governance."*
Par 50	*"Having regard to the profusion of contradictory lies that have spewed out of LASA, including to the highest authorities, in the cover-up following the illegal abortion of my appointment, to get away with and escape accountability for it-successfully so far, like Nixon nearly did after Watergate-your lordships can expect absolutely any lie from LASA in its answering papers, any subterfuge to persuade you to shut down further enquiry into this matter by refusing this petition. Since in-house attorney Mtati acting on instruction can offer you no more than hearsay about the case, and hasn't stinted at committing the most grotesque, poisonous perjury on affidavit on Nair's instructions to prejudice me in the court's eyes before trial, and since the judge found Nair to have been untruthful under oath on any number of scores, I respectfully entreat your lordships to require CEO Vedalankar, and not the former discreditable and unreliable persons, to depose to any answering affidavit under LAC rule 4(6) in regard to why I should be denied leave to argue my case before three senior, experienced, and attentive judges of appeal…The prospect of being jailed may chill any*

	inclination she might have to repeat under oath to your lordships the lies she told me."

UNFOUNDED DEFAMATORY, DEMEANING AND INSULTING ALLEGATIONS MADE BY ADVOCATE BRINK IN HIS SUPPORTING AFFIDAVIT TO URGENT APPLICATION AT PIETERMARITZBURG HIGH COURT UNDER CASE 12977/15 AGAINST WAGLAY JP,

Par 14	*"...(ii) my covering letters to Labour Appeal Court judges Davis and Sutherland JJA, falsely implicated by the order in the perversion of my petition..."*
Par 21	*"I've been busy with my draft complaint to the JSC for months- it's quite intricate, and includes similar fact evidence of the surreptitious perversion, by dint of multiple easily demonstrable lies, of separate Ministerial and Parliamentary enquiries I'd caused to be initiated; the subornation of perjury; and other grave corruption, all clearly shown..."*
Par 22	*"...(ii) that the order is a demonstrable fake..."*
ANNEXURE A: LETTER DATED 7 SEPTEMBER 2015 TO REGISTRAR OF THE LABOUR COURT, THULANI VILAKAZI WHICH FORMS PART OF ADVOCATE BRINK'S SUPPORTING AFFIDAVIT	
Par 32	*"The document is a forgery."*
Par 5- page 2	*"The registrar of the Labour Appeal Court in Johannesburg isn't your superior; and doesn't have the power to issue orders on judicial decisions made in your court. Had my petition been decided in Durban, as alleged in Phophi's order, it would have been signed and issued by you, and not by him in Johannesburg."*
Par 6, page 3	*"Davis and Sutherland JJA wouldn't have associated themselves with such a dull contradictory order. Nor with the pitifully defective logic in its second paragraph."*
Par 11- page 4	*"...according to the fake order..."*
Par 13, page 4	*"...phoney dismissal order..."*
Par 14- page 4	*"(Unlike Cele J, who shamelessly admitted in his chambers before the argument of my case a whole ten months after the two-week trial-set down for three days since my main heads alone were a phone-book thick bristling with 857 footnotes to the 1037 pages of bundled trial documents and to LASA's dense, lengthy pleadings (tactically elicited) and several interlocutory affidavits contradicted again and again by its single trial witness, but which argument he cut to a few hours, saying he just wanted our leading points-that he hadn't troubled to prepare himself in this manner; as might have been expected of a highly paid judge trying an exceptionally serious case involving fundamental rights*

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	violations, millions of rand in damages, and serious maladministration, abuse of power and pervasive corruption in the top echelons of a major public entity headed by a Judge President. It explains his abysmal judgment whitewashing it a further three-and-a-half months later, disgracefully enabling the guilty to evade accountability and to walk away smirking.)
Par 20- page 6	*"Contrary to the false implication of the order that the dismissal of my petition was the unanimous decision of the three named judges-and Phophi later repeated this lie to me expressly in a letter ghost-written for him (Annexure 'L'), his second paragraph perfectly irrelevant, his third a flourish of dismally obtuse contradiction and illogic…You've got the file in your office; you can see for yourself."*
Par 21, page 6	*"To pre-empt any tampering with the real evidence of judicial corruption that the file closes…"*
Par 23, page 6	*"Contrary to the false information uttered in the forged order; calculated to defraud me into abandoning my pursuit of justice after years of struggle-with criminal prosecution and terrible sanctions in store for those who brazenly lied to the Justice Portfolio Committee in the National Assembly about my matter, and perjured themselves in the Labour Court and in the Labour Appeal Court-Davis and Sutherland JJA weren't involved in rejecting my petition, and their names were abused in the perpetration of the fraud on me without their knowledge. Ask them, they'll tell you."*
Par 25, page 7	*"He then covered up his malicious obstruction of my right to appeal (if, under LAC rule 4(8), at least two designated appeal judges thought I was in with a chance), firstly by ordering his registrar in Johannesburg to issue a counterfeit order he'd ghost-written, pretending that he, Davis and Sutherland JJA had considered and unanimously rejected my petition in Durban on 18 February 2015, and secondly by ghost-writing a letter for the said registrar to send to me, repeating this lie and basically telling me to push off and stop asking dangerous questions threatening to blow the lid on his impeachable misconduct."*
Par 26, page 7	*"It isn't any mystery why Waglay JP intentionally violated my fundamental right to due process guaranteed by section 34 of the Constitution by blocking my access to the Labour Appeal Court to appeal and remedy the complete hash that Cele J made of my case. In a magnificent stroke of good fortune, I landed the written evidence of the stunningly dishonest improper influence that caused him to do so."*
Par 28, page 7	*"I've substantially completed drawing such a complaint regarding the perversion of my petition, identifying the other corrupt judges responsible for it and his motives, and I'll be filing it imminently."*
Par 29, page 8	*"…as the bogus order falsely implies…"*
Par 30, page 8	*"…in full knowledge that the so-called order on which it relies is a fraud, and that contrary to false appearances my case is still very much alive*

	and has yet to be properly determined on petition and then on appeal, you'll be acting improperly, in bad faith and unlawfully."
Par 31, page 8	*"...and will put this letter up with my application to demonstrate that you turned a deliberate blind eye to the true facts that I brought to your attention, and proceeded to tax a bill you well knew is not yet due."*

Having set the excerpts above and in totality looking at the tone and language used by Brink, it is my submission that he has no respect to his office and other officers of Court. He is treading on the path of demeaning, insulting and defaming any person who holds a divergent view to his own. He is quick to make conclusions that are based on his delusionary theory and without any factual basis. It is my submission that, as an officer of the court, based on his conduct, the public can be susceptible to far reaching negative implications.

Deponent

THUS SWORN AND SIGNED BEFORE ME AT JOHANNESBURG ON THIS ___ DAY OF NOVEMBER 2015. THE DEPONENT HAVING ACKNOWLEDGED TO ME THAT SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, SHE CONSIDERS THE CONTENTS THEREIN TO BE BINDING ON HER CONSCIENCE AND SHE HAS NO OBJECTION TO THE TAKING OF THE PRESCRIBED OATH.

COMMISSIONER OF OATHS

FULL NAMES :

DESIGNTION :

ADDRESS No 61 Clarendon Place Hillbrow Saps

SUID-AFRIKAANSE POLISIE
STATION COMMANDER
SOUTH AFRICAN POLICE SERVICE

"TVM 1" R3

BRINK/LASA
STATEMENT OF CLAIM
LC D529/11

Copies of this statement of claim and the applicant's document bundle are available in PDF at:

www.tig.org.za/LASA username: lasa password: LASA2010

Particularly significant is the judge's rejection of the employer's attempt to hide HIV as the cause of the dismissal by claiming that the real reason was his allergy to penicillin which he was required to administer to horses as part of his job. Concocting lawful justifications appears to be a common practice by employers and one that must be fought.

SECTION 27 statement on the Labour Court judgment in Gary Shane Allpass v Mooikloof Estates (Pty) Ltd., 16 February 2011

Camouflaging discrimination under the cloak of misconduct is one of the most insidious forms of unfair labour practices. Quick to perceive the unfairness, employees struggle to prove it. As Eagle denied that the reason for dismissing the employee was his HIV positive status, it bore the onus of proving the true reason for dismissing the employee to justify its fairness. It failed to prove that misconduct was the real reason for dismissing the employee. Eagle's management created a pattern of conduct that leads to only one reasonable conclusion: Eagle dismissed the employee on account of his HIV status. As it denied that that was its reason for the dismissal, questions of rationality and justification do not arise. In the circumstances, Eagle failed to discharge the constitutional and statutory onus of proving that the dismissal was not discriminatory.

Pillay J in Bootes v Eagle Ink Systems KZ Natal (Pty) Limited (D781/05) [2007] ZALC 52

The fact of the Watergate cover-up is not nearly as interesting as the step into making the cover-up. And when you understand the step, you understand that Richard Nixon lied.

Bob Woodward

'Surely,' Cachalia told Moerane, 'there's a letter of appointment, there's a note, there's a minute. Government does not operate like a glorified spaza shop ... In the absence of any paper trail must we just accept that [officials in the President's office] are people of standing and they will never mislead, just like [then United States secretary of state] Colin Powell never misled the security council [over Saddam Hussein's possession of weapons of mass destruction]?'

'State grilled over "secret" Zimbabwe report', *Mail & Guardian*, 26 November 2010

People with HIV must not be condemned to 'economic death' by the denial of equal opportunity in employment.

Ngcobo J (as he then was) in Hoffman v SAA (CCT17/00) [2000] ZACC 17; 2001 (1) SA 1; 2000 (11) BCLR 1235 ; [2000] 12 BLLR 1365 (CC) (28 September 2000)

Thought is not free if the expression of certain views makes it impossible to earn a living.

Bertrand Russell

The determination of quantum in relation to general damages (compensation) is a difficult one in instances involving infringement of human dignity (Ntsabo v Real Security CC [2003] 4 ILJ 2341 (LC) at 2383E-F). I do not propose to repeat what I have alluded to already concerning the outrageous and unscrupulous treatment that the applicant was subjected to at the hands of the respondent's officials. I am satisfied that the circumstances of this case justify the award of compensation that reflects a punitive element.

Ndlovu AJ in Reynhardt v University of South Africa (JS 1061/02) [2007] ZALC 96; [2008] 4 BLLR 318 (LC) (17 September 2007)

It is suggested, for instance, that there are some scientists who are 'dangerous and discredited' with whom nobody, including ourselves, should communicate or interact.

In an earlier period in human history, these would be heretics that would be burnt at the stake!

Not long ago, in our own country, people were killed, tortured, imprisoned and prohibited from being quoted in private and in public because the established authority believed that their views were dangerous and discredited.

We are now being asked to do precisely the same thing that the racist apartheid tyranny we opposed did, because, it is said, there exists a scientific view that is supported by the majority, against which dissent is prohibited.

The scientists we are supposed to put into scientific quarantine include Nobel Prize Winners, Members of Academies of Science and Emeritus Professors of various disciplines of medicine!

Scientists, in the name of science, are demanding that we should cooperate with them to freeze scientific discourse on HIV-AIDS at the specific point this discourse had reached in the West in 1984.

People who otherwise would fight very hard to defend the critically important rights of freedom of thought and speech occupy, with regard to the HIV-AIDS issue, the frontline in the campaign of intellectual intimidation and terrorism which argues that the only freedom we have is to agree with what they decree to be established scientific truths.

Some agitate for these extraordinary propositions with a religious fervour born by a degree of fanaticism, which is truly frightening.

The day may not be far off when we will, once again, see books burnt and their authors immolated by fire by those who believe that they have a duty to conduct a holy crusade against the infidels.

It is most strange that all of us seem ready to serve the cause of the fanatics by deciding to stand and wait.

President Thabo Mbeki, letter to President Bill Clinton, Prime Minister Tony Blair, Chancellor Gerhard Schröder, and UN Secretary General Kofi Annan, 3 April 2000

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY ROBIN BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

APPLICANT'S STATEMENT OF CLAIM[1]

THE PARTIES

1. The applicant is Anthony Robin Brink, 52, an advocate of the High Court of South Africa, who resides at 25 Baker Road, Prestbury, Pietermaritzburg, KwaZulu-Natal.

2. The respondent is Legal Aid South Africa, a statutory body established by the Legal Aid Act 22 of 1969, whose registered office and principle place of business is at 29 De Beer Street, Braamfontein, Johannesburg, Gauteng.

3. The respondent was previously called the Legal Aid Board, and both its Approval Framework and Recruitment 'policy and procedure' protocol, inter alia, continue to use this former appellation and its acronym 'LAB', sometimes quoted hereunder.

[1] For convenient reference, the applicant's averments in his statement of claim are footnoted where possible to relevant passages in the documents included in the applicant's trial bundle, listed in the annexed schedule. The documents referred to are identifiable from their page numbers in the schedule and bundle.

Summary Introduction

4. The applicant will show on a conspectus of the open facts weighed with the probabilities that following his selection and recommendation by a professional selection panel for appointment as Senior Litigator, Pietermaritzburg, the respondent's chairperson Dunstan Mlambo and Chief Executive Officer Vidhu Vedalankar, motivated by unlawful political (alternatively racial) prejudice aborted his appointment off the record and without announcing the fact; and that many months later, under pressure to account, Mlambo and Vedalankar attempted to camouflage their direct discrimination against the applicant on prohibited grounds by concocting and advancing a false cover story for it based on a fake financial justification – unsupported and contradicted by the respondent's business records; conflicting with Vedalankar's CEO report for 2009/10; conflicting with deliberately misleading statements Vedalankar made on two occasions to the Portfolio Committee on Justice and Constitutional Development; and contradicting the express wishes of the Minister of Justice and Constitutional Development known to both Mlambo and Vedalankar.

5. The applicant will further show that in furtherance of Mlambo's and Vedalankar's scheme to cover up their unfair discrimination against the applicant, Mlambo lied to the Minister on several scores in a 'Confidential ... Report' to him 'Re: Adv Anthony Brink', which lies Mlambo repeated to the chairperson of the Portfolio Committee; and by so doing Mlambo deliberately misled the respondent's executive authority and Parliament in order (a) to allay their further enquiries into the applicant's complaints against the respondent, which he had copied to the Minister and Committee chairperson, of unfair discrimination against him and unlawful refusal to surrender material records duly requested under the Promotion of Access to Information Act, and (b) to put them off discovering the falsity of the bogus financial justification for their abortion of the applicant's recruitment dishonestly advanced by Vedalankar to the applicant and by Mlambo to the Minister and to the Committee chairperson.

STATEMENT OF THE FACTS ON WHICH THE APPLICANT RELIES

6. The respondent's principle officers referred to herein are:

Mlambo – Chairperson of the Board of Directors

Vedalankar – Chief Executive Officer

Makokoane – Chief Operations Officer

Nair – National Operations Executive

Clark – Human Resources Executive

Hlabatau – Chief Financial Officer

Mdaka – Regional Operations Executive, KwaZulu-Natal

Brijlal – Regional Human Resources Manager, KwaZulu-Natal

7. The material facts on which the applicant relies are pleaded chronologically, with sufficient particularity to enable the respondent to reply, under the following heads:

Part	Heads	Pages	Paragraphs
1	The selection and recommendation of the applicant for appointment to the post of Senior Litigator, Pietermaritzburg, and Mlambo's and Vedalankar's abortion of his recruitment	5–8	8–21
2	The political context	8–12	22–30
3	Mlambo's and Vedalankar's initial inaction and silence strategy to conceal from the applicant their unfair discrimination against him	12–14	31–6
4	The first attempt to put the applicant off with misinformation and discouragement	14–19	37–54

5	The disposal of the first complication impeding Mlambo's and Vedalankar's scheme to prevent the applicant's appointment and conceal their unfair discrimination against him	19–21	55–61
6	The disposal of the second complication that arose to impede Mlambo's and Vedalankar's scheme to prevent the applicant's appointment and conceal their unfair discrimination against him	21–3	62–71
7	The second attempt to put the applicant off with misinformation	24–7	72–85
8	The third attempt to put the applicant off with misinformation: Mlambo's and Vedalankar's fabrication and assertion of a fake budgetary justification for aborting the applicant's appointment to camouflage their unfair discrimination against him	28–30	86–92
9	Mlambo's response to the applicant's petition to him concerning Vedalankar's plainly unlawful refusal to comply with PAIA on dishonestly invented grounds and the indications that her claim to have aborted the applicant's recruitment for financial reasons was untrue	30–43	93–127
10	The facts and contradictions exposing and refuting Mlambo's and Vedalankar's fake budgetary justification for aborting the applicant's appointment	43–62	128–86
11	The alleged 'freezing' of Senior Litigator posts off the record	63–6	187–98

12	The respondent's 'second interview' and 'final approval' claims	66–71	199–211
13	The legal prohibition of unfair discrimination against the applicant as an 'applicant for employment'	71–2	212–5
14	The applicant's legitimate expectation of being appointed	72–4	216–25
15	The facts supporting an award of damages to the applicant for patrimonial loss	74–5	226–9
16	The facts, including aggravating factors, supporting an award of general compensation to the applicant	75–92	230–79
17	Referral to the CCMA within the prescribed time	92–3	280–5
18	Referral to the Labour Court within a reasonable time after the issue of a certificate of outcome by the CCMA	93–5	286–95

The selection and recommendation of the applicant for appointment to the post of Senior Litigator, Pietermaritzburg, and Mlambo's and Vedalankar's abortion of his recruitment

8. In August 2009, and repeatedly prior to this, the respondent advertised in South African law journals and newspapers inviting suitably qualified and experienced lawyers to apply for its vacant Senior Litigator posts at its Pietermaritzburg and Durban Justice Centres.[2]

9. The posts, along with other identical posts at Justice Centres at seats of the High Court, now nearly all filled, were created by the respondent in 2007 at the instance of the then Parliamentary Select Committee on Safety and Security at a meeting with the respondent's chairperson Dunstan Mlambo and CEO Vidhu Vedalankar on 30 May that

[2] Pages 43–5; page 133, paragraph 109; and page 537 of the applicant's document bundle.

year, at which several members of the Committee conveyed their concern about public perceptions of inadequate professional expertise among the respondent's legal staff.[3]

10. The applicant applied for the Pietermaritzburg Senior Litigator post; was shortlisted for it; was interviewed on 12 November 2009 along with other candidates by a duly delegated professional selection panel[4] of senior attorneys and advocates to assess his suitability for appointment; and was selected and recommended by the panel for appointment.[5]

11. Interviews for the vacant Senior Litigator post at the Durban Justice Centre were held on the same day, and an internal candidate from that office, High Court Unit head Bongani Mngadi, was selected for promotion to it.[6]

12. Following the applicant's successful interview for the Pietermaritzburg post, a Motivation[7] was drawn by KwaZulu-Natal Regional Operations Executive Vela Mdaka for the applicant's appointment (and for Mngadi's promotion to the Durban post); and as required by the respondent's Recruitment protocol,[8] the Motivation was duly 'signed off' by all members of the professional selection panel, including Mdaka as 'the line function executive before being forwarded to the HRE/COO/CEO/ delegated for approval'[9] – in casu, the respondent's National Operations Executive Brian Nair.[10]

13. Though a white man, the professional selection panel certified that its selection and recommendation of the applicant for appointment accorded with the respondent's Employment Equity targets.[11]

14. After the last of the professional selection panel 'signed off' the Motivation on 23 November 2009, Mdaka forwarded it to his direct superior Nair, 'the line

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[3] Pages 120–2, paragraphs 50–6.
[4] Pages 230–2, paragraph 1.2.2.
[5] Page 244, paragraph 1; and page 247, paragraph 6.
[6] Ibid.
[7] Pages 244–8. The Motivation is incorrectly dated 6 November 2009, before the interviews took place on the 12th ; and it further incorrectly states that the interviews were held on 5 November, a week earlier than they actually were.
[8] Page 234, note commencing, 'NB: Motivation has to be signed off'.
[9] Ibid.
[10] Page 217, paragraph 12; and pages 370 and 372, section 8.2.2(b).
[11] Page 248.

executive/manager responsible for the appointment of Senior Litigators',[12] for his approval in terms of the respondent's Approval Framework, subject to the agreement of CEO Vedalankar and Chief Operations Officer Jerry Makokoane.[13]

15. Notwithstanding his obligation under the Approval Framework to solicit his superior Makokoane's agreement or disagreement with the applicant's appointment, Nair did not consult him, and he was irregularly and unlawfully left out of the approval process.

16. On learning of the applicant's identity, Vedalankar exercised her prerogative not to agree with the applicant's appointment, thus aborting his recruitment.

17. Having regard to his subsequent recorded conduct in the matter, to be pleaded infra, it is probable that Vedalankar consulted the chairperson of the respondent's Board of Directors, Dunstan Mlambo, and that Mlambo supported and was party to 'the decisions we took' (his phrase in a related context) to abort the applicant's recruitment and thereafter to camouflage the true reason for doing so under cover of a lying alibi.

18. The grounds on which Mlambo and Vedalankar rejected the applicant's appointment were that in their view the applicant is a political undesirable, whose objectionable minority 'thought, belief and opinion'[14] in matters of contested public health policy, and his prominent political activity in this regard,[15] do not 'fit' with the respondent's 'organizational culture' and/or 'values' and/or 'brand' and/or one of its 'KEY' operating strategies and projects in this contested knowledge and policy arena.[16] (Or a racially undesirable white.)

19. Mlambo's and Vedalankar's decision to reject the applicant's appointment, on prohibited grounds, was taken and communicated to Nair behind the scenes and off the record and accordingly no record of it exists.[17]

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[12] Page 217, paragraph 12.
[13] Pages 370 and 372, section 8.2.2(b).
[14] Page 3, paragraphs 10–12.
[15] Ibid.
[16] Pages 453; 459–61; 462–74; and 525–36.
[17] Page 222, paragraph 35; and page 381, paragraph 14.

20. Mlambo neither consulted nor informed the rest of the Board of his decision taken jointly with Vedalankar to covertly discriminate against the applicant on prohibited grounds, to abort his recruitment, and to prevent his appointment to the respondent's critical vacant Senior Litigator post at its Pietermaritzburg Justice Centre.

21. The reason Mlambo did not inform, much less consult the Board of Directors before agreeing with Vedalankar to torpedo the applicant's successful application is because as the President of the Labour Court, and therefore fully cognizant of the basic principles of labour law in the democratic constitutional era, he well appreciated the dire unlawfulness of his and Vedalankar's violation of the applicant's rights to equality and to equal employment opportunity and of their unfair discrimination against him on prohibited grounds; and his intention in not consulting or even informing the rest of the Board was that they should not discover it.

The political context

22. At the time he applied and was interviewed, selected and recommended for the post, the applicant was engaged as a full-time researcher, writer and activist in Cape Town, working as the founder and leader of a national voluntary association and information clearing house, the Treatment Information Group, to bring government and public attention to the medical and scientific research literature demonstrating the exceptionally dangerous toxicity and clinical inefficacy of the chemical compounds AZT and nevirapine, marketed by the pharmaceutical industry as antiretroviral drugs ('ARVs'), and to dissentient minority medical and scientific opinion concerning the contemporary Western AIDS construct generally. In 1999 the applicant's comprehensive review of the medical and scientific research literature on the extreme toxicity of AZT moved then President Thabo Mbeki to order an enquiry into its safety[18] – for which drug a political action group, the Treatment Action Campaign ('TAC'), was lobbying to coerce the government to spend billions of rands on buying it from the world's then largest transnational pharmaceutical corporation GlaxoWellcome (now GlaxoSmithKline) to administer to pregnant African women and their newborn babies in public hospitals and clinics. In 2002 the applicant drew an amicus curiae application in

[18] Pages 13–4, paragraph 8; page 14, paragraph 10; pages 80–2; page 88; and pages 93–8.

support of the government's appeal to the Constitutional Court against an order won by the TAC that it provide nevirapine to women in labour and their newly born babies – in which application the applicant reported that the single clinical trial on which the TAC based its entire case had just been rejected as a worthless shambles by the US Food and Drug Administration; refuted the TAC's fervent allegations about the salvific marvels of a single baptismal dose of the drug given newborn African babies; pointed out its very high toxicity; and highlighted the high incidence of severe adverse effects reported among African babies in the said clinical drug trial, some fatal.[19]

23. For a complex of reasons, the purely medical and scientific controversy over the safety and therapeutic utility of ARVs since former President Mbeki's initial public ventilation of the issue in the National Council of Provinces on 28 October 1999 has been acutely polarized in public discourse in South Africa and has been freighted with an intense ideological, political, moral and emotive charge. And among those, predominantly of European and Asiatic ancestry but also some compliant Africans, who believe and propound with tremendous, widely shared moral enthusiasm,[20] that these drugs are modern, sophisticated, redemptive Western medicines[21] to rescue the otherwise doomed African majority from an early death caused by an explosive epidemic[22] of deadly, sexually transmitted plague among them (but not among whites, coloureds and Indians), due to their indisciplined, incontinent, violent and abusive sex lives,[23] the applicant is generally loathed for not conforming to and for scorning[24] these ludicrous, profoundly racist follies (which most whites, coloureds and Indians find very attractive) as South Africa's top AIDS denialist; ignorantly and perversely opposed to medical and scientific truth; a pernicious Lysenkoist influence on then President Thabo Mbeki, whose shared aversion to ARVs has consequently cost hundreds of thousands of African lives; a depraved moral and political reprobate; a social pariah; dishonest; mentally ill;

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[19] Pages 11–3, paragraphs 5.1–7.
[20] Pages 462–74, every page and pointedly at page 465–6, last paragraph.
[21] Page 468–9, last paragraph, sentences commencing, 'Treatment'; page 469, paragraph commencing, 'I've said'; page 472, third and fourth paragraphs commencing, 'Question: Eliza Slattery'; and page 473, penultimate and last paragraphs commencing, 'Question: I'm Michael Fleshman'.
[22] Page 465, first paragraph commencing, 'The sort of'; and page 470, first paragraph commencing, 'The third thing'.
[23] Page 466, last paragraph; page 467, first paragraph commencing, 'But there are', and last paragraph; page 468–9, last paragraph; and pages 471–2, penultimate and final paragraphs, commencing, 'Question: I work'.
[24] Page 15, paragraph 12.

evil; and even a public enemy who ought to be killed.[25] The TAC has got the applicant proscribed by the Advertising Standards Authority – banned from voicing his case against ARVs in the media, and from engaging printing works to publish his reviews and synopses of peer-reviewed research findings about them, published in the professional medical and scientific press. The Parliamentary Opposition, the Democratic Alliance, has similarly listed and anathematized the applicant as South Africa's Number One menace to the public, 'so dangerous' that the party enjoins 'the media ... to ... deny [his] dissident views publicity' and 'professional organizations to exclude [him] from positions of authority'[26] – precisely like a 'Communist' lawyer named in the Government Gazette by the apartheid regime: politically neutralized, gagged and barred from practising his profession in the courts.[27]

24. In short, for campaigning for the most unpopular cause in the democratic era, the applicant is, to his knowledge, currently the most violently detested, despised, reviled, marginalized, repressed, and isolated political dissident in South Africa.[28]

25. In contradistinction to the applicant's negative conclusions derived from his intensively researched knowledge and exhaustive published reviews[29] of the medical and scientific research literature showing AZT and nevirapine to be completely useless, gravely harmful cell poisons, especially for unborn and newly born children,[30] in South Africa nearly all African, Vedalankar subscribes to the almost universal Western consensus, established among the commercial media-consuming public by the pharmaceutical industry and its political and propaganda assets, that its said chemical merchandise is actually life-saving medicine; and she accordingly believes that 'Legal Aid SA's most significant accomplishment' (per the question put) has been that 'Legal Aid SA funded the constitutional litigation on behalf of the Treatment Action Campaign to get the government to roll out anti-retrovirals to pregnant mothers who are HIV positive to prevent the transmission of the virus from mother-to-child in all state hospitals. This case is arguably one of the most significant impact cases as it has resulted in preventing

[25] Pages 415–8; and 93–9.
[26] Page 415, part 1, first citation.
[27] Page 418, Part 3.
[28] Pages 14–5, paragraph 11; pages 93–9; and 194.
[29] Pages 80–2.
[30] Pages 11–4, paragraphs 5.1–10.

the loss of life of a large number of babies who would otherwise have contracted HIV Aids.'[31]

26. Although himself African, Mlambo uncritically subscribes to the American and European medical industrial complex's HIV-AIDS-ARV business model, promoted by the pharmaceutical industry[32] that Africans in South Africa (not whites, coloureds or Indians) are 'new[ly]'[33] riddled with deadly venereal disease and specifically that 'between the ages of 25 and 29, 40% of women are suffering from HIV and AIDS',[34] and that for this reason these Africans absolutely need to consume the extraordinarily toxic patented chemicals manufactured, marketed and sold by the Western transnational pharmaceutical industry as ARVs every day until they die. Or else they will die horrible early deaths.

27. Mlambo actually believes these things and is an active political promoter of this immensely lucrative politico-medical construct on the international stage under the mantle of human rights,[35] and he also serves 'on the Board of the policy-setting group that guides the work of the Legal Resources Centre' ('LRC')[36] – attorneys for its 'organizational client ... the Treatment Action Campaign' in the nevirapine case against the government in the High and Constitutional Courts,[37] funded by the respondent in alleged service of human rights,[38] even though the TAC is not an 'indigent person..'[39] but a multi-million rand corporation lavishly financed by foreign interests. Instructed by the TAC, the LRC acted against the applicant in the Cape High Court in 2005 in an abusive misjoinder to shut him down as the country's leading and most prominent critic of ARVs and of their professional advocates and political lobbyists. (On sight of the

[31] Page 11, question 5 and reply.
[32] Page 471, first paragraph; and page 472, penultimate paragraph. 'BMS' is the pharmaceutical corporation Bristol-Myers Squibb. Both Merck and BMS are major producers of ARVs.
[33] Page 526.
[34] Page 469; and page 15, paragraph 14.
[35] Pages 462–74; and 526.
[36] Page 463, fifth paragraph commencing, 'And then in'.
[37] Page 464, fourth paragraph commencing, 'In 2002'.
[38] Page 11, paragraph 5.
[39] Page 379, paragraph 3.

applicant's heads of argument on the eve of trial in March 2008, the TAC and LRC immediately withdrew against him).[40]

28. Both Vedalankar and Nair are members of a network of many of the world's leading local and international activists, officials and journalists engaged in promoting Northern corporate pharmaceutical business with ARVs in South Africa and in the countries of the South generally.[41]

29. Mlambo, Vedalankar and Nair are thus partisans of pharmaceutical interests and the chemical merchandise they promote, and in this regard they are diametrically and radically opposed to the applicant in his opinion and beliefs and the heavily politicised, virulently contested cause for which he campaigns, driven by his moral, social and political conscience.

30. The respondent's entire Board and executive management structure actively promote and perpetuate the Western HIV-AIDS-ARV-paradigm in South Africa and the vast pharmaceutical and ancillary commercial and professional interests it supports, both within the respondent as an organization[42] and outside it;[43] and the respondent 'prioritis[es]' its 'HIV/AIDS Strategy and Roll Out Plan'[44] as a 'KEY'[45] operating policy,[46] with a current dedicated budget allocation of R200 000 a year[47] – and previously more than double[48] and treble[49] this sum – for disbursing to these interests.

<u>Mlambo's and Vedalankar's initial inaction and silence strategy to conceal from the applicant their unfair discrimination against him</u>

31. Because Vedalankar informed Nair that she did not agree with the applicant's recruitment as a political (or racial) undesirable, Nair never 'signed off' the Motivation to record 'RECOMMENDATION ACCEPTED' by him of the professional selection panel's

[40] Page 14, paragraph 9.
[41] Page 65, item 16.
[42] Pages 461; 527; 530–4; and 536.
[43] Pages 461; 529; 534; and 536.
[44] Page 534.
[45] Page 531.
[46] Pages 525–36; 459–61; and 462–74.
[47] Page 461, 'Budget HIV/AIDS'; and page 532, 'HIV/AIDS Budget'.
[48] Page 532.
[49] Page 535–6.

selection and recommendation of the applicant for appointment;[50] and the recruitment process to appoint the applicant was thus brought to an end.

32. Well appreciating that no good reason existed for him not to note 'RECOMMENDATION ACCEPTED' on the Motivation, and appreciating further that the decision to abort the applicant's appointment was unlawful, Nair was astute not to note 'RECOMMENDATION NOT ACCEPTED' either.[51] Nonetheless, the practical effect of Nair's deliberate omission to 'sign.. off' the Motivation either way was to terminate the recruitment process for the applicant's appointment.

33. The first strategy adopted by Mlambo and Vedalankar to conceal from the applicant their unfair discrimination against him was deliberate inaction and silence.

34. The reason Mlambo and Vedalankar opted for this initial simple strategy was because:

    (a) it entailed the minimum possible risk that the applicant would discover their unfair discrimination against him; and,

    (b) they bargained that after being kept waiting in the dark for several months, the applicant would lose hope, conclude that he had been unsuccessful at his interview, give up pursuing the post for which he had applied, and withdraw[52] himself from the recruitment process of his own accord, thus achieving Mlambo's and Vedalankar's objectives in shutting him out and concealing their decision to do so.

35. Notwithstanding the direct interests of the respondent's national Human Resources Executive Amanda Clark and KZN ROE Mdaka in Mlambo's and Vedalankar's abortion of the applicant's recruitment to the critical vacant senior professional post in KwaZulu-Natal for which he had been selected and recommended, Clark was only informed around five months[53] and Mdaka nine months[54] later.

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[50] Page 248.
[51] Ibid.
[52] Page 6, paragraph 25; and page 256. Apropos of Clark's false charge in the penultimate paragraph of her email at page 256, please note the reply on page 28, bulleted paragraph commencing, 'displaces'.
[53] Pages 5–6; paragraphs 18–24.
[54] Page 151, paragraph 192; and page 388.

36. Complicating Mlambo's and Vedalankar's scheme to prevent the applicant's appointment was the fact that the Pietermaritzburg Senior Litigator post had been advertised simultaneously with the Durban one,[55] interviews for both had been conducted on the same day, and selections and recommendations for both posts were made at the same time.[56] So, appreciating that it was not possible for the Durban appointment to be finalized and not the Pietermaritzburg one without alerting the applicant to the irregular handling of his application and leading to his possible discovery of Mlambo's and Vedalankar's direct covert unfair discrimination against him, they decided to shelve the process for the internal promotion of the Durban candidate pro tem, without informing him.

The first attempt to put the applicant off with misinformation and discouragement

37. When three weeks after his interview the applicant enquired from the respondent's KZN Regional Human Resources Manager Baboo Brijlal as to the outcome, Brijlal replied that he was not permitted to say and instructed the applicant to wait for information. (Brijlal had chaired and minuted the selection panel, and had co-signed the Motivation for the applicant's appointment.)[57]

38. The applicant then waited for five months, with no information from the respondent at all.

39. On 14 April 2010 the applicant telephoned Clark to enquire about progress in the appointment process. In a reassuringly professional and pleasant manner she responded that she was unaware of the applicant and of his pending application for the Pietermaritzburg Senior Litigator post, but would investigate, and in a friendly email a couple of hours later recorded that she had 'looked into this matter and can confirm it is still in progress and has not been concluded. I will endeavour to expedite the process in which I am not directly involved at this stage. ... Thanks for your keen interest. We

[55] Pages 43–4; and 45.
[56] Pages 244–8.
[57] Page 248.

hope to conclude the matter soon.' Clark advised the applicant to contact Brijlal 'for updates'.[58]

40. Clark's initial telephonic and emailed responses to the applicant's enquiry on 14 April 2010, in which she revealed her complete ignorance of the applicant and the status of the process to finalize his recruitment for the Pietermaritzburg Senior Litigator post, show that for five months after his successful interview for appointment and for about four months after Mlambo and Vedalankar decided to abort his recruitment and Nair was told of this, Vedalankar and Nair concealed this decision from her.

41. An hour or so prior to his call to Clark on 14 April 2010, the applicant enquired of Pietermaritzburg Justice Centre Executive Bertus Appel whether he had any information as to progress in the matter. Appel had none, and volunteered that whenever he enquired of Mdaka about the reason for the delay in getting his Senior Litigator, Mdaka had no idea.[59] (Both Mdaka and Appel served on the professional selection panel that unanimously selected and recommended the applicant for appointment.)[60]

42. Mdaka's ignorance as to the reason for the delay in the finalization of the applicant's appointment shows that five months after his successful interview, and about four months after Mlambo and Vedalankar decided to abort the applicant's recruitment, Vedalankar and Nair had concealed this decision from Mdaka as well.[61]

43. In sum, as at 14 April 2010, neither Clark nor Mdaka nor Brijlal had been given any information by Vedalankar and Nair about the reason for Mlambo's and Vedalankar's decision to abort the finalization of the applicant's recruitment, in the five-month period since his successful interview.

44. At the time Clark made her enquiries for the applicant, both Vedalankar and Nair were out of office attending a meeting with the Parliamentary Portfolio Committee on Justice and Constitutional Development in Cape Town.[62] Upon their return to their offices,

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[58] Page 5, paragraph 20; and page 258.
[59] Page 151, paragraph 192.
[60] Page 248.
[61] Page 151, paragraph 192.
[62] Pages 431–3.

Vedalankar and/or Nair briefed Clark about Vedalankar's and Mlambo's decision to prevent the applicant's appointment and the improper reason for it; and as will appear below, Clark joined Vedalankar's scheme to shut the applicant out and conceal from him their unfair discrimination against him.

45. A week after his telephone call to Clark and her emailed assurance that the recruitment process was still on the go, the applicant's second enquiry to Brijlal 'for updates' drew another blank, other than his information that the matter was now in the hands of the respondent's national executive managers and his claim that the professional selection panel's choice of candidate for appointment was subject to confirmation 'by the chairman, a Judge of Appeal' at 'a final interview'.[63]

46. The applicant's persistent, repeated further telephone calls to Clark for information as to the state of play were then avoided and not returned.[64]

47. On 22 April 2010 the applicant emailed Clark, requesting her to establish 'whether the administrative machinery in HQ involved in fixing a date with the judge for the final interviews is indeed turning – and not stalled at the clerical level'.[65]

48. A week later on 30 April, almost six months after the applicant's successful interview, Clark responded, with no explanation, no apology for the odd long and silent delay, her email now calculatedly unpleasant, uninformative and discouraging, as well as disingenuous and contradictory: '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 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.'[66]

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[63] Page 5, paragraph 21.
[64] Page 5, paragraph 22.
[65] Page 257.
[66] Page 256.

49. In a stingingly insultingly manner Clark also falsely accused the applicant of shady dealing: 'It is also not proper to obtain inside information from your brother and then to stand on whatever you have been told by him', concerning the applicant's (mistaken) belief, from what he'd heard, that his selection and recommendation by the regional professional selection panel was subject to Mlambo's approval following another interview by him.[67]

50. Secretly from the applicant, Clark blind-copied her deliberately offensive and degrading email to Mdaka and Brijlal.[68]

51. In her statements to the applicant in furtherance of Mlambo's and Vedalankar's scheme that she had joined to unfairly discriminate against the applicant by blocking his recruitment, and to put him off pursuing his appointment, Clark:

    (a) determinedly concealed from the applicant the fact that his interview had been successful and that he had been selected and recommended for appointment, as well as the status and progress of the process to finalize the process – in fact aborted by Mlambo and Vedalankar;

    (b) falsely insinuated that the applicant's interview had been unsuccessful along with the other shortlisted candidates 'called to [the] interview' – when in truth and in fact the Motivation[69] for the applicant's appointment, signed by all members of the professional selection panel, showed that much more than merely 'Being called to an interview' together with the other unsuccessful candidates, the applicant had been selected from among them and had unanimously been recommended for appointment to the post for which he had applied;

    (c) implicitly contradicted her false insinuation to the applicant that his interview had been unsuccessful by (i) stating that the recruitment 'process' still had to be 'complete[d]', and (ii) inviting the applicant to 'withdraw' from it – thereby implying and confirming that his interview had indeed been successful and that he had

[67] Page 256, penultimate sentence; and page 28, bulleted paragraph commencing, 'displaces'.
[68] Page 218, paragraph 18.
[69] Pages 244–8.

indeed been selected and recommended for appointment, and not rejected after his interview along with the other unsuccessful shortlisted candidates;

(d) falsely alleged that the outcome of the interview and selection process was unclear ('At this stage it is not even clear which applicants will be considered in the second round') – whereas in truth and in fact the applicant and Mngadi had clearly been selected and recommended as the sole suitable candidates for appointment to the Pietermaritzburg and Durban Senior Litigator posts for which they had respectively applied;

(e) falsely implied that legitimate operational considerations had arisen since the applicant's successful interview to put the completion of the recruitment process for his appointment in doubt – whereas in truth and in fact none had arisen to prevent it;

(f) falsely suggested that it was uncertain whether the process to finalize the applicant's recruitment would be completed – whereas in truth and in fact Mlambo and Vedalankar had already decided to abort it;

(g) made plain that the applicant could expect no information from the respondent in the future, even as she falsely implied that the process to appoint the applicant was still alive; and,

(h) whereas two weeks earlier she had encouraged the applicant to contact Brijlal 'for updates', Clark now contrived to discourage him from approaching the respondent again to 'follow up' and establish the upshot of his application and when it might be finalized, and from pursuing his appointment to the post for which she knew he had been duly selected and recommended.

52. Notably in light of subsequent allegations by Nair, Vedalankar and Mlambo pleaded infra, Clark did not claim in her palpably hostile email to the applicant at the end of April 2010, following her consultation with Vedalankar and/or Nair, that:

(a) in the almost half a year since the applicant's successful interview she or any other executive manager had encountered any 'initial' practical difficulties 'in coordinating' the finalization of the recruitment process, resulting in 'delays';[70]

(b) the Senior Litigator 'recruitment process' had thereafter been 'put on hold';[71] and,

(c) any good reason had arisen to 'put ... the finalis[ation] of the recruitment process ... on hold'.[72]

53. Although now finally 'directly involved at this stage', nearly six months after the Pietermaritzburg and Durban Senior Litigator interviews, Clark did not proceed to inform, or to instruct Brijlal to inform, the other candidates Ngcamu and van Wyk that their applications had been unsuccessful, and they were left to infer this from her glaringly unprofessional failure to communicate with them.

54. Clark's intention in not informing any of the interviewed candidates of the outcome of their interviews was to conceal the undesirable outcome, namely the fact that the applicant had been recommended and selected by the professional selection panel for appointment to the Pietermaritzburg post.

<u>The disposal of the first complication impeding Mlambo's and Vedalankar's scheme to prevent the applicant's appointment and conceal their unfair discrimination against him</u>

55. Appreciating (a) that the applicant had not been put off by Mlambo's and Vedalankar's inaction and silence strategy, and that half a year after his interview he was still agitating for the finalization of his appointment, and (b) that Mlambo's and Vedalankar's scheme to covertly discriminate against the applicant therefore needed elaboration, the complication posed by Mngadi's stalled internal promotion to the Durban Senior Litigator post was disposed of by Vedalankar's and Mlambo's decision to finally abort his appointment too; and 'in April/May'[73] 2010 Mngadi was notified

[70] Page 505, second paragraph.
[71] Page 19.
[72] Ibid.
[73] Pages 146–7, paragraphs 179–80.

seemingly by Brijlal[74] by email[75] that the respondent had decided not to fill the post for which he had applied, alternatively that the respondent had decided not to fill its remaining vacant Senior Litigator posts, no reason given him (Mngadi assumed some 'internal restructuring' had taken place).[76]

56. Other than the email notification of Mngadi 'in April/May' 2010, no record exists of Vedalankar's and Mlambo's decision to abort Mngadi's promotion to the Durban Senior Litigator post; and no record exists of the instruction given by Nair, as line function executive,[77] to Mdaka or to Brijlal to notify Mngadi that the appointment process had been terminated.[78]

57. The reason Vedalankar and Nair were astute not to leave any record of the decision to terminate Mngadi's promotion to the Durban Senior Litigator post is because they well appreciated that it was grossly irregular.

58. Unlike Mngadi, the applicant was not told by the respondent that his recruitment had been aborted, even though evidently anxious for information about his application many months after his interview. Instead, he was told by Clark that it was 'still in progress and has not been concluded'[79] and 'I think you should allow us to complete the process at the pace we have decided',[80] and the applicant was then kept further waiting in the dark in the deliberate expectation that he would lose hope and abandon his application of his own accord, thus achieving Mlambo's and Vedalankar's purposes

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[74] Page 385, paragraph 37. To date, in deliberate breach of their constitutional and legal obligations under PAIA, and with the intention of concealing evidence from this court and perverting the true and just determination of the applicant's claim, Vedalankar and Nair, as information officer and deputy information officer respectively, have persistently unlawfully withheld this critically relevant record: page 182, item 12; page 320, penultimate paragraph; page 343, part 20; page 385, paragraph 37; and page 403, part 9. Because a record of the letter or email to Mngadi exists, it has not been denied on oath under section 23 of PAIA that it exists; cf. Nair's clear statements on oath that other records specified by the applicant do not exist: pages 366–8; and 378–389.

[75] Pages 146–7, paragraphs 179–80.

[76] Ibid.

[77] Page 19.

[78] Page 382, paragraph 19; and page 388. Nair's instruction to Mdaka 'to regret' all interviewed candidates for the Pietermaritzburg and Durban Senior Litigator posts was issued on 16 August 2010, many months after Mngadi had already been notified 'in April/May' that the respondent was not going to fill the Durban post.

[79] Page 5, paragraph 20; and page 258. On 14 April 2010.

[80] Page 7, paragraph 33; and page 256. On 30 April 2010.

in their scheme to prevent the applicant's appointment and conceal their direct unfair discrimination against him.

59. In April 2010, the same month that the applicant and Clark communicated, the respondent commenced recruiting for a Senior Litigator for the Mthatha Justice Centre.[81]

60. The respondent's advertisement for a Senior Litigator for Mthatha in April 2010 shows that no budgetary or other legitimate operational considerations had arisen in the five months since the applicant's successful interview in November 2009 to prevent the filling of the respondent's remaining three critical vacant Senior Litigator posts, nor even some months later in about July 2010 when interviews were held for shortlisted candidates for the Mthatha post and a suitable candidate was selected and recommended for appointment, apparently approved, and notified accordingly.[82]

61. And indeed no record exists whatsoever of any suggestion, any proposal,[83] any discussion,[84] any agreement, any decision[85] not to fill the respondent's three remaining critical vacant Senior Litigator posts.[86]

<u>The disposal of the second complication that arose to impede Mlambo's and Vedalankar's scheme to prevent the applicant's appointment and conceal their unfair discrimination against him</u>

62. After Clark's email to the applicant on 30 April 2010, unpleasantly and disingenuously rebuking his entirely reasonable and proper enquiry after five and half months of strange, unprofessional silence and inaction – 'I think you should allow us to complete the process at the pace we have decided. ... If we require further information or follow-

[81] Page 46. The closing date for applications was 7 May 2010, and the respondent typically allowed a month for submitting them.
[82] Page 128, paragraph 84; and page 299, paragraph 186. He 'was ready to start'.
[83] Pages 339–40, part 15; and page 384, paragraph 32.
[84] Page 333, part 8, items 13 and 14; and pages 382–3, paragraphs 22 and 23.
[85] Page 342, part 18; and page 385, paragraph 35.
[86] Pages 235–40; and 251–4. Makokoane's general cost-saving email and memorandum (pages 241–30, put up by Vedalankar as record V6) is dated 30 September 2010, and is accordingly irrelevant to the reasons for the abortion of the applicant's recruitment many months earlier in late November or December 2009, and even on Vedalankar's false version to the applicant that, 'motivate[d]' by Nair, she had 'immediately ...frozen ... all senior litigator posts that were vacant ... In July 2010'.

up from yourself, our organisation will contact you'[87] – he waited a further two and a half months for information from the respondent, but as Clark had led him to expect, he got none.

63. On 12 July 2010, now eight months after his successful interview, the applicant wrote to Vedalankar, recording the peculiar and disquieting history of the matter then within his knowledge and enquiring when the appointment process might be concluded.[88]

64. The applicant's letter to Vedalankar provoked a crisis for her and Mlambo's inaction and silence strategy, as elaborated by Clark's deliberate misinformation and discouragement of the applicant, and on 29 July 2010 Vedalankar summoned Nair to discuss how to resolve it, after first consulting Clark.[89]

65. Before doing so, Vedalankar discussed the matter with a third party, probably Mlambo.[90]

66. The discussions between Vedalankar, Nair and Clark took place off the record and behind the scenes, and no record exists of them.[91]

67. Further complicating Mlambo's and Vedalankar's scheme to prevent the applicant's appointment and to conceal their unfair discrimination against him was the fact that just days or a couple of weeks[92] prior to Vedalankar's and Nair's meeting on or about 29 July 2010, a suitable candidate had been selected and recommended for appointment to the Mthatha Senior Litigator post, and had apparently been approved and notified accordingly.[93]

68. Not able to proceed with the Mthatha appointment without exposing and compromising their scheme to covertly discriminate unfairly against the applicant and

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[87] Page 256.
[88] Pages 1–17.
[89] Page 389.
[90] Page 389. Vedalankar's email has 'FW' in the subject bar, signifying a prior exchange on the same subject. She and Nair as information officer and deputy information officer respectively have failed to disclose this prior exchange to the applicant, in contempt of their legal obligations and in criminal contravention of section 90 of PAIA. This matter will be further canvassed infra.
[91] Page 342, part 18; and page 384, paragraph 32.
[92] Page 128, paragraph 84.
[93] Page 128, paragraph 84; and page 299, paragraph 186. He 'was ready to start'.

prevent him being appointed to the equivalent Pietermaritzburg post, and alive to the fact that the applicant was pursuing his appointment and was not just going away as hoped, Mlambo and Vedalankar decided to abort the recruitment of the Mthatha candidate as well.[94]

69. No record exists of Mlambo's and Vedalankar's decision to abort the Mthatha recruitment, and their decision was conveyed by Nair as 'line function executive'[95] to the Eastern Cape Regional Operations Executive verbally and off the record.[96]

70. The reason Vedalankar and Nair were astute not to leave any record of Mlambo's and Vedalankar's abortion of the recruitment of the candidate selected and recommended for appointment to the Mthatha Senior Litigator post, on the eve of his appointment after he had apparently been approved and notified of this,[97] is because they well appreciated that it was grossly irregular.

71. Mlambo's and Vedalankar's purpose in sacrificing the successful Mthatha candidate 'In July 2010'[98] off the record (precipitated by the applicant's letter to Vedalankar that month), as they had done some months earlier in respect of the Durban candidate 'in April/May' (precipitated by the applicant's persistent enquiries to Clark in April), was to fabricate a factual foundation for their assertion about to be made to the applicant that the respondent had decided, 'due to various reasons',[99] impliedly legitimate, not to fill the respondent's three remaining vacant Senior Litigator posts[100] in order to disguise her and Mlambo's unfair discrimination against the applicant in rejecting his appointment on prohibited grounds in late November or December 2009.

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[94] Ibid.
[95] Page 19.
[96] Page 351, paragraph 10; and page 365, paragraph 7.
[97] Page 128, paragraph 84; and page 299, paragraph 186. He 'was ready to start'.
[98] Page 103, paragraph 6.7; and page 104, paragraph 7.3.
[99] Page 19.
[100] Ibid.

The second attempt to put the applicant off with misinformation

72. At their meeting on or about 29 July 2010, Vedalankar instructed Nair to answer the applicant's letter to her,[101] and on 3 August 2010 Nair did so, stating to the applicant: 'I acknowledge that the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [sic] put on hold due to various reasons. I can now confirm that we will not be proceeding with the filling of any of these posts.'[102]

73. By these statements Nair falsely implied and intended the applicant to understand that a decision had first been taken to 'put on hold ... the recruitment process to finalise the appointments for all vacant Senior Litigator posts' at Pietermaritzburg, Durban and Mthatha and then another 'not [to] be proceeding with the filling of these posts'.

74. In truth and in fact:

(a) 'the recruitment process to finalise the appointment..' of the applicant to the Pietermaritzburg Senior Litigator post had been aborted immediately by Mlambo and Vedalankar, without informing him of the fact, in late November or December 2009;

(b) 'the recruitment process to finalise the appointment..' of Mngadi to the Durban Senior Litigator post was simultaneously frozen and then finally aborted by Vedalankar 'in April/May' 2010; and he was emailed to inform him that the post he had applied for was not going to be filled;[103]

(c) 'the recruitment process to finalise the appointment..' of the Mthatha candidate was never 'put on hold'; it was aborted almost immediately on or about 29 July 2010[104] after he had just been selected and recommended for appointment, apparently approved and notified accordingly,[105] subsequent to Vedalankar's sight

[101] Page 19, first sentence; and page 389.
[102] Page 19.
[103] Pages 146–7, paragraphs 179–80; and page 385, paragraph 37.
[104] Page 389.
[105] Page 128, paragraph 84; and page 299, paragraph 186. He 'was ready to start'.

of the applicant's letter to her that month pressing for the finalization of his appointment, and then her discussion of it with Nair on the said date.[106]

75. Nair's false statements and implications to the applicant were intended to deceive and mislead him concerning the actual fate of his successful application for the Pietermaritzburg Senior Litigator post, and to defraud him into abandoning his legitimate expectation of being appointed to it.

76. Nair's deliberately vague allegation, 'due to various reasons', was intended to falsely imply to the applicant that proper operational considerations had arisen causing the respondent to duly resolve first to hold and then to discontinue with the applicant's recruitment, and two others simultaneously with it.

77. In truth and in fact no operational considerations had arisen to warrant aborting the applicant's appointment in late November or December 2009, or that of the Durban and Mthatha candidates 'in April/May' and 'In July 2010' respectively; and accordingly no record exists of any such considerations in relation to these Senior Litigator posts.

78. On 23 August 2010 Nair's letter to the applicant was followed by one from Mdaka[107] in similar terms, written on Nair's instructions:[108] 'Please be advised that Legal Aid South Africa will not be proceeding with the filling of this post.' The letter was marked 'Confidential', i.e. to be kept secret and not shown to anyone else.

79. Mngadi did not receive a similar 'regret'[109] letter from Mdaka, for the reason that he had already been informed 'in April/May' 2010 that the post for which he had applied was not going to be filled.[110] And consistent with this fact, Nair confirms that besides the applicant, only two of the other three shortlisted candidates interviewed for the

[106] Page 389.
[107] Page 20.
[108] Page 388.
[109] Ibid.
[110] Page 157, paragraph 228.

Pietermaritzburg and Durban Senior Litigator posts (Ngcamu and van Wyk)[111] were sent 'regret' letters.[112] More than nine months after their interviews.

80. On 26 August 2010 the applicant interrogated and tested the veracity of Nair's claims, both express and implied, by dint of an extensive request for fifty-one specified records under the Promotion of Access to Information Act 2 of 2000 ('PAIA').[113]

81. The applicant's searching records request was obviously directed at extracting and obtaining the evidence to support his scepticism about Nair's claims, and at exposing them as false; and as the respondent's information officer Vedalankar fully appreciated this.

82. In contempt of her constitutional and legal obligations to the applicant, spelt out by the applicant in his covering letter,[114] Vedalankar's initial reaction to his request was to ignore it, and he was constrained to engage the assistance of the PAIA Unit of the South African Human Rights Commission ('the SAHRC') to intervene and obtain an undertaking to address it.[115]

83. On 1 September 2010 the applicant challenged Nair's above-quoted and other claims in a petition to his immediate superior, Makokoane.[116] He did not reply. The applicant copied Chief Financial Officer Rebecca Hlabatau concerning the squandering of public revenue in the abortion of his recruitment.[117] She did not respond. Legal Development Executive Patrick Hundermark, an attorney in the executive management structure was copied too.[118] He did not respond either.

84. On 18 October 2010, mentioning also the applicant's letter to Makokoane, Vedalankar refused the applicant's entire request for records, justifying her withholding and concealment of the incriminating documentary evidence he sought, on the basis of a false statement of law, which she claimed to be supported by a deceptively false

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[111] Page 245.
[112] Page 383, paragraph 36.
[113] Pages 49–69.
[114] Page 49–52.
[115] Page 113, paragraphs 17–19.
[116] Pages 21–39.
[117] Pages 42; and 47.
[118] Pages 41; and 47.

misquotation from a reported judgment to put the applicant off exercising his constitutional right to access the respondent's records, which judgment in truth and in fact held precisely the opposite of what Vedalankar falsely alleged it did and squarely supported the applicant's claim to entitlement to access the records he sought.[119]

85. Since she is a legally uneducated person, it is probable that Vedalankar sought legal counsel in drawing the statement of the law she alleged to be applicable to the applicant's request. And given:

(a) Mlambo's conspicuous failure to meet and address the applicant's extraordinarily serious opening complaint in his subsequent petition to him and the Board that Vedalankar had first completely ignored and then had positively rejected his August records request on the basis of a false and fraudulent misstatement of the law;[120]

(b) Mlambo's later pretence to the applicant that despite this he 'could find nothing untoward'[121] in the respondent's conduct;

(c) Mlambo's familiarity with the contents of the applicant's PAIA requests and his dissembled negative opinion, among others, expressed about those records that Vedalankar had persistently refused to produce, falsely alleging to the Minister of Justice and Constitutional Development that they were pointless rather than critically relevant;[122] and,

(d) Mlambo's and Vedalankar's collaboration and backchannel communication[123] (the records of which Nair as deputy information officer[124] is withholding in deliberate contempt of PAIA)[125] in Mlambo's dismissal of the applicant's petition to him and the Board about Vedalankar's refusal to comply with PAIA and her deceptive

[119] Pages 101–8; and 113–19, paragraphs 17–43.
[120] Page 113, paragraphs 17–43.
[121] Page 209.
[122] Page 506, first paragraph.
[123] Pages 186–7; page 201, paragraph 29.
[124] Page 387.
[125] Page 352, item 14; and page 365, paragraph 9.

misstatement of its provisions, and the indications then within his knowledge that he had been unfairly discriminated against,[126]

(all matters to be canvassed in detail infra) it is probable that Mlambo was the author of the false and misleading statement of the law concerning the applicant's right to information, and that his purpose in grossly misstating the law to him was to fob him off (as he twice did later)[127] and prevent him obtaining the records and the PAIA section 23 affidavit concerning non-existent records that he needed in order to expose the falsity of Nair's claim to him, made on their behalf to cover-up their unfair discrimination against him, and to defraud him into abandoning his claim to the records and section 23 affidavit he needed to prove his case in this court.[128]

<u>The third attempt to put the applicant off with misinformation: Mlambo's and Vedalankar's fabrication and assertion of a fake budgetary justification for aborting the applicant's appointment to camouflage their unfair discrimination against him</u>

86. Appreciating that more than eight months after his successful interview the applicant was set on pursuing his appointment, and that:

(a) their initial silence and inaction strategy had failed;

(b) their attempt through Clark to mislead the applicant and put him off pursuing his appointment had also failed; and,

(c) their bid to shake the applicant off by dissembling through Nair that it had been duly resolved that 'we will not be proceeding with the filling of any of these posts' had failed too,

Mlambo and Vedalankar now concocted and advanced a false explanation to cover the true reason for aborting the applicant's recruitment, to confound his discovery of the true facts, and to finally put him off pursuing his appointment to the Senior Litigator post for which he had been duly selected and recommended.

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[126] Pages 109–167.
[127] Pages 186; and 209.
[128] Page 165, paragraph 254.

87. Mlambo's connivance with Vedalankar in the fabrication of the false explanation she advanced to the applicant for the abortion of his successful application is evident from the facts that:

(a) as will be pleaded in detail infra, Mlambo would later consciously and deliberately tell the same lies, and more lies of his own (contradicting certain of Vedalankar's other lies), to the Minister of Justice and Constitutional Development, which lies he repeated some months later to the chairperson of the Portfolio Committee; and,

(b) the lying alibi advanced by Vedalankar as a cover story for her abortion of the applicant's successful application was uttered immediately after her deceptive misstatement of the applicant's rights under PAIA of which Mlambo was the probable author.

88. In her response on 18 October 2010 refusing the applicant's entire records request, including his request for the minutes of his interview,[129] Vedalankar alleged: 'You were recommended together with other candidates, for the second round of interviews.'[130]

89. Vedalankar's allegation to the applicant was a lie, in that in truth and in fact only the applicant and Mngadi were selected and recommended from among the four shortlisted candidates for the Pietermaritzburg and Durban posts for which they had respectively applied,[131] and no other 'candidates ... together with' them.

90. The reason Vedalankar lied to the applicant about this, just as Clark had previously done – 'At this stage it is not even clear which candidates will be considered in the second round'[132] – was because she (and Clark) sought to obscure the fact that the applicant had been the sole successful candidate selected and recommended by the professional selection panel for the Pietermaritzburg Senior Litigator post and that he enjoyed a legitimate expectation of being appointed accordingly.

[129] Page 62, item B1.
[130] Page 104, paragraph 7.2.
[131] Pages 244; and 247.
[132] Page 256, second paragraph.

91. Vedalankar further alleged: 'The NOE, as the executive responsible for operations may also motivate a change in the organizational structure, including the freezing of positions, for discussion and finalization with the CEO (refer S.8.1.2(b) of the Legal Aid SA Approval Framework).'[133] And immediately following in the next paragraph: '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.'[134]

92. Vedalankar's allegations in context were deceptively false, and are contradicted by (a) the open facts, (b) the respondent's business records, (c) her CEO report for 2009/10, and (d) her statements on two occasions to the Portfolio Committee on Justice and Constitutional Development, to be canvassed infra.

Mlambo's response to the applicant's petition to him concerning Vedalankar's plainly unlawful refusal to comply with PAIA on dishonestly invented grounds and the indications that her claim to have aborted the applicant's recruitment for financial reasons was untrue

93. Having regard to their fiduciary duties and legal responsibilities,[135] the applicant petitioned Mlambo and the Board on 30 November 2010[136] to intervene and remedy:

(a) Vedalankar's unlawful refusal as the respondent's information officer to comply with PAIA and grant the applicant access to the records he had duly requested – first by ignoring his request, and then by refusing it wholesale on the basis of a false statement of applicable law and a fraudulent misquotation from a reported judgment claimed to support it;[137] and,

[133] Page 103, paragraph 6.6.
[134] Page 103, paragraph 6.7.
[135] Pages 111–113, paragraphs 8–16.
[136] Pages 109–67.
[137] Pages 113–19, paragraphs 17–43.

(b) her alleged decision 'In July 2010' to have aborted the applicant's appointment for financial reasons – which claim the applicant impeached with the facts and indications within his then still limited knowledge that Vedalankar's allegations in this regard were untrue.

94. At the time the applicant petitioned Mlambo and the Board, he was unaware that Mlambo was complicit[138] in Vedalankar's unfair discrimination against him, abortion of his recruitment, and cover-up.

95. The applicant's request on 8 December 2010[139] to the respondent's Board Secretary Bee-Mari Schoeman to ensure that his petition was brought to the attention of all Board members (the respondent's public information about the current membership of the Board was stale),[140] and not only Mlambo as chairperson, and his reminder to her a month later on 10 January 2011,[141] both went unanswered.

96. In the light of all the facts and circumstances, pleaded herein, it is probable that Mlambo or Vedalankar countermanded Schoeman to ensure that the applicant's petition was kept off the agenda for discussion by the Board at its next meeting, in furtherance of their scheme to covertly discriminate unfairly against him, shut him out, and keep this concealed.

97. Notwithstanding the extraordinary gravity of the applicant's complaints, and the incontestable case he had made, with reference to reported judgments, concerning Vedalankar's plainly unlawful refusal to comply with PAIA under cover of a fraudulent misstatement of applicable law[142] – later tacitly conceded[143] – Mlambo cursorily dismissed the applicant's fifty-nine page petition with a two-line rebuff, dissembling as he did so that he had given the issues raised by the applicant due consideration and had objectively and independently evaluated them: 'I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-

[138] Pages 505–7 .
[139] Pages 168–73.
[140] Pages 260–1; and 259.
[141] Page 188.
[142] Pages 113–19, paragraphs 17–43.
[143] Pages 210–24.

Natal. I could find no unfairness or arbitrariness towards you as alleged by you or at all.'[144]

98. In dismissing the applicant's petition, Mlambo acted without the authority and support of the Board. The Board was accordingly not party to Mlambo's dismissive response to the applicant, and was not even copied in his covering email to him.

99. The reason Mlambo did not address the applicant's appeal that he and the Board direct Vedalankar to comply with her constitutional and legal obligations under PAIA to afford the applicant access to the respondent's records that he had duly requested is because:

(a) Mlambo well appreciated that the applicant's comprehensive, searching records request in August 2010 was directed at exposing the falsity of Nair's claim made on Vedalankar's and Mlambo's behalf, and later repeated directly by Vedalankar[145] and Mlambo[146] themselves, that the respondent had duly resolved to abort the applicant's appointment, along with those of Mngadi and the successful Mthatha candidate, subsequent to their selection and recommendation by the professional selection panels delegated to pick the best candidates, if any, for the Senior Litigator posts in question.

(b) Mlambo himself had authored Vedalankar's deceptive faux legal justification for refusing the applicant's records request, alternatively he supported it;

(c) Like Vedalankar, Mlambo wished to prevent the applicant from obtaining the records – and sworn confirmation that others do not exist[147] – supporting his surmise that no formal decision had been taken on the record to abort his recruitment and that he had been unfairly discriminated against, thus equipping him with the evidence he needed to seek redress in this court.

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[144] Page 186. The letter is wrongly dated 9 November 2010, which is before the applicant's petition three weeks later on the 30th.
[145] Pages 101–8; and 210–24.
[146] Pages 505–7.
[147] Page 50, paragraph commencing, 'Several'.

H.T

100. The reason Mlambo falsely pretended to the applicant that he had impartially 'reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-Natal' and found them impeccable is because he:

(a) well appreciated that Nair's claims to the applicant on 3 August 2010,[148] made on his and Vedalankar's behalf, were lies covering the real reason why the applicant's recruitment had been aborted, namely their unfair discrimination against him as a political (or racial) undesirable;

(b) well appreciated, likewise, that Vedalankar's core claims to the applicant in her letter of 18 October 2010 concerning the reason she gave for aborting his appointment were lies to the same end; and,

(c) contrived to:

(i) conceal his active complicity in the decision he took with Vedalankar to unfairly discriminate against the applicant and then do whatever necessary to cover it up; and,

(ii) maintain the applicant's illusion at the time that he was independent arbiter and authority over the respondent's executive business management, duly and properly conducted himself in this function at formal arms length, and that he was concerned and committed, with the rest of the Board, to ensure that the respondent conducted itself strictly in compliance with the law at all times.

101. According to its 'Properties' file, Mlambo's letter to the applicant dismissing his petition about Vedalankar's misconduct against him as CEO and as information officer, which Mlambo emailed the applicant as a PDF attachment on 30 December 2010, was prepared by Vedalankar on her own computer two weeks earlier on 15 December.[149]

102. This shows that Mlambo and Vedalankar worked in tandem, off the record and behind the scenes, in a joint endeavour to prevent the applicant obtaining the documentary evidence he needed to prove his surmise that he had been unfairly discriminated

[148] Page 19.
[149] Page 187.

against, thus frustrating his attempt to bring this to light and to vindicate his fundamental rights to equality and equal employment opportunity in this court.

103. Besides formal acknowledgments by Board members du Rand, Konar and Maree, no others responded to the applicant's petition. To the contrary, after being personally briefed on its contents, Gandhi responded to the applicant's complaints, following a telephonic briefing by Vawda, by wantonly smearing him as a defamer and extortionist.[150]

104. To the applicant's protest to Mlambo and the Board about this,[151] Mlambo responded by rebuffing the applicant with the further false charge: 'Your conduct is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view', and by alleging that the Board had no proper interest in the matter. 'For this reason I call on you to desist from communicating with Board members in this regard. I have, in turn, requested Board members to ignore all communications from you and/or on your behalf.'[152]

105. On 25 February 2011, on the eve of its meeting the following day, the applicant submitted a further and final appeal to the Board to address and resolve his complaints of unfair discrimination and refusal to comply with PAIA, and copied his appeal to the Minister of Justice and Constitutional Development, to the Deputy Minister, and to the chairperson of the Portfolio Committee.[153] No member of the Board responded.

106. In a bid to discount the applicant's complaints as empty and to mislead the Minister into concluding that the respondent had duly decided to abort the applicant's recruitment for good reason and had duly complied/was complying with his PAIA requests, Mlambo reacted by writing a purported rebuttal of the applicant's complaints in the form of a poisonously prejudicial and disparaging 'Confidential ... Report ... Re:

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[150] Pages 207–8.
[151] Pages 197–208.
[152] Page 209. Mlambo's alleged request – if in truth it was ever made – to other Board members to ignore the applicant's communications, duly requested under PAIA, has unlawfully been withheld: page 352, item 15; page 365, paragraph 9. Seemingly reluctant to perjure himself, Nair does not declare in his section 23 affidavit that it does not exist, thereby confirming Mlambo lied to the applicant in claiming to have made this request.
[153] Pages 310–14.

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Adv Anthony Brink' to the Minister on 9 March 2011,[154] replete with outright false and misleading information and disingenuous half-truths, to wit (inter alia):

107. 'Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts.'[155] Mlambo's improvisation of this lying alibi to the Minister to cover and account for the respondent's inaction in finalizing the applicant's appointment (because he and Vedalankar had aborted it) in the three-and-a-half-month period between 23 November 2009, when the last of the professional selection panel 'signed off' the Motivation for the applicant's appointment,[156] and 10 March 2010, when the respondent first had knowledge of its budgetary uncertainty,[157] is exposed and refuted by the following facts:

(a) Nair did not approve the professional selection panel's selection and recommendation of the applicant, and this is why he never 'signed off' the Motivation to signify 'RECOMMENDATION ACCEPTED' under the heading 'NEXT ROUND INTERVIEW APPROVAL'[158] after the applicant's successful interview. Directly contradicting Mlambo, Vedalankar explicitly confirmed to the applicant: 'the 2nd round was never approved by NOE and thus never proceeded with'.[159]

(b) According to Vedalankar, 'Seeing that the ... Senior Litigator's post was a senior post, second round interviews were to proceed to the national level with national executives and was to be coordinated and managed by the HRE'.[160] But 'Ms Clark would not have been involved in the Senior Litigator's recruitment process as the second round of interviews was not proceeded with'.[161] Indeed, five months after his successful interview Clark had never heard of the applicant and knew nothing of

[154] Pages 505–7.
[155] Page 505, second paragraph.
[156] Pages 247–8.
[157] Page 236, paragraph commencing, 'On Wednesday'.
[158] Page 248.
[159] Page 215, V7, third column.
[160] Page 217, paragraph 13.
[161] Page 220, paragraph 27.

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his pending appointment, and confirmed to him on 14 April 2010 that she was 'not directly involved at this stage'.[162] This is why she never took any steps to 'coordinate..'[163] any 'second round interviews [at] the national level', and consequently never encountered any trouble 'coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one' – as falsely alleged by Mlambo to the Minister and later to the chairperson of the Portfolio Committee, with the false implication that Clark had contacted him seeking a convenient date and time.

(c) According to Vedalankar, there were no delays in finalizing the applicant's appointment ('I reject that there were any delays in dealing with any post');[164] and the reason the applicant was kept waiting nearly nine months in the dark (before being put off by Nair on 3 August 2010)[165] was not because of 'delays in coordinating a meeting time suitable for all members of the panel', but rather because 'all those Executives that were engaged in the recruitment of the Senior Litigator posts [sic] were also involved in costs-cutting discussions/processes including identifying the areas that could be sacrificed to keep Legal Aid SA in budget', and 'naturally, the drive to secure funding took priority' over their 'recruitment drives', including the finalization of the applicant's appointment (even as in April 2010, five months after the applicant's successful interview, the respondent began recruiting for a Senior Litigator for Mthatha, and, as will be canvassed in detail infra, the respondent was creating masses of new posts and employing masses of new staff, including senior legal professionals.[166] That is, the respondent's 'Executives that were engaged in the recruitment of the Senior Litigator posts' were all much too busy with their 'drive to secure funding' all day, every day, month after month, to take the simple steps necessary to finalize the applicant's appointment, but not too busy to go about creating masses of new posts and appointing masses of new staff including lots of senior legal professionals

[162] Page 5, paragraphs 19–20.
[163] Page 217, paragraph 13.
[164] Page 220, paragraph 26.
[165] Page 19.
[166] Page 457.

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in the course of their 'recruitment drive..', nor too busy to begin their 'recruitment drive..' to find a suitable candidate for appointment as Senior Litigator in Mthatha.)

(d) Vedalankar admits that 'there is no recorded explanation for what you [the applicant] refer to as "the delay"',[167] and Nair confirms that 'no written record ... exists' concerning 'the pace we have decided ... to complete our process'.[168] That is, no records exist of email exchanges or telephone calls to show that any attempt whatsoever was made in 'coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one', and no record exists of any decision taken to postpone or call off such attempts. The reason no such records exist is because in truth and in fact there was never any attempt by Clark or anyone else to 'coordinat[e] a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one', nor were there any 'delays' in this regard, because Mlambo and Vedalankar had immediately aborted the applicant's recruitment on learning of his identity, thus killing the process to recruit him. Even on Vedalankar's false version to the applicant, she and her fellow 'Executives that were engaged in the recruitment of the Senior Litigator posts' were too distracted by their all-consuming 'drive to secure funding' in which each was involved the whole time to spare any for the finalization of the applicant's appointment. According to Vedalankar this had nothing to do with 'delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one', and this is why no records exist in this regard.

108. It follows that Mlambo's 'Confidential' allegation to the Minister and later to the chairperson of the Portfolio Committee that 'the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one' was a blatant lie improvised by him to patch the first gaping hole (among many others) in his and Vedalankar's identical lying alibi uttered variously to the applicant, to the Minister and to the chairperson of the Portfolio Committee to mislead and deceive them all, so as to

[167] Ibid.
[168] Page 327, part 3; and page 381, paragraph 15.

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cover the true reasons they had aborted the applicant's recruitment, namely because they didn't want a political (or racial) undesirable like him in 'our organization',[169] and so sought to shut him out.

109. That Mlambo was full well aware that his core allegation to the Minister and later to the chairperson of the Portfolio Committee was a lie, namely that 'pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts' – which lie he repeated: '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' – is plain from the fact that on 31 July 2010 he and the rest of the Board had passed a resolution approving 'contingency measures to cater for this'[170] that had nothing whatsoever to do with the alleged 'freezing of senior litigator posts' and the abortion of the recruitment of candidates already selected and recommended for appointment to these critical unfilled positions by professional selection panels. The only 'contingency measures to cater for this ... financial uncertainty', the 'mitigating measures in response to the OSD shortfall' approved by the Board,[171] entailed the temporary reduction of the respondent's Junior Practitioner staff establishment, by abolishing fifty-six of these non-critical junior posts – and none other.[172] (This matter will be closely canvassed infra.)

110. And when telling these 'Confidential' lies to the Minister and later to the chairperson of the Portfolio Committee, thinking the applicant would never find out about them, Mlambo knew they were lies, because the applicant had just a fortnight earlier identified them to him as lies, and pointed up the clear evidence – already within Mlambo's own knowledge – that they were lies.[173]

111. It is perfectly true, as Mlambo alleged, that 'Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time[174] ... were

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[169] Page 8, paragraph 36; page 19, second and third paragraphs; page 37, paragraph 67;
[170] Page 505, bottom line.
[171] Page 251; and page 254, paragraph 4.
[172] Page 254, paragraph 4.
[173] Pages 310–14.
[174] Pages 236–40; and 251–4.

shared with Adv Brink' – for indeed they do. But as these 'Various documents' also show, it is absolutely untrue that they 'clearly demonstrate' that 'we were contemplating ... the freezing of posts', 'the freezing of many positions', insofar as the respondent's critical vacant staff establishment was concerned. They show that in truth and in fact at no stage was the respondent 'contemplating ... the freezing of' its unfilled critical Senior Litigator posts, and that from the outset the respondent expressly 'contemplat[ed]' the reduction of its non-critical junior staff establishment only. There was never at any stage any question of 'freezing' the respondent's vacant critical senior professional staff establishment; this was never 'contemplat[ed]'. The 'Various documents ... shared with' the applicant reveal Mlambo's unambiguous, clearly intended implication to the Minister and later the chairperson of the Portfolio Committee to have been false and they show that Mlambo consciously and deliberately misled them to put them off the truth.

112. Mlambo's false allegation that 'All executives involved in this matter have confirmed that this individual was not known to them, nor his political views or publications, and that the first time they came across his name was when his letter of complaint about his non-appointment was received' is contradicted and refuted by the facts that:

(a) the Motivation for the applicant's appointment recorded his name thrice – twice as the 'recommended' candidate [175] – and noted, 'Candidate is a prolific writer/author with many commendations cited on his CV'.[176] The Motivation was submitted to Nair, presumably accompanied by the applicant's CV listing these 'publications' and 'many commendations',[177] for approval in late November or December 2009 – more than six months before the applicant's 'letter of complaint about his non-appointment was received' by Vedalankar on 12 July 2010; and,

(b) the applicant introduced himself to Clark when telephoning her on 14 April 2010 and explained the purpose of his enquiry, and she noted his name and email address so as to make enquiries about him and for him and to revert to him with what she had learned, commencing an email exchange a couple of hours later that

[175] Pages 244–8, paragraphs 1, 3 and 6.
[176] Page 246.
[177] Pages 80–2.

ensued over the following two weeks[178] – three months before the applicant's 'letter of complaint about his non-appointment was received' by Vedalankar on 12 July 2010.

113. These facts flatly disprove Mlambo's lie to the Minister and later to the chairperson of the Portfolio Committee – in the course of his and Vedalankar's cover-up of their unfair discrimination against the applicant, now taken to the highest political level – that 'the first time they [at least Nair and Clark] came across his name was when his letter of complaint about his non-appointment was received' in July 2010.

114. Mlambo did not consult the Board before writing his 'Confidential ... Report' to the Minister.[179]

115. On 23 March 2011 the chairperson of the Portfolio Committee responded to the applicant's appeal to the Board on 25 February, copied to him, by writing to Mlambo: 'Having received Advocate Brink's letter you will understand that I must ask you, your Board [of Directors] and the [Legal Aid] Board's CEO for a formal response to these allegations, please.'[180]

116. Thinking his 'Confidential ... Report' written to the Minister behind the scenes a fortnight earlier had sufficed to finish the applicant off, Mlambo did not initially bother himself with the Portfolio Committee chairperson's call on him to see to it that he, the Board and Vedalankar furnish a 'formal response' to the applicant's complaints concerning (in the words of the Committee chairperson) 'his recruitment as Senior Litigator in Pietermaritzburg and [Vedalankar's] refusal to comply with the provisions of the Promotion of Access to Information Act'.[181]

117. Three months later on 22 June 2011, when it was apparent that the applicant was persisting with his complaints,[182] Mlambo changed his mind and belatedly put up his 'Report' to the Minister in 'updated' form.[183] With a view to demolishing the applicant

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[178] Pages 256–8.
[179] Page 364, paragraph 6.
[180] Page 503.
[181] Ibid.
[182] Pages 344–52; 353–61; 395–400; and 401–14.
[183] Pages 507, 'Updated with sections in blue font 22 June 2011'.

once and for all, Mlambo quoted his abusive email to the applicant on 24 January 2011 ('Your conduct is unbecoming to say the least and borders on harassment') in his covering letter, and concluded: 'I trust that the attached report and this letter clarify the matter concerning Mr Brink.'

118. Mlambo's purpose in doing this was to denigrate the applicant as an obsessive 'insulting and malicious' lunatic, with his 'invasive conduct' and his interminable 'tirade' to 'several lengthy letters to various individuals and organizations, including to the Chairperson and other Directors of the Board of Legal Aid SA' about his 'unfounded ... conspiracy theory', his baseless paranoia about a 'conspiracy against him'.[184]

119. Mlambo did not, as the chairperson of the Portfolio Committee had requested, see to the preparation and submission of 'formal response[s]' by the Board as a whole and by Vedalankar as CEO.

120. The reason Mlambo did not obtain a 'formal response' from the Board is because the Board was not party to his and Vedalankar's covert decision to unfairly discriminate against the applicant, nor was the Board party to any 'decision ... made not to proceed with the filling of vacant senior litigator posts'.[185]

121. Contrary to Mlambo's false implications to the Minister and chairperson of the Portfolio Committee in this regard, the Board accordingly had no knowledge of 'our reasons for freezing this post',[186] as alleged.

122. The reason Mlambo did not obtain a 'formal response' from Vedalankar, as required by the chairperson of the Portfolio Committee, is because Mlambo's and Vedalankar's fake financial cover story was precisely the same.

123. Mlambo's abusive email to the applicant in January, quoted in full to the chairperson of the Portfolio Committee above his conclusion, 'I trust that the attached report and this letter clarify the matter concerning Mr Brink', was calculated to:

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[184] Pages 505–7.
[185] Page 505, second paragraph.
[186] Page 506, first paragraph.

(a) prejudice the chairperson against the applicant;

(b) imply that the applicant's complaints had no substance or merit; and,

(c) put the chairperson off further enquiry into them.

124. Mlambo's abusive email to the applicant in January quoted in his letter to the chairperson of the Portfolio Committee, contained the allegation, 'Your matter was handled at Executive Management level being the level at which such matters are handled', thus implying both to the applicant and to the chairperson that he had no involvement in the abortion of the applicant's recruitment (whereas in truth and in fact he was party to the decision taken with Vedalankar to unfairly discriminate against him, abort his recruitment, and later disguise this with a fake budgetary justification).

125. In his 'Report' to the Minister, and later to the chairperson of the Portfolio Committee, Mlambo contradicted this false claim by implying that he and the Board had been party to the decision to abort the applicant's recruitment. Regarding 'our reasons for freezing this post', Mlambo alleged that 'financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts'.[187] And, '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 the organization at the time.'[188]

126. Since the Approval Framework[189] does not empower Mlambo and Vedalankar, or any other member(s) of the management structure, to take business and operational decisions together on their own, Mlambo intended the Minister and the Committee chairperson to understand that he and the Board (we) had duly resolved to abort the applicant's appointment and the appointments of two others for similar posts. In truth and in fact, the Board never did so. Mlambo's clear implication that it had was false, and was calculated to mislead and deceive the Minister and Committee chairperson in this regard.

[187] Pages 505–7.
[188] Page 507, 'Conclusion'.
[189] Pages 370–6.

127. Mlambo correctly bargained that as a senior judge the Minister and the chairperson of the Portfolio Committee would take him at his word and assume without question that he was telling the truth; and indeed, the applicant's entreaty elicited no response from the Minister, and on 29 June 2011 the Committee chairperson informed the applicant: 'In the light of the facts set out in Justice Mlambo's response, I now regard this matter as closed.'[190]

The facts and contradictions exposing and refuting Mlambo's and Vedalankar's fake budgetary justification for aborting the applicant's appointment

128. On 15 December 2010 the applicant delivered a second PAIA request for further specified records;[191] and in her response on 28 January 2011[192] – failing to deal with it, and again refusing to comply with the applicant's August records request on the basis of yet more wholly spurious reasons[193] – Vedalankar put up twelve records, which she marked V1–V12.[194]

129. Vedalankar's stated purpose in producing these records was not to respect the applicant's constitutional right to information and to comply with his records requests – to the contrary, she even spurned his mandatory, non-refundable request fee[195] – rather, it was to 'demonstrate'[196] her allegations to him in her letter of 18 October 2010[197] about the reason she had aborted his recruitment.

130. The records produced by Vedalankar contradict and refute her false allegations to the applicant in her October letter.

131. Record V3 is a letter Vedalankar wrote the Director General of the Department of Justice and Constitutional Development on 18 March 2010; and it records that a week earlier, on 10 March, she had learned that 'Contrary to confirmed reports by the DoJ&CD, the Department did not recommend a budget baseline adjustment for MTEF

[190] Page 502.
[191] Pages 174–85.
[192] Pages 211–24.
[193] Pages 315–43.
[194] Pages 225–58.
[195] Page 224, paragraph 44.
[196] Pages 213–6, third column.
[197] Pages 101–8.

2010/13 for Legal Aid SA. This situation will result in a budget deficit for Legal Aid SA in its 2010/11 MTEF cycle.'[198]

132. Vedalankar's statement to the Director General on 18 March 2010 gives the lie to her allegation to the applicant in her letter of 18 October 2010 that 'I, and the Legal Aid SA [sic] under my watch, have never sought to make any decisions regarding the Senior Litigator posts on any ground other than the budget constraints', because Mlambo and Vedalankar had aborted the applicant's recruitment, off the record and behind the scenes, in late November or December 2009, three or four months before any question of budgetary pressure had arisen on 10 March 2010.[199] Or, on Nair's false version to the applicant, 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [sic] put on hold due to various reasons'[200] three or four months before 10 March 2010 when the respondent first apprehended that a budgetary issue had arisen.

133. Record V4 is a follow-up letter Vedalankar wrote the Director General on 13 April 2010 about the outstanding transfer of OSD funding and the Department's failure to have adjusted the respondent's baseline funding;[201] and it mentions the posts that Vedalankar and the respondent's other executive managers 'had to identify ... early this year' for possible 'reduction' to meet the funding 'shortfall'[202] – namely 'the number of practitioners that we can make available at courts', with a 'primary impact' caused by their reduction 'on service delivery at courts including increased delays and backlogs'.[203] The 'practitioners ... at courts' to which Vedalankar referred in her letter were junior criminal defence lawyers serving the district and regional courts where 'delays and backlogs' are common, and she and Nair were specific about this later on.[204]

134. Vedalankar's letter to the Director General 'early this year' on 13 April 2010 is the first mention in the respondent's records of the possible need to reduce its staff

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[198] Page 236, paragraphs 6 and 7.
[199] Page 223, paragraph 39.
[200] Page 19.
[201] Pages 238–9.
[202] Page 103, paragraph 6.7.
[203] Pages 238–9, third paragraph.
[204] Pages 240; and 253, paragraph 2.2.a).

establishment – its junior staff establishment – to relieve its budgetary uncertainty; and her letter contains no suggestion that 'management' 'had to identify' its three remaining critical vacant Senior Litigator posts when considering posts for possible 'reduction'.

135. And indeed, when the applicant telephoned Clark on 14 April 2010 and she emailed her response to his enquiry a couple of hours later, the day before Vedalankar sent this letter to the Director General, there was no suggestion from her that the respondent's remaining critical unfilled Senior Litigator posts were being considered by 'management' for possible 'reduction'. Nor was there any such suggestion by Clark in her email to the applicant two weeks later on the 30th,[205] answering his further enquiry on the 22nd,[206] following her consultation with Vedalankar and/or Nair as to the reason his recruitment was not being finalized.

136. The reason Vedalankar did not in her letter to the Director General 'identify' vacant Senior Litigator posts for 'reduction' is because, contrary to what she falsely suggested to the applicant in her letter of 18 October 2010, in truth and in fact 'management' never at any stage 'identif[ied]' such critical vacant senior posts for possible 'reduction' to alleviate the respondent's budgetary uncertainty.

137. The fact that the abolition ('or freezing') of critical vacant Senior Litigator posts for which suitable candidates had already been selected and recommended for appointment at Pietermaritzburg and Durban was in truth never contemplated by Vedalankar and other executive managers 'early this year' after 10 March 2010[207] is demonstrated by the facts that:

(a) the day after Vedalankar wrote to the Director General on 13 April 2010, Clark assured the applicant that she had 'looked into this matter and can confirm' that his application for the Pietermaritzburg Senior Litigator post was 'still in progress and has not been concluded', and, 'We hope to conclude the matter soon';[208] and,

[205] Pages 256–8.
[206] Ibid.
[207] Page 236, paragraph 6.
[208] Page 5, paragraphs 19–20.

(b) the respondent advertised in the same month to recruit a Senior Litigator for Mthatha[209] and proceeded to interview shortlisted applicants in or about July.[210]

138. Record V5 is an email by Nair addressed to Makokoane on 15 July 2010, copied to Vedalankar and Clark, as well as to Hlabatau in view of its budgetary ramifications;[211] and consistent with Vedalankar's letter to the Director General in April, it records Nair's proposal to Makokoane – duly originated and mooted by Nair in terms of his powers and responsibilities under the respondent's Approval Framework, and submitted to Makokoane for his approval under the same[212] – 'to budget for the shortfall' by means of a 'first cut of 56 practitioner posts at JCs [Justice Centres]' serving the 'District and Regional courts' to effect 'a potential savings of R16 m', that is, to abolish fifty-six junior criminal defence practitioner posts. And in the event that further staff cuts were found to be necessary 'to budget for the shortfall', Nair proposed to Makokoane that more of the same junior legal posts be abolished, with the abolition of some even lighter 'paralegal and admin positions at JCs' as an additional possibility.

139. Like Vedalankar in her letter to the Director General in April 2010, Nair never proposed the abolition (or 'freezing') of the respondent's remaining three unfilled critical Senior Litigator posts.

140. Contrary to Vedalankar's patently false claim to the applicant in her letter of 28 January 2011 that Nair's proposal to Makokoane 'show[s] that not only the Senior Litigators' posts were identified for possible freezing',[213] Nair's proposal plainly shows that in truth and in fact Senior Litigator posts were never 'identified for possible freezing', in that Nair proposed cutting some junior practitioner posts only, and if needs be some even more junior 'paralegal and admin positions'.

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[209] Page 46.
[210] Page 128, paragraph 84; and page 299, paragraph 186.
[211] Page 240.
[212] Pages 370; and 372.
[213] Page 214, V5, third column.

141. Record V10 is the second page Vedalankar supplied of the minutes of the Board meeting on 31 July 2010,[214] to which her and her fellow executive managers' 'Report to Board' a fortnight earlier on 16 July is attached;[215] and these two records show that:

(a) Makokoane, Vedalankar and Clark agreed with Nair's proposal 'to mitigate for the probable deficit' by temporarily reducing the junior practitioner staff establishment 'for the remaining part of the 2010/11 budget period' and they noted this joint 'Recommendation' in their 'Report to Board';[216]

(b) the Board approved this 'Recommendation' two weeks later, precisely in line with Nair's proposal to Makokoane on 15 July to temporarily reduce public defender 'coverage' in the district and regional courts to 80% and 90% respectively: 'The Board approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of Annexure 1';[217] and,

(c) the Board appointed Vedalankar to implement its resolution to approve her 'Recommendation' made together with Makokoane, Nair, Clark and other executive managers to temporarily reduce the junior practitioner staff establishment 'to mitigate for the probable deficit' – and no other posts.[218]

142. In sum, the respondent's records show that it was never contemplated, never proposed, never agreed, and never approved that the respondent's three remaining unfilled critical Senior Litigator posts, for which suitably qualified and experienced applicants had been selected and recommended for appointment, be cut, either by abolishing or 'freezing' them.

143. To the contrary, in their 'Report to Board' Vedalankar and her management colleagues pertinently 'prioritize[d]' the recruitment of suitable staff for 'critical positions' – such as vacant Senior Litigator posts. After raising the possible need for even further reduction of 'coverage' of 'District and Regional Courts' by junior criminal defence

[214] Page 251.
[215] Pages 252–4.
[216] Page 253, paragraph 2.2.a).
[217] Page 251, paragraph 4.2.
[218] Page 251, paragraph 4.2, 'Responsible Person' column.

lawyers,[219] that is, the reduction of even more junior practitioner posts, they recorded: 'The recruitment process will be reviewed, centralizing the decision on filling of posts at Executive level, with due regard to the need to prioritise critical positions.'[220]

144. So when Nair wrote to the applicant on 3 August 2010 claiming that 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [sic] put on hold due to various reasons. I can now confirm that we will not be proceeding with the filling of any of these posts', implying that two formal decisions had been taken in this regard in terms of the Approval Framework, he was lying to the applicant to put him off the truth; for when he told this lie, Nair knew full well that in truth and in fact the only vacant posts that had just been temporarily cut by the Board, at his own suggestion, were some junior practitioner posts serving the lower criminal courts.[221]

145. And likewise when Vedalankar wrote to the applicant on 18 October 2010 claiming that 'In July 2010 the NOE and CEO [Nair and Vedalankar] took the decision that all senior litigator posts that were vacant would be immediately frozen', she lied to the applicant to put him off the truth; for when she told this lie, Vedalankar knew full well that in truth and in fact 'In July 2010 the NOE and CEO took the decision' along with Makokoane and Clark to do away 'for the remaining part of the 2010/11 budget period'[222] with some junior practitioner posts only, and that the Board had approved this recommendation and appointed her to implement its resolution in this regard.[223]

146. Contrary to the lies they told the applicant, the truth of it is that when Vedalankar and Nair and other executive managers 'took the decision ... In July 2010'[224] to make a 'Recommendation'[225] to the Board that it pass a resolution to approve the temporary reduction of some posts to 'mitigate for the probable deficit',[226] the only posts that they contemplated, proposed, and agreed should be reduced to this end were some junior public defender posts. And accordingly it was only these junior practitioner posts that

[219] Page 253, paragraph 2.2.a).
[220] Page 253, paragraph 2.2.b).
[221] Page 240.
[222] Page 253, paragraph 2.2.a).
[223] Page 251, paragraph 4.2, 'Responsible Person' column.
[224] Page 103, paragraph 6.7.
[225] Page 254, paragraph 4.
[226] Page 253, paragraph 2.2.

they then recommended to the Board for reduction – which 'mitigating measures'[227] the Board approved two weeks later, and the Board accordingly resolved to abolish a number of these junior posts, and none other.

147. Notwithstanding the obvious interest of Hlabatau in Vedalankar's alleged decision 'In July 2010' to agree with Nair's alleged 'motivat[ion]' to 'freeze' three Senior Litigator posts, given its budgetary implications of ~R2 million a year in combined salaries,[228] Vedalankar and Nair did not inform her of her alleged decision to free up the Senior Litigator salary budget to ease the respondent's budgetary uncertainty, and no record of any such communication exists.

148. Accordingly, Hlabatau did not reallocate the budget for Senior Litigator salaries in 2010/11 to meet the respondent's 'shortfall' in 'anticipated funding for the 2010/11 financial year', following Vedalankar's and Nair's falsely alleged decision 'In July 2010' to freeze the three vacant Senior Litigator posts 'in order to meet this shortfall',[229] and no accounting record exists to show she did.

149. The reason Hlabatau was not informed is because Vedalankar's allegation to the applicant in this regard, with Mlambo's connivance, was a lie.

150. The Approval Framework requires that the Board Remuneration Committee be informed of any level 13 appointment, such as that of a Senior Litigator.[230] A decision to abort the recruitment of three candidates already selected and recommended for appointment to three budgeted Senior Litigator posts has the same financial accountability implications. Yet Vedalankar never informed the Board Remuneration Committee that 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen'[231] – allegedly with Mlambo's and the Board's approval: 'our reasons for freezing this [Pietermaritzburg] post',[232] as he falsely implied to the Minister and chairperson of the Portfolio Committee.

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[227] Page 251, paragraph 4.2.
[228] Pages 45–6; and page 218, paragraph 20.
[229] Page 103, paragraph 6.7.
[230] Page 372, section 8.2.2, 'OTHER' column, read with page 370.
[231] Page 103, paragraph 6.7.
[232] Page 506, first paragraph.

151. Whereas Vedalankar and other executive managers had duly sought and obtained a resolution from the Board approving their decision on 16 July 2010 to cut some junior practitioner posts to alleviate the respondent's budgetary uncertainty, in view of the implications of this decision on the implementation of the respondent's strategic and business plans, they sought no such Board resolution to allegedly 'freeze' the respondent's three critical vacant Senior Litigator posts that same month, for which candidates had been interviewed, selected and recommended, either before or at the Board meeting on 31 July 2010, or before or at its subsequent meetings on 30 October 2010 and 26 February 2011. Indeed, the Board was not even informed by Vedalankar and Nair of their alleged joint decision 'In July 2010' to 'freeze' these three critical senior professional posts.[233]

152. The reason Vedalankar did not present to the Board for approval her alleged decision to 'freeze' the respondent's three remaining vacant Senior Litigator posts 'In July 2010', as allegedly 'motivate[d]' by Nair, as she had done in respect of her decision to cut some junior posts in the same month,[234] as indeed 'motivate[d]' by Nair,[235] is because contrary to her false allegations to the applicant in this regard, in truth and in fact she did not 'freeze' the posts 'immediately'[236] 'In July 2010';[237] and her allegation to the applicant that she had was a lying alibi fabricated to conceal her and Mlambo's unlawful abortion of his recruitment in late November or December 2009 'immediately'[238] on learning of his identity, and then in the course of covering it up, their unlawful abortion of Mngadi's appointment 'In April/May' 2010,[239] and then the successful Mthatha candidate's 'In July 2010' on or about the 29th,[240] all off the record.[241]

153. Vedalankar's false allegation to the applicant in her letter of 18 October 2010 that she and Nair had 'immediately ... In July 2010 ... frozen' the critical vacant Pietermaritzburg Senior Litigator post for which he had been selected and recommended for

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[233] Page 385, paragraph 36.
[234] Pages 252–4.
[235] Page 240.
[236] Page 103, last line.
[237] Page 103, penultimate line.
[238] Page 103, last line. Vedalankar's word, in a revealing slip, in a related context.
[239] Pages 146–7, paragraphs 179–80.
[240] Page 389.
[241] Page 381, paragraph 14.

appointment, together with other equivalent posts, is further contradicted by her CEO report of 19 August 2010,[242] contained in the respondent's 'Annual Report 2009/2010'. Whereas two weeks earlier on 3 August 2010 Nair had falsely claimed to the applicant on her behalf,[243] 'I can now confirm that we will not be proceeding with the filling of any of these posts',[244] Vedalankar made no mention in her annual CEO report of having just (allegedly) 'frozen' three critical senior professional posts three weeks previously. Nor does Vedalankar's false allegation to the applicant in this regard feature anywhere else in the annual report.

154. To the contrary, in her CEO report Vedalankar stated: 'Our strategic shift also incorporated changes to our support platform to support the delivery of quality legal services. ... our priority continued to be increasing access to quality legal aid services. ... The revised civil legal aid strategy mentioned above will to a certain extent increase capacity to assist clients in civil legal aid matters.'[245] This is to say, she misled and lied to the Minister, and to the Portfolio Committee to whom she presented the annual report at her meeting with it on 12 October 2010, because on her version to the applicant she had a couple of weeks earlier been obliged through lack of funds not to 'increase' but to reduce the respondent's 'delivery of quality legal services', to reduce the poor's 'access to quality legal aid services', and to reduce the respondent's 'capacity to assist clients in civil legal aid matters'.

155. Vedalankar's false allegation to the applicant on 18 October 2010 that she and Nair had 'frozen' three critical Senior Litigator posts 'immediately ... In July 2010' is contradicted again by her statement to the Portfolio Committee made six days earlier on the 12th, in which she assured the Committee that the respondent was 'on track on all components of our Business Plan and we are confident that we will deliver on this Business Plan in this financial year' and 'we don't have any problem areas that we would like to report on'.[246]

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[242] Pages 475–9.
[243] Page 19.
[244] Ibid.
[245] Pages 475–9.
[246] Page 184. The respondent's Business Plan is based on its 'Strategic Plan 2009–2012': page 452.

156. In her address to the Committee, Vedalankar did not say she had just some weeks earlier been obliged to 'freeze' three critical vacant Senior Litigator posts 'immediately ... In July 2010' for budgetary reasons; to the contrary, she stated that 'if we didn't get the OSD money that we were meant to it would mean that we would have to freeze some posts but the Minister didn't want that and said that we needed to continue with the business. And so he did get involved and he had assisted', and 'at the moment we are in the process of fixing ... the funding issues like OSD ... In fact the Minister has been involved ... and undertook to assist to resolve this issue through ... the mid-term adjustment budget'[247] – thus implying to the Committee that in accordance with the Minister's wishes, and thanks to his productive intervention in the problem of outstanding OSD funding, no posts were 'frozen'.

157. On Vedalankar's version to the applicant she lied to Parliament, because in her address to the Committee on 12 October 2010 she stated that Mlambo had suggested to the Minister (when 'our chairperson met with the Minister') that the respondent might have to 'freeze posts', 'freeze some posts'[248] as a contingent future possibility should the respondent not receive its outstanding OSD funding allocation, but because the Minister had rejected the proposal to 'freeze some posts', and had 'been involved ... and undertook to assist to resolve this issue' of outstanding OSD funding, the respondent had consequently 'continue[d] with the business'[249] normally, without 'freezing' any posts.

158. Vedalankar's false allegation to the applicant on 18 October 2010 that she and Nair had 'frozen' three critical Senior Litigator posts 'immediately ... In July 2010' is further contradicted by her information to the Portfolio Committee on 31 March 2011 in her 'Legal Aid South Africa Strategic Plan and budget 2011' presentation. According to the record of her response to the Committee's specific concern raised about 'the vacancy rate, generally, and at the professional assistant level', i.e. at the level of qualified and admitted legal professionals, 'Ms Vedalankar replied that in 2010/11, LASA had set a target of 96% of all posts being filled, although it had then held back on filling some of

[247] Ibid.
[248] Ibid.
[249] Ibid.

the vacancies because of the uncertainty of obtaining OSD funding in Phase 1, which, if not recovered, would have put the LASA into deficit. OSD was now settled in the baseline figures, and she thanked the Committee for its support in this regard. LASA now had 96% of all posts filled.'[250]

159. Vedalankar did not allege to the Committee at this meeting on 31 March 2011, as she had falsely alleged to the applicant on 18 October 2010 and again on 28 January 2011,[251] that she had 'frozen' the respondent's (three) remaining critical unfilled Senior Litigator posts; contrariwise, in her reply to the Committee's question about 'the vacancy rate' Vedalankar unambiguously implied that during some financial uncertainty, now past, the respondent had merely delayed filling some posts, now filled.

160. On her version to the applicant Vedalankar yet again on 31 March 2011 deliberately misled Parliament to conceal her and Mlambo's unlawful abortion of the applicant's appointment to the Pietermaritzburg Senior Litigator post, and then in the course of a cover-up their subsequent unlawful abortions at different times of the recruitment of the other duly selected and recommended candidates for the two other remaining equivalent posts at Durban and Mthatha, thereby preventing the respondent's employment of senior legal professionals with civil law expertise for critical vacant senior professional posts in accordance with the respondent's 'Strategic Plan 2009–2012'.

161. According to Vedalankar's information to the Committee on 31 March 2011, no remaining budgetary justification for not 'filling some of the vacancies' has existed since 'OSD was ... settled in the baseline figures'.[252]

162. According to Vedalankar's information to the Committee on 12 October 2010, the Minister had already resolved the respondent's problem with outstanding OSD funding

[250] Page 438, penultimate paragraph.
[251] Page 214, paragraph V5, third column.
[252] Ibid.

for 2010/11 and had specifically informed the respondent's chairperson that he did not want any 'freezing' of posts.[253]

163. It follows that even on Vedalankar's false version to the applicant, since 12 October 2010 at the latest there has been no budgetary justification for the respondent not to proceed with filling its remaining three critical vacant Senior Litigator posts, for which suitable candidates, including the applicant, have already been selected and recommended.

164. In his 'Report' to the Minister and later to the chairperson of the Portfolio Committee, Mlambo mentions (truthfully) that 'Various documents which clearly demonstrate the financial uncertainty at the time[254] ... were shared with Adv Brink'[255] – thus himself confirming that the respondent's 'financial uncertainty' is a thing of the past, that the respondent's own false pretext for not continuing with the applicant's appointment has evaporated, and no proper, 'honest'[256] impediment exists to prevent the finalization of his appointment to the Pietermaritzburg Senior Litigator post for which he was selected and recommended.

165. The respondent's current 'Best Employer 2010/11' profile accordingly records, on information supplied by the respondent, that the respondent 'offers a platform for advanced legal practice in its high court units and through positions such as senior litigator'[257] – contradicting Vedalankar's repeated false claims to the applicant that she had 'frozen' all critical vacant Senior Litigator posts for budgetary reasons[258] – which false claims, being false, Vedalankar has never made to the Board,[259] nor to the Portfolio Committee at either of her two presentations on 12 October 2010[260] and 31 March 2010,[261] nor to the Minister in her CEO report for 2009/10.[262]

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[253] Page 184, final paragraph.
[254] Pages 236–40.
[255] Page 505, final paragraph, sentence commencing, 'Various'.
[256] Page 506, first paragraph, first line.
[257] Page 453.
[258] Page 103, paragraph 6.7; page 104, paragraph 7.3; and page 214, paragraph V5, third column.
[259] Page 385, paragraph 36.
[260] Page 184.
[261] Pages 434–41.
[262] Pages 475–9.

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166. So when Vedalankar wrote to the applicant on 18 October 2010, six days after her address to the Portfolio Committee on the 12th, alleging to him that because 'anticipated funding for the 2010/11 financial year did not materialise', having '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. ... In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen', the respondent's temporary budgetary uncertainty caused by outstanding OSD funding had already been resolved, as she had reported to the Portfolio Committee a week earlier; and Vedalankar's allegations to the applicant, read together, were therefore deliberately false and deceptive and calculated to defraud him into abandoning his claim to appointment to the post for which he had been selected and recommended.

167. Unlike the other provinces, KwaZulu-Natal, one of the poorest and most populous, currently lacks any experienced, in-house Senior Litigator to handle 'specialised, complex or impact' civil litigation in the upper courts and to school the respondent's junior attorneys, as envisaged in the advertised job description,[263] and to 'provide support for practitioners in more complex matters', as the respondent's current annual report puts it.[264] According to Nair, it is in the rural areas that the 'demand [for] Civil legal aid ... was bigger'.[265] Mlambo has 'agreed that there was still much to be done in reaching the rural poor'.[266]

168. Thus obstructing and frustrating the implementation of the respondent's 'Strategic Plan 2009–2012', Mlambo's and Vedalankar's abortion of the applicant's recruitment (and of the internal promotion of Mngadi) has perpetuated in KwaZulu-Natal:

(a) the 'Lack of specialized legal skills taking cognizance of the complexity of the context in which the organization operates' and the 'Lack of capacity to provide impact litigation'[267] mentioned in the respondent's draft 'Strategic Plan 2009–2012' issued

[263] Page 45.
[264] Page 142, paragraph 153.
[265] Page 433, penultimate paragraph.
[266] Page 441, thirteenth paragraph.
[267] Page 445, sections III and IV.

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by Vedalankar on 5 September 2008,[268] which was why 'the Legal Aid Board should capacitate for specialized skills';[269] and,

(b) the respondent's 'Legal Delivery Challenges' in that province, raised by Vedalankar[270] in her 'Briefing of Justice Portfolio Committee 5 August 2009': 'Limited capacity to render civil legal aid services', hence its resolution in its 'Way Forward' to 'Increase Legal Aid SA's capacity to render civil legal aid services.'[271]

169. Which challenges the respondent's 'Strategic Plan 2009–2012' was aimed at resolving:

- 'To improve access to justice especially for rural/remote communities';
- 'To develop a full appreciation of the civil justice needs of the poor and provide more civil representation'; and,
- 'To undertake targeted impact litigation'.[272] And,
- 'Programme P5: To improve access to justice through Impact litigation';[273]
- 'Programme P23: ... recruit specialist skills';[274] and,
- 'Programme P24: ... increased capacity of LAB ie more legal specialists' and 'capacitate civil units ie more staff and more supervision'.[275]

170. Vedalankar's alleged 'freezing' of the Pietermaritzburg, Durban, and Mthatha Senior Litigator posts on or about 29 July 2010 – in truth her and Mlambo's abortion at different times of the recruitment processes for these posts – is contrary to the express wishes of the Minister noted and recorded two weeks earlier in her and the other executive managers' 'Report to Board' of 16 July 2010[276] and conveyed by her to the

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[268] Page 444.
[269] Page 445, section XIV.
[270] Page 426, penultimate paragraph.
[271] Page 429.
[272] Page 446, 'Client & Community'.
[273] Page 447.
[274] Page 450.
[275] Ibid.
[276] Page 252, paragraph 1.3.

Portfolio Committee on 12 October 2010;[277] and her and Mlambo's unlawful interference in the appointment of Senior Litigators is contrary to the express wishes of Parliament stated on 30 May 2007,[278] and contrary to the respondent's 'Strategic Plan 2009–2012' approved by the Board and presented to the Minister in September 2009[279] and to the Portfolio Committee by Vedalankar and Nair on 14 April 2010.[280]

171. Since it was certainly not 'accepted'[281] by the Minister that the respondent should 'freeze' its recruiting for unfilled posts, especially its critical vacant posts – to the contrary, the Minister had explicitly rejected the suggestion, as Vedalankar herself informed the Board[282] and later the Portfolio Committee[283] – the truth of it is that contrary to her lying suggestion to the applicant, 'management' never 'accepted' that 'all senior litigator posts that were vacant would be immediately frozen'.[284] And this is why no record whatsoever exists to show it ever did.

172. Vedalankar's alleged 'freezing' of the respondent's critical vacant Senior Litigator posts 'In July 2010', for which suitable candidates had been selected and recommended for appointment, is also at odds with the specific concern of the Portfolio Committee, expressed at its discussion on 4 May 2010 of national Budget Vote 23, about 'the high vacancy rate' in the Department of Justice and Constitutional Development and public bodies subject to its oversight and 'the negative consequences that vacancies can have for the delivery of justice services': 'The Committee recommends that all critical posts be filled as soon as possible, especially given the fact that the Department has the budget for the posts.'[285]

173. According to Vedalankar's information to the Portfolio Committee on 31 March 2011, 'in 2010/11, LASA had set a target of 96% of all posts being filled'.[286] Under the heading 'legal supervisory staff/managers' in the respondent's 2009/10 annual report,

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[277] Page 184, last paragraph
[278] Pages 120–1, paragraphs 50–5.
[279] Page 452.
[280] Page 431.
[281] Page 103, paragraph 6.7.
[282] Page 252, paragraph 1.3.
[283] Page 184, last paragraph.
[284] Page 103, paragraph 6.7.
[285] Pages 132–3, paragraphs 105–6.
[286] Page 438, penultimate paragraph.

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occupancy is 91%, or 252 out of 272. The First Quarter Report for 2010/11 presented to the Portfolio Committee on 12 October 2010 records occupancy at 92%, or 263 out of 286.[287] Mlambo's and Vedalankar's ill-motivated obstruction, off the record and behind the scenes, of the appointment of the candidates duly selected and recommended for the respondent's vacant critical Senior Litigator posts thus contradicts and frustrates the achievement of the respondent's occupancy target for 'legal supervisory staff/managers'.

174. As pleaded supra, according to the report of Vedalankar's address to the Portfolio Committee on 31 March 2011, the respondent had 'held back on filling some of the vacancies because of the uncertainty of obtaining OSD funding in Phase 1, which, if not recovered, would have put the LASA into deficit. OSD was now settled in the baseline figures, and she thanked the Committee for its support in this regard.'[288] In other words, the budgetary 'uncertainty' (Mlambo's term) has long been resolved with the 'support [of] the Committee'.

175. According to the respondent's report to the Portfolio Committee on 31 March 2011, its total budget for 2010/11 was R1 179 million,[289] of which 99.6% was projected to be spent.[290] The 0.4% unspent 2010/11 budget amounts to approximately R5 million – amply sufficient to meet the salaries of three Senior Litigators.[291]

176. Further contradicting Vedalankar's false claim to the applicant on 18 October 2010 that 'It was accepted that this [i.e. the 'anticipated funding for the 2010/11 financial year [which] did not materialise'] required a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall',[292] the respondent's First Quarter Report for the period April to June 2010, presented to the Portfolio Committee on 12 October 2010, shows that the respondent created 82 new budgeted posts. 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

[287] Page 457.
[288] Page 438, penultimate paragraph.
[289] Page 443.
[290] Page 437, sixth paragraph commencing, 'She noted'.
[291] Page 45; page 46; page 140, paragraph 144; page 61, item 14; and page 218, paragraph 20.
[292] Page 103, paragraph 6.7.

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attorneys.[293] Overall, the respondent's staff establishment increased by a substantial 3.2%.

177. That is, even after the process to appoint the applicant had been 'put on hold' as alleged by Nair[294] and then finally discontinued ('we will not be proceeding with the filling of any of these posts') 'In July 2010' for budgetary reasons as alleged by Vedalankar later on,[295] the respondent was actively creating masses of new posts and employing masses of new personnel, including senior legal professionals.

178. Vedalankar's claim to the applicant to have 'frozen ... all senior litigator posts that were vacant' is inconsistent and irreconcilable with the respondent's information to government noted in national Budget Vote 23 on 17 February 2010, in which it is recorded that expenditure on employee remuneration 'is set to increase as a proportion of total expenditure, mainly due to LASA's strategy to reduce the outsourcing of legal representation. This is expected to be achieved by appointing more staff and implementing the special occupational specific dispensation for legally qualified professionals.'[296] Mlambo's and Vedalankar's abortion of the applicant's appointment, and that of two other duly selected and recommended 'legally qualified professionals', stymies this 'strategy' to reduce operating costs and it perpetuates the expensive 'outsourcing of legal representation' in complex civil matters to advocates in private practice in KwaZulu-Natal.

179. Vedalankar's claim to the applicant to have 'frozen ... all senior litigator posts that were vacant' is also contradicted by her concluding statement to the applicant in her 18 October 2010 letter: 'Should we decide to unfreeze these positions in the future, the positions will be duly advertised and you will be at liberty to submit your application for any of the positions.'[297] Had Vedalankar merely 'frozen' the Pietermaritzburg Senior Litigator post, which is to say the process for the applicant's recruitment to it, as she alleged to the applicant, rather than in truth and in fact having acted with Mlambo to covertly abort his recruitment in late November or December 2009, she would have

[293] Page 457.
[294] Page 19.
[295] Page 103, paragraph 6.7.
[296] Pages 483–4, paragraph headed 'Expenditure trends'.
[297] Page 104, paragraph 7.5.

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offered to revive the interrupted recruitment process from where it had paused, concluding in the applicant's appointment to the post for which he was selected and recommended – especially since by 12 October 2010[298] at the latest the respondent's budgetary issues had been resolved[299] with the assistance of the Minister.

180. The fraudulent subterfuge behind Vedalankar's invitation to the applicant to reapply sometime in the future for the post for which he had already been selected and recommended was to put him off pursuing his appointment, and make sure that he was shut out in accordance with her and Mlambo's decision in this regard in late November or December 2009.

181. In her second letter to the applicant on 28 January 2011, Vedalankar deceitfully attempted to distance herself from and conceal her involvement in her and Mlambo's decision in late November or December 2009 to reject his appointment on prohibited grounds, by dissembling that it was not her but Nair who took the decision not to proceed with the process to finalize his appointment because it was 'never approved by NOE and thus never proceeded with'.[300]

182. Vedalankar's statement is true on its face but a lie in substance, in that the applicant's recruitment was 'never approved by NOE and thus never proceeded with' precisely because she and Mlambo had vetoed it.

183. To the same dishonest end, Vedalankar lied further in alleging in the same letter: 'I am not aware of any of the Executives discussing you and your candidacy for the above-mentioned post save the edited and blacked out recommendation[301] for the next round of interviews.'[302] That is to say, according to Vedalankar, other than the professional selection panel's discussion of the applicant's suitability and positive conclusion recorded in the Motivation[303] for the applicant's appointment there was no further

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[298] Page 184.
[299] Page 438, penultimate paragraph.
[300] Page 215, V7, third column.
[301] Pages 244–8.
[302] Page 219, paragraph 21; page 61, item 16.
[303] Page 234, first paragraph commencing, 'NB: Motivation'.

discussion of the applicant's appointment by the respondent's management executives – and certainly not by her.

184. The lie to both these false allegations by Vedalankar is given by the fact that, as will be canvassed infra, the Approval Framework requires that she and Makokoane 'Must agree' to Nair's 'Final approval', and by necessary implication his disapproval, of 'Senior Professional staff' 'Appointments'[304] following their selection and recommendation for appointment by professional selection panels. It is plain that Nair did not as a third-ranking business manager (CEO: COO: NOE) decide to abort the applicant's appointment on an unauthorized, unlawful frolic of his own without first soliciting Vedalankar's agreement or disagreement as required of him by the Approval Framework. (Indeed, Vedalankar claims responsibility for aborting the applicant's recruitment, 'motivate[d]' by Nair, 'immediately' 'In July 2010'.)[305] It follows that contrary to her lie to the applicant about it, Vedalankar indeed discussed his 'candidacy' for the Pietermaritzburg Senior Litigator post with Nair and informed him of her and Mlambo's rejection of his appointment.

185. Vedalankar's email to Nair on 29 July 2010,[306] in reaction to the applicant's letter to her of the 12th,[307] shows that contrary to her lie to the applicant that besides Mdaka on the professional selection panel, 'I am not aware of any of the Executives discussing you and your candidacy', she and other executives indeed again discussed the applicant and his 'candidacy' in July 2010, in that:

(a) On or about 29 July 2010 Vedalankar held a specific discussion with Nair about the applicant's letter of 12 July 2010 concerning his 'candidacy' and long overdue appointment;[308]

(b) 'FW:' (i.e. Forwarded) in the Subject bar of Vedalankar's said email – 'FW: Complaint against the HRE & an interview process [sic]' – shows unequivocally that there had been prior written discussion of the subject of the applicant's complaint and enquiry

[304] Page 372, section 8.2.2, read with page 370.
[305] Page 103, paragraph 6.7.
[306] Page 389.
[307] Pages 1–17.
[308] Pages 389; and 19.

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about the delay in his appointment in email traffic between Vedalankar and another party, probably Mlambo, and the absence of this prior exchange below her message shows that Vedalankar deleted the record of this discussion to conceal it before emailing Nair under the original subject heading of the prior email discussion; and,

(c) the content of Vedalankar's message – 'Please see attached letter[.] I am not sure 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 and then discuss with me' shows that notwithstanding the low cunning of her transparently feigned ignorance of the matter, Vedalankar well knew 'the outcome' of 'the process' to abort the applicant's appointment that had already been 'finalise[d]' by Mlambo and her many months earlier and of which 'outcome' 'the persons interviewed' needed to be 'advise[d]', namely the applicant above all, since Mngadi had already been 'advise[d]' by email 'in April/May' 2010[309] at her and Mlambo's instance.

186. The reason Vedalankar lied to the applicant in denying that she and other executive managers had ever discussed him or his 'candidacy' – when in truth and in fact, she and other executives had indeed discussed it in late November or December 2009, again in the last week of April 2010,[310] and again on or about 29 July 2010[311] – is because she was seeking to conceal her direct role behind the scenes in aborting his recruitment on account of unlawful political (or racial) prejudice, and her and Mlambo's developing scheme to cover it up.

<u>The alleged 'freezing' of Senior Litigator posts off the record</u>

187. In her letter to the applicant of 18 October 2010, Vedalankar alleged: 'The NOE, as the executive responsible for operations may also motivate a change in the organizational structure, including the freezing of positions, for discussion and finalization with the CEO (refer S.8.1.2 (b) of the Legal Aid SA Approval Framework).'[312] And accordingly: 'In

[309] Pages 146–7, paragraphs 179–80; and page 385, paragraph 37.
[310] Pages 5–6, paragraphs 23–4.
[311] Page 389.
[312] Page 103, paragraph 6.6.

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July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.'[313]

188. Vedalankar further alleged in her letter to the applicant on 28 January 2011 that her alleged decision 'In July 2010' to 'freeze' 'all senior litigator posts that were vacant' was 'verbal'.[314] Nair confirms on oath that no record exists of Vedalankar's alleged decision, allegedly 'motivate[d]' by him.[315]

189. Mlambo similarly alleged to the Minister on 9 March 2010[316] and to the chairperson of the Portfolio Committee on 22 June 2010[317] that '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 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.'[318]

190. Section 8.1.2(b) of the respondent's Approval Framework, read with section 8.1.2(a), provides for the 'Establishment of new positions, regrading of existing positions and abolition of posts'.[319] Contrary to Vedalankar's false claim to the applicant, the Approval Framework does not provide for 'the freezing of positions' by Vedalankar or anyone else. The Approval Framework does not give Nair the power to 'motivate' for the 'freezing of posts' for the obvious reason that it is natural that a post itself is incapable of being 'frozen', only a recruitment process to fill it. Hence Nair's claim to the applicant, 'I can now confirm that we will not be proceeding with the filling of any of

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[313] Page 103, paragraph 6.7.
[314] Page 221, paragraph 29, final sentence. 'All communication' referred to in paragraph 29 concerning the proposed 'change in the organizational structure' (the 'decision to create or abolish a post') in order to reduce operating costs went to the temporary reduction of junior practitioner posts.
[315] Page 342, Part 18; and page 385, paragraph 35.
[316] Pages 507.
[317] Page 504.
[318] Pages 505–7.
[319] Page 372.

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these posts' – in which he correctly did not claim the posts themselves were 'frozen'. Furthermore, 'freezing' a post, i.e. a recruitment process to fill it, as opposed to abolishing it, plainly does not 'change ... the organizational structure', which would result from the 'Establishment ... regrading' or 'abolition of posts', as the Approval Framework specifically envisages.[320]

191. But if, the above facts notwithstanding, it be held that the Approval Framework does implicitly permit Vedalankar to 'freeze' posts, as she alleges, section 8.1.2(b) requires Nair to 'motivate' any 'change in the organizational structure' to COO Makokoane, who 'Must agree'. HRE Clark 'Must be consulted (before)'. And 'Final approval' is Vedalankar's responsibility. This is why Nair duly observed these requirements when motivating to Makokoane for a reduction of the junior practitioner staff establishment on 16 July 2010, copying Clark and Vedalankar in.[321]

192. No record exists to show that Nair 'motivate[d]' to 'freeze' 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts'.[322] In truth and in fact the records show that in July 2010, the month in which Vedalankar falsely alleged to the applicant that she had 'frozen ... all senior litigator posts that were vacant' upon Nair's 'motivat[ion]', Nair had 'motivate[d]' a very different 'change in the organizational structure' that had nothing to do with the respondent's critical vacant Senior Litigator post establishment, namely for the reduction of some junior practitioner posts and if necessary some even lighter paralegal and administrative posts.[323] And Makokoane, Clark and Vedalankar all agreed, and recommended this to the Board for approval.[324]

193. No record exists to show that Makokoane 'agree[d]' with the alleged 'freezing' of the respondent's successful recruitment of three suitable candidates selected and recommended for appointment as Senior Litigators.[325]

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[320] Page 372, section 8.1.2.
[321] Pages 240; and 372.
[322] Page 19; page 339, part 15; and page 384, paragraph 32.
[323] Page 240.
[324] Page 254, paragraph 4.
[325] Page 221, paragraph 29.

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194. No record exists to show that Clark was consulted before 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [sic] put on hold', as Nair put it.[326] On Nair's version to the applicant, by July 2010 the applicant's appointment following his successful interview had been 'on hold', i.e. 'frozen' (with no information given him) for about eight months. In April 2010, five months after he had been selected and recommended, Clark knew nothing of the reason for the extraordinarily long delay in finalizing the applicant's appointment when he enquired of her.[327] This shows that she had not been 'consulted' as required before this alleged decision was taken to 'put on hold', i.e. 'freeze', 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts' – even on Vedalankar's false assertion to the applicant that the Approval Framework permits her to 'freeze' posts.

195. And no record exists to show that Vedalankar gave her 'Final approval' to Nair's alleged 'motivat[ion]' to 'freeze' the recruitment process for the appointment of the applicant as Senior Litigator, Pietermaritzburg,[328] and for the appointment of two other applicants for the equivalent posts in Durban and Mthatha.

196. It is manifestly not possible that a major decision – substantially impacting on and reducing (a) the respondent's ability to deliver 'quality legal services', (b) the poor's 'access to quality legal aid services' and (c) the respondent's 'capacity to assist clients in civil legal aid matters', thus contradicting the respondent's 'strategic shift' set out in its 'Strategic Plan 2009–20012', as Vedalankar summed it up in her CEO report[329] – taken by several[330] national executives at the highest levels of the management structure of a major public entity be 'verbal'[331] and that no record of the decision or the preceding debate exists whatsoever.[332] It follows that Vedalankar lied to the applicant in alleging that 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that

[326] Page 19; page 340–1, part 16; and page 384, paragraph 33.
[327] Page 5, paragraphs 19–20.
[328] Page 222, paragraph 35; page 381, paragraph 14; page 342, part 18; and page 385, paragraph 35.
[329] Pages 475–9.
[330] Page 385, paragraph 36.
[331] Page 221, paragraph 29, final sentence.
[332] Page 333, part 8, item 14; and page 383, paragraph 23.

were vacant would be immediately frozen.'[333] And that Mlambo lied to the Minister and to the chairperson of the Portfolio Committee about this accordingly.[334]

197. Any decision by Vedalankar to halt the recruitment of senior legal professionals for three out of ten remaining unfilled critical Senior Litigator posts, especially after they had already been selected and recommended for appointment by professional selection panels, contrary to the express wishes of the Minister[335] and of Parliament,[336] and contrary to the respondent's 'Strategic Plan 2009–2012' approved by the Board and presented to the Minister and to the Portfolio Committee, manifestly required the Board's approval. Hence the Board's approval sought and obtained by Vedalankar and other executive managers for their decision recorded in their 'Report to Board' on 16 July 2010 to temporarily cut some junior practitioner posts, especially given that 'The Executive Authority has however in a meeting with the Legal Aid SA Board Chairperson expressed his wish to have Legal Aid SA service delivery maintained.'[337]

198. In the premises, even on her own clearly false version, Vedalankar's alleged 'verbal' decision 'In July 2010' to 'freeze' the post for which the applicant had been selected and recommended, plus two others, was beyond her powers and unlawful.

<u>The respondent's 'second interview' and 'final approval' claims</u>

199. The respondent's managers have repeatedly alleged to the applicant that his recommendation for appointment by the professional selection panel that interviewed and selected him is or was subject to the approval, variously, of:

(a) 'the Chairperson, a Judge of Appeal' at 'a final interview' – per Brijlal in April 2010;[338]

(b) a 'second round' interview – per Clark in April 2010;[339]

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[333] Page 103, paragraph 6.7.
[334] Pages 505–7.
[335] Page 184.
[336] Pages 120–1, paragraphs 50–55.
[337] Page 252, paragraph 1.3.
[338] Page 6, paragraph 28.
[339] Page 6, paragraph 28.

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(c) Nair as 'the line function executive' and therefore 'the person responsible for the final approval of the Senior Litigator appointments in our organization ... which in this case is myself' – per Nair in August 2010;[340]

(d) a 'second stage ... interview ... by a national office panel, including the Chairperson of the Board, National Operations Executive (NOE), Legal Development Executive, Human Resource Executive and the Chief Operations Officer. ... [T]he ROE for KwaZulu-Natal together with the NOE and CEO approve the final appointment' – per Vedalankar in October 2010;[341]

(e) 'second round interviews ... with national executives'; 'the process for Senior Litigator was two-pronged ... you were ... subject to a second round interview process for which the interview panel included Mlambo JP and other National Office Executives' – per Vedalankar in January 2011;[342]

(f) 'a second interview panel' of 'identified National Office executives. ... The Chairperson of the Board was also invited to participate in this panel. The second interview panel would consider all candidates recommended from the first round of interviews to the second round of interviews. ... If after the second round interviews a recommendation is made, the Regional Operations Executive in charge would finalize the appointment only after the National Operations Executive and the Chief Executive Officer agree with the recommendation' – per Nair in April 2011.[343]

200. That is, according to the respondent's managers quoted above, the applicant's selection and recommendation by the KwaZulu-Natal regional professional selection panel for appointment as Senior Litigator, Pietermaritzburg, was subject to the discretionary approval of the respondent's national business managers and Board chairperson following a second interview of the applicant by the latter persons to again assess his suitability for appointment, and if, after this, he was approved for the second time, the applicant's appointment was subject to the final discretionary approval, variously, of the respondent's:

[340] Page 19.
[341] Page 103, paragraphs 6.2–5.
[342] Page 215, paragraph V7, third column; and page 217, paragraph 13.
[343] Page 380, paragraph 12.

(a) chairperson; or,

(b) National Operations Executive; or,

(c) 'ROE for KwaZulu-Natal together with the NOE and CEO'; or,

(d) 'National Operations Executive and the Chief Executive Officer'; or,

(e) 'Regional Operations Executive in charge ... only after the National Operations Executive and the Chief Executive Officer agree with the recommendation'.

201. Mlambo alleged similarly to the Minister in March 2011[344] and later to the chairperson of the Portfolio Committee in June[345] that the applicant 'was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted panel ... of which the Chairperson of the Board of Directors is one'.[346]

202. 'Version_2' of the respondent's Recruitment 'policy and procedure'[347] protocol, approved by the Board on 29 November 2008,[348] 'provides the Legal Aid Board with clear guidelines to be followed when a vacancy exists', and at all times it has governed the process for the applicant's recruitment.[349]

203. Mlambo's and the respondent's managers' claims that the professional selection panel's selection and recommendation of the applicant for appointment was subject to the further approval of any of the officers enumerated above, following a second interview, is unsupported by and inconsistent with the respondent's Recruitment 'policy and procedure' protocol.

204. The Recruitment 'policy and procedure' protocol makes no provision for any of the respondent's national business managers and Board directors to conduct any 'second round interview process' of senior legal professionals selected and recommended by

[344] Page 505.
[345] Ibid.
[346] Page 505, first and second paragraphs.
[347] Page 228, paragraph 1.1.3.
[348] Page 228, footer.
[349] Page 228, paragraph 1.1.3.

regional professional selection panels for appointment as Senior Litigators at regional Justice Centres. That is, the Recruitment protocol does not require senior legal professionals, selected and recommended for appointment as Senior Litigators following the interrogation of their qualifications, expertise and suitability by a delegated panel of their senior legal professional peers, to present themselves for further examination and assessment by the respondent's nearly all legally unqualified national executive business managers, and the chairperson of the respondent's Board 'invited'[350] along to join them.

205. The respondent's executive managers, whose function is to implement the policy resolutions passed by the Board, do not have the power to deviate from the Recruitment 'policy and procedure' protocol resolved upon by the Board, and to just invent[351] off the record[352] and (sometimes) follow[353] their own ad hoc 'policy and procedure' for the recruitment of senior legal professionals[354] for the respondent's advertised vacant Senior Litigator posts.

206. Which unauthorized and irregular recruitment 'policy and procedure' Mlambo, Nair, Vedalankar and Clark have whimsically applied to some Senior Litigator candidates and not others. According to Nair, 'the second interview panel has sat on three separate occasions to consider prospective candidates'[355] – yet the respondent has filled seven of its originally advertised nine[356] Senior Litigator posts in other provinces, Pietermaritzburg and Durban excepted.

207. Nor do the respondent's executive business managers Nair, Vedalankar and Clark, all legally unqualified, have the power to arrogate to themselves a discretionary vetting function over senior legal professionals selected and recommended for appointment as Senior Litigators by duly appointed professional selection panels comprising senior

[350] Page 380, paragraph 10.
[351] Pages 379–80, paragraph 8–9.
[352] Page 380, paragraph 8.
[353] Page 380, paragraph 11.
[354] Page 280, paragraph 9, second sentence.
[355] Page 380, top of the page.
[356] Page 537.

attorneys and advocates with the necessary professional competence to assess their expertise and suitability.

208. Nor do Nair, Vedalankar, and Clark have the power to appoint the chairperson or any other lawyer on the Board to share this unauthorized and irregular gatekeeping function with them and to assist them, perhaps appreciating that because they are all legally unqualified they are entirely incapable of assessing the expertise and suitability of senior legal professionals selected and recommended for appointment by professional selection boards. Neither the respondent's Approval Framework nor its Recruitment 'policy and procedure' protocol provide for the chairperson or any other member of the Board to involve him- or herself in staff recruitment. The unlawful irregularity of such involvement by the chairperson in the respondent's operations is pointed up by Nair's own observation to the applicant: 'The Board's responsibility primarily relates to policy issues and not operations, hence appointments and freezing of positions are dealt with by Executives.'[357]

209. Consequently, Nair's claim to the applicant on 8 April 2011 that he had decided 'verbally ... in April 2008 ... in consultation with both the Chief Executive Officer and the Human Resources Executive ... that the process of recruitment for Senior Litigators will include a second round of interviews [by] a panel ... of identified National Office executives' with the 'Chairperson of the Board ... invited to participate'[358] is legally irrelevant.

210. Section 8.2.2(b) of the Approval Framework[359] read with 'Key to Levels'[360] stipulates that 'Final approval' for 'Senior Professional staff' 'Appointments' (after their selection and recommendation for appointment by professional selection panels in terms of the respondent's Recruitment protocol)[361] must be provided by Nair as NOE with the concurrence of Vedalankar and Makokoane as CEO and COO respectively, who 'Must agree'. It is implicit that absent any legitimate obstacle, these business managers will

[357] Page 364, paragraph 6.
[358] Page 380, paragraph 10.
[359] Page 372.
[360] Page 370.
[361] Pages 228–34.

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agree with and approve the professional selection panel's selection and recommendation, and not reject it on the basis of any exercise of arbitrary power.

211. In the premises, the applicant's selection and recommendation for appointment as Senior Litigator, Pietermaritzburg, is not subject to the discretionary approval of any second interview panel and thereafter of some of the same or any other of the respondent's executive business managers, as falsely alleged to the applicant.

The legal prohibition of unfair discrimination against the applicant as an 'applicant for employment'

212. Under the heading 'Prohibition of Unfair Discrimination', section 6(1) in Chapter 2 of the Employment Equity Act 55 of 1998 ('the EEA') provides: 'No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, ... conscience, belief, political opinion'.

213. Under the heading 'Definitions, Purpose, Interpretation and Application' in section 1 in Chapter 1 of the EEA, 'employment policy or practice' 'includes ... appointments and the appointment process'.

214. Under the heading 'Applicants', section 9 of the EEA provides: 'For the purposes of section 6, 7 and 8, employee includes an applicant for employment.'

215. In the premises, as an applicant for the respondent's advertised vacant Senior Litigator post at Pietermaritzburg, the EEA protects the applicant from unfair discrimination against him in 'the appointment process'.

The applicant's legitimate expectation of being appointed

216. But for Mlambo's and Vedalankar's direct covert discrimination against the applicant on prohibited grounds, he would have been appointed to the Pietermaritzburg Senior Litigator post.

217. The post remains vacant and budgeted for, and was prioritized for recruitment along with other critical unfilled posts by Vedalankar and other executive managers in their 'Report to Board' on 16 July 2010.[362]

218. The respondent is accordingly currently advertising to recruit senior legal practitioners for other critical vacant posts, such as for a Corporate Attorney in its National Office in Braamfontein and for a Justice Centre Executive at Colesburg.

219. The advertisement for the Pietermaritzburg Senior Litigator post[363] to which the applicant responded did not include 'An indication that the LAB reserves the right not to make an appointment and that applicants not contacted within two months may consider their applications unsuccessful.'[364] So Mlambo's and Vedalankar's strategy of keeping the applicant waiting in the dark for many months – with false information thereafter given to him by Clark after nearly six months, by Nair after nearly nine months, and by Vedalankar after eleven months and again more three months after that – did not and does not constitute any basis for the applicant to 'consider [his] application.. unsuccessful'.

220. Having been selected by a duly delegated regional professional selection panel from among the shortlisted applicants for the advertised Pietermaritzburg Senior Litigator post and having been recommended by the panel for appointment, the applicant has a legitimate expectation and right to be appointed.

221. And having shown that:

(a) Mlambo's and Vedalankar's stated reason for blocking the applicant's appointment is a lie;

(b) Mlambo's and Vedalankar's claim that the post for which the applicant was duly selected and recommended was duly 'frozen', along with (two) others, is unsupported and contradicted by the respondent's records; conflicts with Vedalankar's CEO report for 2009/10; conflicts with her statements to the

[362] Page 253, paragraph 2.2.b).
[363] Page 45.
[364] Page 229, paragraph 1.2.1.5(j).

Portfolio Committee on Justice and Constitutional Development; and is inconsistent with the peremptory provisions of the Approval Framework;

(c) there is no provision in the respondent's Recruitment 'policy and procedure' protocol or in any other document for any second interview by the respondent's national management executives and chairperson following the applicant's selection and recommendation for appointment by the KwaZulu-Natal regional professional selection panel; and,

(d) there is no provision in the respondent's Recruitment protocol or in any other document for any third-tier discretionary approval process,

the applicant is accordingly entitled to an order directing the respondent to appoint him to the Pietermaritzburg Senior Litigator post, subject to the clear outcome of a recruitment check conducted in terms of the respondent's 'Recruitment Check Procedure' prescribed by the Recruitment 'policy and procedure' protocol to confirm the applicant's 'personal particulars, including but not limited to, qualifications, security checks, and credit checks'[365] – in other words that he is who he says he is; holds the professional qualifications and has the professional experience he states he does;[366] poses no threat to the security of the democratic state;[367] has a spotless credit record; and has no previous convictions for any criminal offence or professional ethical infraction, nor are there any proceedings pending against him.

222. Since the Pietermaritzburg Senior Litigator post is a 'Regional Appointment' and not a 'National' one – 'Reporting to the relevant JCE',[368] i.e. the Pietermaritzburg Justice Centre Executive – 'the responsibility' per the Recruitment protocol 'of authorizing' the mandatory 'LAB-RC (Legal Aid Board recruitment check)' to verify 'the candidate's personal particulars including but not limited to, qualifications, security checks, and

[365] Page 233, paragraph 1.2.3.7.
[366] Pages 71–9.
[367] Pages 83–92.
[368] Page 537.

credit checks ... will vest in the ROE', namely Mdaka, 'who in turn can delegate it to the Regional Human Resources Manager', namely Brijlal.[369]

223. Because Mlambo and Vedalankar aborted the applicant's recruitment, no formal recruitment check was performed on him[370] and his consent[371] to such was never sought.[372]

224. As required by and in terms of the Recruitment protocol,[373] the applicant hereby notes his written consent to such an 'LAB-RC' investigation being performed on him by Mdaka or his delegate Brijlal.[374]

225. Since the advertisement for the post did not 'indicate that references were required', 'the referees as submitted by the applicant'[375] at the foot of his Curriculum Vitae[376] were superfluous; and the Recruitment protocol explicitly prohibits Mdaka or Brijlal from 'contact[ing]' them.[377]

<u>The facts supporting an award of damages to the applicant for patrimonial loss</u>

226. Having regard to the facts and circumstances enumerated below it would be just and equitable were the respondent to be ordered to pay the applicant damages for lost income in a sum equivalent to the salary he would have earned had he been employed as Senior Litigator, Pietermaritzburg, after being selected and recommended for appointment to the post.

227. But for Mlambo's and Vedalankar's unlawful abortion of the applicant's recruitment, it is probable that he would have been appointed on 1 January 2010. This is the date he indicated when asked at his interview on 12 November 2009 how soon he would be available to start should his application be successful, which date, six weeks after his

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[369] Page 233, paragraph 1.2.3.7; and page 234, paragraph 1.3.2.1.
[370] Page 351, item 3; and page 364, paragraph 2, request 3.
[371] Page 234, paragraph 1.3.3.
[372] Page 364, paragraph 3.
[373] Page 234, paragraph 1.3.3.
[374] Page 233, paragraph 1.2.3.6.
[375] Page 233, paragraph 1.2.3.6.
[376] Pages 71–9.
[377] Page 233, paragraph 1.2.3.6.

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interview, was noted by the professional selection panel and recorded by Brijlal without demur.

228. The time it has taken the applicant to bring his claim to trial in this court since Mlambo's and Vedalankar's decision to abort his recruitment in late November or December 2009 on prohibited grounds has been the direct result of their developing scheme to conceal their unfair discrimination against him, as well as Vedalankar's and Nair's[378] persistent failure to comply with their legal obligations under PAIA[379] with a view to (a) delaying the applicant's discovery of the true facts; (b) hindering the preparation and presentation of his case; (c) concealing material evidence from him and from this court;[380] and (d) perverting the true and just determination of his claim.

229. The applicant's uncovering of the facts in this matter – Mlambo's and Vedalankar's unfair discrimination against him and subsequent cover-up – has cost many hundreds of hours of his professional time diverted and applied to pursuing, unearthing and presenting the dishonestly concealed truth since 30 April 2010, when Clark disclosed the respondent's mala fides and hostile animus towards him[381] at the commencement of the respondent's persistent endeavours to misinform and defraud him into abandoning his claim to appointment.

<u>The facts, including aggravating factors, supporting an award of general compensation to the applicant</u>

230. Having regard to the facts and circumstances enumerated below it would be just and equitable were the respondent to be ordered to compensate the applicant for:

(a) violating his fundamental rights to equality and not to be unfairly discriminated against;

(b) impairing his dignity;

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[378] Page 387. This record shows that Vedalankar appointed Nair deputy information officer to handle the applicant's PAIA requests on 11 March 2011.
[379] Pages 353–61; 395–400; and 401–14.
[380] Page 37, paragraph 71; page 165, paragraph 254; and page 101, first paragraph commencing, 'I acknowledge'; page 210, paragraph 1; and page 244, paragraph 41.
[381] Pages 5–8, paragraphs 23–40.

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(c) denying him equal employment opportunity so as to penalize him economically for exercising his fundamental civil rights in the post-apartheid democratic order in campaigning for his deeply unpopular, intensely politicized cause (or on account of his race); and,

(d) chilling his fundamental right to the full and equal enjoyment of all his rights and freedoms.

231. The Bill of Rights in Chapter 2 of the Constitution guarantees the applicant's rights to think freely; to conduct scientific research; to form and hold independent opinions; to communicate the information he has researched and to impart his conclusions about it to government and to the public; to be moved to lawful action by his moral, social, and political conscience; to campaign for a cause; and to actively participate in the public policy controversies of the day. And not to be unfairly discriminated against for exercising these fundamental rights in the democratic era.

232. And indeed, like socially and politically engaged members of 'the public', the applicant is positively 'encouraged' by section 195(e) 'to participate in policy-making'.

233. Under the heading 'Rights', section 7 provides: 'This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom'; and it requires that 'The state must respect, protect, promote and fulfil the rights in the Bill of Rights.'

234. Under the heading 'Equality', section 9 provides: '(1) Everyone is equal before the law and has the right to equal protection and benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and freedoms. ... (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, ... conscience, belief, ...'

235. Section 197(3) specifically directs: 'No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause.'

236. Under the heading 'Freedom of religion, belief and opinion', section 15(1) provides: 'Everyone has the right to freedom of conscience, ... thought, belief and opinion.'

237. Under the heading 'Freedom of expression', section 16(1) provides: 'Everyone has the right to freedom of expression, which includes ... freedom to receive or impart information or ideas ... freedom of artistic creativity ... academic freedom and freedom of scientific research.'

238. Under the heading 'Political rights', section 19(1) provides: 'Every citizen is free to make political choices, which includes the right ... to campaign for a ... cause.'

239. Under the heading 'Access to information', section 32(1)(a) provides: 'Everyone has the right of access to ... any information held by the state.'

240. The respondent publicly declaims its 'Vision' to be 'A just South Africa in which the rights enshrined in our Constitution are promoted, respected, defended, protected and fulfilled to ensure justice for all'[382] – even as behind the scenes it has deliberately and contemptuously violated the applicant's fundamental right not to be unfairly discriminated against for exercising his liberty of conscience and belief. (Or on account of his race.)

241. The respondent's direct discrimination against the applicant on account of his active participation in the scientific and intense political policy controversy over the safety and utility of the pharmaceutical products AZT and nevirapine[383] for administration to the African poor, particularly to unborn and newly born children, (or on account of his race) constitutes an egregiously serious attack on his fundamental rights by an organ of state in the post-apartheid constitutional era in democratic South Africa.

242. At all material times Mlambo and Vedalankar have appreciated the gravely unlawful nature of their conduct in that:

(a) the respondent's Recruitment protocol repeatedly enjoins the respondent's officers involved in recruitment to avoid unfair discrimination, including 'hidden' discrimination on account of 'political or other beliefs' and 'race', given its unlawfulness and potentially serious 'consequences':

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[382] Page 21, paragraph 3.
[383] Pages 11–16, part 5.

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- 'The recruitment process must be fair, objective, transparent, and non-discriminatory.'[384]

- 'In the process of interviewing, the selection committee or panel must avoid irrelevant questions or questions that could be potentially discriminatory, including but not limited to an employee's ... political or other beliefs [and] race'.[385]

- 'Employees nominated to serve on a selection committee or panel should be informed, and, where necessary, trained in respect of the consequences of discrimination in the recruitment and selection process and ways to avoid hidden or latent discrimination in the recruitment processes.'[386]

- 'Care must be taken to avoid the making of recruitment decisions on discriminatory grounds.'[387] And,

(b) the respondent holds out as one its 'Values', in accordance with the founding values of the Constitution, 'Respect for human dignity (ubuntu) and diversity': 'To ensure that in all our dealings with our clients, communities and staff we respect the dignity of every person regardless of class, race, gender, sexual orientation, age or any other form of prejudice. To value our differences in a manner that celebrates diversity';[388] and,

(c) the respondent claims in its 'Terms of Reference' that 'The Constitution of South Africa, Act 108 of 1996, provides the overall legal framework from which Legal Aid South Africa derives its mandate. Chapter Two, of the Bill of Rights, outlines the right to equality (Section 9) ...'; and,

(d) the applicant pertinently drew Vedalankar's attention to relevant provisions of the Bill of Rights in his letter to her in July 2010[389] and to the statutory prohibitions

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[384] Page 228, paragraph 1.1.2.
[385] Page 232, paragraph 1.2.2.9.
[386] Page 232, paragraph 1.2.2.10.
[387] Page 233, paragraph 1.2.3.2.
[388] Page 428.
[389] Pages 3–4, paragraphs 10–13.

against discrimination on prohibited grounds in his letter to Makokoane in September 2010,[390] to which Vedalankar replied.[391]

243. And for this reason, well appreciating the unconstitutionality and illegality of his and her prejudice against the applicant in his application for the advertised post and their covert, intentional, direct unfair discrimination against him in vetoing his appointment, and thus violating his fundamental right to equality in the post-apartheid constitutional era, Mlambo and Vedalankar have cloaked it with a fake budgetary justification to cover and conceal it.

244. Notwithstanding that Mlambo's and Vedalankar's unfair discrimination against the applicant, being gravely unlawful, is undeclared and has been camouflaged with a fake cover story, a conspectus of all the relevant available evidence supports the conclusion, on a preponderance of probabilities, that the true reason they aborted the applicant's appointment was unlawful political (or racial) discrimination.

245. Not only have Mlambo and Vedalankar violated the applicant's fundamental rights guaranteed by the Constitution, they have compounded this by grossly unethically attempting to defraud him into abandoning his legitimate expectation and right to be appointed to the post for which he was selected and recommended by means of a fake budgetary justification they invented and advanced to camouflage their unfair discrimination against him and their unlawful abortion of his recruitment.

246. Mlambo's and Vedalankar's brazen dishonesty displayed towards the applicant is all the more reprehensible in the light of:

(a) the respondent's public claim that 'Integrity' is one of its 'Values': 'To be honest and ethical in all our dealings.'[392]

(b) Vedalankar's dissimulation in her letter to the applicant on 28 January 2011, with Mlambo's connivance, even as they were violating his fundamental rights to equality and to information, that 'Legal Aid SA promotes and complies with the

[390] Page 35, paragraphs 59–61.
[391] Page 101, final paragraph.
[392] Ibid.

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constitutional precepts of accountability; openness; transparency and respect for human and related rights including your right to access information in its possession.'[393]

247. Had the applicant trusted on the strength of these representations that Vedalankar, Nair, and Clark were 'honest and ethical in all our dealings', and that they respected 'the constitutional precepts of accountability; openness; transparency and respect for human and related rights including your right to access information in its possession', and had he not proceeded to examine their claims to him and found them to be false, he would not have uncovered Mlambo's and Vedalankar's unfair discrimination against him and their persistent attempts to conceal it, and he would have been defrauded into abandoning his rights.

248. Presuming without question that Mlambo was 'honest and ethical in all [his] dealings', their impression reinforced by his express claim that 'our reasons for freezing this post is [sic] honest',[394] the Minister and the chairperson of the Portfolio Committee were deliberately misled by him into believing that the respondent had duly 'frozen' the post for which the applicant had been selected and recommended for appointment, and at the same time other equivalent posts, and that it had complied/was complying with the applicant's outstanding records requests to gather the evidence necessary to plead and present his case properly, some of which requests, Mlambo further falsely claimed, were pointless, which is to say a waste of the respondent's time.[395]

249. Vedalankar and Nair have further compounded the former's violation of the applicant's fundamental rights by abusing their offices as information officer and deputy information officer respectively in ignoring and then repeatedly unlawfully refusing him access to the records he duly requested,[396] so as to conceal the evidence of Mlambo's and Vedalankar's unlawful and unethical conduct as chairperson and CEO respectively in unfairly discriminating against him on prohibited grounds and then in

[393] Page 210, paragraph 2.
[394] Page 506, first paragraph.
[395] Ibid.
[396] Pages 315–43; and 401–14.

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developing an elaborate cover story to camouflage this and defraud him into abandoning his claim to appointment.

250. The Preamble to PAIA pertinently contemplates this evil in 'RECOGNIZING THAT –
* the system of government in South Africa before 27 April 1994, amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'.

251. In further contempt of their constitutional and legal obligations under PAIA, both Vedalankar and Nair, as information officer and deputy information officer respectively, have falsely denied the existence of records requested by the applicant to unlawfully defeat the operation of PAIA, frustrate the applicant's discovery of the truth, and pervert the true and just determination of his claim. As pleaded supra:

(a) 'FW:' in the Subject bar of Vedalankar's email to Nair on 29 July 2010 evidences prior discussion of the applicant's complaint and enquiry about the delay in his appointment under the heading, 'FW: Complaint against the HRE & an interview process [sic]', in an email exchange between Vedalankar and another party, and the absence of this prior exchange below her message shows that Vedalankar deleted the record of it to conceal it before emailing Nair under the original subject heading of the prior email discussion; and,

(b) an email exchange took place between Mlambo and Vedalankar in December 2010 concerning the applicant's first petition to him and the Board to redress his complaints that he had been unfairly discriminated against and that Vedalankar had unlawfully refused to comply with PAIA on the basis both of a false statement of the provisions of PAIA and of a false misquotation from reported case interpreting and applying it.[397] The applicant emailed his petition to Mlambo while he was abroad in the US.[398] Mlambo then discussed it with Vedalankar, and asked her to prepare a brief, dismissive reply, which she did on 15 December 2010 on her computer, according to its 'Properties' file,[399] while he was still abroad. Vedalankar then

[397] Pages 109–67.
[398] Pages 168–73.
[399] Page 259.

emailed this reply that she had prepared to Mlambo, who emailed it on to the applicant from his own computer two weeks later on the 30th, following his return to the country.[400]

252. Yet Vedalankar falsely alleged in response to the applicant's request for records of 'any matters discussed by the Management Board concerning Brink and/or the Pietermaritzburg Senior Litigator post, after the re-advertisement of the post in August 2009':[401] 'I am not aware of any of the Executives discussing you and your candidacy for the above-mentioned post save the edited and blacked out recommendation' by the professional selection panel.[402]

253. On 1 March 2011[403] Vedalankar tried passing the buck to Nair for her failure to comply with the applicant's August and December 2010 records requests by appointing him deputy information officer specifically to deal with the applicant's complaints about this.[404]

254. Arising from Vedalankar's January letter, the applicant filed a third PAIA request on 9 March 2011.[405]

255. In his response to all three requests on 8 April 2011, Nair alleged, as Vedalankar had falsely done in January: 'No records of discussions exist where Mr. Brink was mentioned after August 2009 by the Management Executive Committee.'[406] Nair's statement would only be true if the records of these discussions or exchanges no longer exist, having been unlawfully[407] destroyed with the same intention of defeating the operation of PAIA, frustrating the applicant's discovery of the truth, and perverting the true and just determination of his claim.

256. Notwithstanding the applicant's request for 'All and any other records ... in which the word "Brink" features, where it clearly or possibly refers to the records requester Adv

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[400] Page 201, paragraphs 27–9. The letter is wrongly dated 9 November 2010, prior to the applicant's petition.
[401] Page 61, item 16.
[402] Page 219, paragraph 21; page 61, item 16.
[403] Page 387.
[404] Page 367, paragraphs 5–6.
[405] Pages 344–52.
[406] Page 382, paragraph 17.
[407] Page 51, 'Section 90 Offences'.

Anthony Brink',[408] Nair failed to produce Mlambo's false and highly prejudicial 'Confidential ... Report' to the Minister 'Re: Adv Anthony Brink' on 9 March 2011 under the respondent's 'Legal Aid South Africa' logo.[409]

257. Though Mlambo's 'Report' to the Minister was dated 9 March 2011, a month before Nair's response on 8 April to the applicant's third records request the same day (9 March)[410] and to his outstanding, unlawfully withheld records requests in August and December 2010,[411] Nair disingenuously avoided disclosing this highly material, prejudicial record by claiming on oath that apart from the emailed submission and transmission of the applicant's CV, 'a search was conducted on our internal email system and there are no records found where Mr. Brink's name was discussed or appears prior to his request for information'[412] – namely his request for records on 23 August 2010,[413] repeated on 3 March 2011 in his first memorandum to the SAHRC concerning the respondent's persistent failure to comply with his PAIA requests in August and December.[414]

258. By this dishonest device to defeat the operation of PAIA and conceal crucially relevant records, Nair has avoided complying with the applicant's request for 'All and any other records ... in which the word "Brink" features, where it clearly or possibly refers to the records requester Adv Anthony Brink'[415] – such as the Portfolio Committee chairperson's letter to Mlambo demanding his, the Board's and Vedalankar's 'formal response' to the applicant's PAIA request refusal and unfair discrimination complaints,[416] and Mlambo's highly material, prejudicial 'Report' to the Minister[417] with its covering letter/email. 'All and any other' records generated by the respondent since August 2010 have likewise been suppressed with this trick, with Nair declaring such

[408] Page 68, item 35; and page 338, item 35.
[409] Pages 505–7.
[410] Pages 344–52.
[411] Pages 315–43.
[412] Page 384, paragraph 30.
[413] Page 57.
[414] Page 338, item 35.
[415] Page 68, item 35; and page 338, item 35.
[416] Page 503.
[417] Pages 505–7.

highly relevant records 'not relevant because it is after we informed you that we are not proceeding to fill the Senior Litigator position'.[418]

259. If it be established on the evidence that Mlambo did not disclose to Nair his correspondence with the chairperson of the Portfolio Committee and his 'Confidential ... Report Re: Adv Anthony Brink' to the Minister and its covering letter/email, Mlambo is directly responsible for this particular instance of the respondent's flagrant failure to comply with PAIA. Mlambo was not only aware that the applicant's records requests had not been complied with – he mentioned in his 'Report' that 'We are in the process of ensuring that any outstanding requests for information are attended to',[419] thus implicitly conceding that the respondent had indeed not complied with PAIA, as the applicant had repeatedly complained – he was moreover aware of the specific records that the applicant had requested, in falsely claiming (anyway irrelevantly under section 11(3) of PAIA) that 'many of his requests do not relate to his complaint regarding non appointment'. Yet knowing the applicant sought 'All and any other records ... in which the word "Brink" features, where it clearly or possibly refers to the records requester Adv Anthony Brink',[420] Mlambo did not divulge to Nair his highly material, prejudicial 'Confidential ... Report' to the Minister 'Re: Adv Anthony Brink', and thus concealed it from the applicant.

260. Since, like Vedalankar, Nair is a legally uneducated person, it is probable that Mlambo drew or at least vetted and approved his responses to the applicant's outstanding first and seconds records requests filed in August and December 2010 and third request in March 2011, just as he in all probability did with Vedalankar's October 2010 and January 2011 responses; and for this reason Mlambo is ultimately culpable for Nair's multiple failures to comply with PAIA, in Vedalankar's pattern, in order to suppress critically relevant records.

261. Mlambo and Vedalankar dishonestly covered their unfair discrimination against the applicant with a developing elaborate fraud, in which they also contemptuously

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[418] Page 365, paragraph 9.
[419] Page 506.
[420] Page 68, item 35; and page 338, item 35.

trampled on the rights and legitimate expectations of two other successful applicants for similar Senior Litigator posts, almost certainly both African.

262. Not only did the respondent's executive managers Vedalankar, Nair and Clark all lie to the applicant about the fate of his application to put him off discovering the truth and from vindicating his fundamental rights that Mlambo and Vedalankar had violated, Vedalankar compounded this yet further by responding to the applicant's correct identification of their lies in his correspondence with dishonestly made false accusations that he had made 'malicious accusations', 'serious and malicious accusations' with 'malicious intent', 'disparaging attacks on people's dignity on baseless assumptions', including 'baseless accusations of financial improprieties'[421] that were 'outright defamatory'[422] – all of which charges were to the knowledge of Vedalankar false, and were levelled at the applicant, coupled with a clearly implied threat to sue him for defamation,[423] in a further mala fide attempt to intimidate him and deter him from vindicating his fundamental rights.

263. Mlambo employed the same discreditable tactic to blacken the applicant in the eyes of the Minister and the chairperson of the Portfolio Committee, so as to divert their attention from the factual merits, by falsely characterising the applicant in his 'Report' to them as 'insulting and malicious' and the applicant's repeated approaches to the Board for justice as 'invasive conduct' and a 'tirade' sprung from an 'unfounded ... conspiracy theory' (Mlambo repeats his disparaging, mocking use of the word 'conspiracy' to drive home the derisory aspersion intended), and by falsely alleging to the applicant, which false allegation he repeated to the chairperson of the Portfolio Committee, that the applicant had gravely misconducted himself in his struggle to vindicate his rights that he and Vedalankar had violated.[424]

264. From Mlambo's identical false charge – 'insulting and malicious' – also levelled by Vedalankar in her letter to the applicant of 28 January 2011, it is probable that Mlambo read it and supported her persistent unlawful refusal of the applicant's first records

[421] Pages 151–4, paragraphs 195–214.
[422] Page 212, paragraph 5.6; page 223, paragraph 40; and page 224, paragraph 41.
[423] Page 212, paragraph 5.
[424] Pages 505–7.

request in August 2010 and her failure to respond to his second in December, as she spat back his compulsory request fee.

265. In the course of his and Vedalankar's cover-up, Mlambo falsely assured the Minister and the chairperson of the Portfolio Committee that 'We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act. We copied these responses to the SA Human Rights Commission to confirm our compliance with PAIA', at the same time conceding that 'We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA', which is to say the respondent had not complied with PAIA – but also falsely alleging about these, to play down the gravity of Vedalankar's delinquency, that 'many of his requests do not relate to his complaint regarding non appointment',[425] thus contriving to create the impression that in his insistence that Vedalankar comply with her legal obligations under PAIA and respect his constitutional right to information concerning the 'outstanding' records she was unlawfully withholding,[426] the applicant is an incompetent, distracted gadfly, wasting the respondent's time, and that his persistent complaints to the Board that Vedalankar had refused to comply fully with PAIA under cover of a slew of spurious pretexts is without merit.

266. In truth and in fact, contrary to Mlambo's false assurances to the Minister and to the chairperson of the Portfolio Committee that the respondent has 'been open and transparent with Adv Brink',[427] the respondent remains in deliberate default of its constitutional and legal obligations under PAIA in order to conceal records needed by the applicant for the full and proper pleading and presentation of his claim in this court.[428]

267. Mlambo further falsely portrayed the applicant to the Minister and to the chairperson of the Portfolio Committee as intent on mere money-grubbing rather than on an implacable quest to vindicate his fundamental rights: 'The relief he sought was

[425] Pages 506, first paragraph.
[426] Pages 315–43; and 401–14.
[427] Page 506, first paragraph.
[428] Ibid.

monetary'.[429] In truth and in fact, the primary relief the applicant has always sought is his appointment.

268. Mlambo further misrepresented to the Minister and to the chairman of the Portfolio Committee the basis of the applicant's claim for damages, thereby massively understating the respondent's financial exposure.[430]

269. On multiple scores, Mlambo, Vedalankar, Nair and Clark have violated:

(a) the 'Basic values and principles governing public administration' as set out in section 195(1) of the Constitution – applicable under subsection (2)(b) to the respondent as an 'organ of state' – requiring that 'Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles: (a) A high standard of professional ethics must be promoted and maintained. ... (f) Public administration must be accountable. (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.' And,

(b) the Batho Pele Principles governing the conduct of public servants in the post-apartheid, progressive, democratic, constitutional era: 'The creation of a people-centred and a people-driven public service that is characterised by equity, quality, timeousness and a strong code of ethics.' Which Principles require the 'alignment of staffing plans, human resources development processes and organisational capacity building with the needs of citizens'.[431] Hence, as Vedalankar puts it in her CEO report for 2009/10, the respondent's 'strategic shift also incorporated changes to our support platform to support the delivery of quality legal services. ... our priority continued to be increasing access to quality legal aid services. ... The revised civil legal aid strategy mentioned above will to a certain extent increase capacity to assist clients in civil legal aid matters',[432] inter alia, by engaging Senior Litigators.

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[429] Page 505.
[430] Page 506, second paragraph.
[431] Page 29, paragraph 34; and page 142, paragraph 154.
[432] Pages 257–9.

270. Mlambo's and Vedalankar's direct discrimination against the applicant on prohibited grounds and their unlawful abortion of his recruitment to the advertised senior professional post for which he was duly selected and recommended constitutes an extraordinarily serious abuse of power by an organ of state for unlawful, unconstitutional ends, in contempt of the core values and basic civil liberties enshrined in the Bill of Rights in Chapter 2 of the Constitution in post-apartheid, democratic South Africa, and in direct contravention of section 9(3): 'The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, ... conscience, belief'.

271. Despite (a) having resolved on 31 July 2010 to 'approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of Annexure 1',[433] namely Vedalankar's and other management executives' 'Recommendation' in paragraph 4 of their 'Report to Board' to temporarily reduce some junior practitioner posts, and none other;[434] and (b) having thrice been apprised by the applicant[435] of the indications of Vedalankar's direct covert discrimination against him on prohibited grounds and of Vedalankar's assertion of a fake budgetary justification concocted to camouflage it, as well as of Vedalankar's refusal to comply with PAIA,[436] the respondent's Board has failed to respond to the applicant's repeated pleas to intervene and remedy his complaints.

272. According to the 'Introduction' to 'Corporate Governance Arrangements' in Section 4 of LASA's Annual Report 2009/10, 'processes and practices are reviewed on an ongoing basis to ensure compliance with the legal obligation to use funds in an economic, efficient and effective manner and to adhere to good corporate governance practices ... Processes are underpinned by the principles of openness, integrity and accountability. ... Corporate governance is concerned with structures and processes for decision making, accountability, control and behaviour. It starts at the Board of the organisation and this sets the tone for behaviour down to operational level at Justice Centres. ... Legal Aid South Africa has an ethics programme which promotes ethical behaviour in

[433] Page 251, paragraph 4.2.
[434] Page 254, paragraph 4.
[435] Pages 109–65; 197–207; and 310–14.
[436] Pages 113–19; paragraphs 17-43; and pages 190–1.

the workplace. This is supported by a written business conduct policy dealing with ethics, which is applicable throughout Legal Aid South Africa. The continued focus on the business conduct policy has raised awareness of the need for ethical behaviour across the organisation. Employees are required to maintain high ethical standards and to ensure that Legal Aid South Africa's business practices are conducted in a manner that is above reproach.'[437]

273. Section 50(1)(b) of the Public Finance Management Act 1 of 1999 requires that 'The accounting authority for a public entity must act with fidelity, honesty and integrity and in the best interests of the public entity in managing the financial affairs of the public entity.' Section 83(1)(b) makes it 'an act of financial misconduct if that accounting authority wilfully or negligently ... permits ... a fruitless and wasteful expenditure'. And section 83 (2) provides that 'If the accounting authority is a board, every member is individually and severally liable for any financial misconduct of the accounting authority.'

274. Notwithstanding the Board's legal obligation as accounting authority to act with 'fidelity, honesty and integrity' and not to 'permit.. ... fruitless and wasteful expenditure' (for which 'every member is individually and severally liable'), and notwithstanding the oversight responsibility that the Board claims it exercises to ensure that 'good corporate governance practices' based on 'principles of openness, integrity and accountability' are observed by the respondent's executive managers in 'decision making, accountability, control and behaviour', and notwithstanding further the Board's professed concern about 'ethical behaviour in the workplace', namely that 'high ethical standards' be observed, and that 'business practices' should be 'above reproach' – which is why their 'processes and practices are reviewed on an ongoing basis to ensure compliance with the legal obligation to use funds in an economic, efficient and effective manner' – the Board has tacitly approved of and accorded itself with:

(a) the respondent's violation of the applicant's fundamental rights to equality and to information;

[437] Pages 111–2, paragraphs 8–11.

(b) the respondent's squandering of public revenue in unlawfully aborting the applicant's recruitment following extensive, repeated public advertising of the post for which he applied, and, in the course of the cover-up, in the subsequent abortions at different times of two similar posts; and,

(c) Vedalankar's, Nair's and Clark's unethical conduct in lying to the applicant to conceal the respondent's direct unfair discrimination against him and in their attempt to defraud him into abandoning his legitimate expectation of being appointed to the Senior Litigator post for which he was duly selected and recommended.

275. Certain members of the Board have additionally actively supported Mlambo's, Vedalankar's, Nair's and Clark's discrimination, misinformation, cover-up, and attempts to put the applicant off vindicating his fundamental rights by slandering him, with at least one, possibly two members of the Board wantonly smearing him as a blackmailer and defamer.[438] And for lodging a complaint about this[439] and for his persistent pleas to the Board that Vedalankar respect his fundamental right to records and that his unfair discrimination complaint be resolved by the Board out of court, the applicant has not only been twice rebuffed in bad faith by the respondent's chairperson – 'I have on a previous occasion informed you that I could find nothing untoward in your treatment by Legal Aid SA' – but also abused by him with the wholly unfounded accusation, 'Your conduct is unbecoming to say the least and borders on harassment',[440] thus falsely charging that the applicant has pursued his claim in a professionally dishonourable and all but unlawful fashion, and grossly improperly suggesting that he should drop his complaints of unfair discrimination and unlawful refusal of his records requests, allow the respondent to succeed with its contemptuous violation of his fundamental rights, and walk away.

276. Mlambo's and Vedalankar's direct discrimination against the applicant on prohibited grounds has additionally had the effect of violating his fundamental right to the 'full and equal enjoyment of all rights and freedoms' under section 9(2) of the Constitution, in

[438] Page 207–8.
[439] Pages 197–9, paragraphs 1–18.
[440] Page 209.

that contrary to its mandate in section 195(e), 'the public must be encouraged to participate in policy-making', their unfair discrimination against him has chilled his public participation and his promotion of the incalculably important cause for which he campaigns in the interest of the poor and the weak against the abuses of the transnational pharmaceutical industry in South Africa and other vulnerable countries of the South for fear of further inflaming and hardening their unlawful political prejudice against him.

277. Mlambo's and Vedalankar's dishonestly concealed direct and intentional unfair discrimination against the applicant and their infringement of his right to dignity have impacted severely on him in:

(a) causing him professional and social humiliation;

(b) causing him immense psychological stress over an extended period of time;

(c) impairing his general health;

(d) unnecessarily distressing his personal relationships;

(e) profoundly reducing his enjoyment of the amenities of life; and,

(f) massively consuming and wasting his professional time and resources in pursuit of the truth of the matter as a virtually fulltime project.

278. The horror of the applicant's experience of Mlambo's and Vedalankar's dishonestly camouflaged direct unfair discrimination against him has been considerably exacerbated by his apprehension that Mlambo heads the very court in which he is constrained to seek justice – particularly given the history of Mlambo's appalling, brazen dishonesty in his dissimulations to the applicant and rebukes of his approaches to him for justice; in his false representations to the Minister and chairperson of the Portfolio Committee; and in his and Vedalankar's mala fide dealing with the applicant and how best to defeat him, in cabals, behind the scenes and off the record.

279. In the premises, the egregiously outrageous and unscrupulous treatment that the applicant has been subjected to at the hands of the respondent's national executive

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managers and Board of Directors warrants an award of general compensation to him with both punitive and exemplary elements.

Referral to the CCMA within the prescribed time

280. On 28 January 2011 the applicant obtained the evidence[441] supporting his surmise that Vedalankar's repeated claims to him to have 'frozen' the Pietermaritzburg Senior Litigator post for budgetary reasons were lies.[442]

281. This evidence generated the probability, in the absence of an honest and truthful explanation, that the true reason for the abortion of the applicant's appointment was unlawful political prejudice against him as a deeply unpopular dissident activist in what has been the most emotive, politicised, and polarized policy controversy in the democratic era, in which Mlambo's and Vedalankar's beliefs and opinions, indeed the respondent's collective beliefs and opinions[443] expressed in its 'KEY'[444] operating policy and 'HIV/AIDS Strategy and Roll Out Plan',[445] diametrically opposed to the applicant's, are a matter of public record. (Alternatively, unlawful racial prejudice.)

282. The applicant referred his claim to the Commission for Conciliation, Mediation and Arbitration ('the CCMA') for conciliation on 22 March 2011.

283. The applicant's referral of his claim to the CCMA was accordingly within the six-month time limit prescribed by section 10 of the EEA for the referral of claims arising from unfair discrimination.

284. Alternatively, if it be held that the applicant had knowledge of his cause of action at the time he petitioned Mlambo and the Board on 30 November 2010 and raised the limited indications, then within his knowledge, that the financial cover story Vedalankar had advanced to him was untrue, the applicant was still within time for referring his claim to the CCMA for conciliation on 22 March 2011.

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[441] Pages 236–40; and 251–4.
[442] Page 103, paragraph 6.7; page 104, paragraph 7.3; and page 214, paragraph V5, third column.
[443] Pages 525–36; 459–61; and 462–74.
[444] Page 531.
[445] Page 534.

285. A conciliation hearing was held on 20 April 2011, at which the Commissioner unsuccessfully attempted to resolve the dispute, following which a certificate of outcome was issued under section 135(5) of the Labour Relations Act 66 of 1995.[446]

Referral to the Labour Court within a reasonable time after the issue of a certificate of outcome by the CCMA

286. The EEA does not stipulate a time limit for the referral of unfair discrimination claims to the Labour Court for trial after the issue of a certificate of outcome by the CCMA, and it is therefore implied by law that applicants must refer such claims within a reasonable time.

287. When the applicant's claim went to conciliation on 20 April 2011, the respondent had still not complied with his lawful requests for records under PAIA, which records he required to plead his claim in this court on the basis of all the available relevant documentary evidence, and on which records he intended to rely at trial.[447]

288. With a view to compelling the respondent to disgorge the records it was unlawfully withholding from him, to his prejudice in the preparation and launch of his case, the applicant filed two formal complaints against it with the SAHRC on 11 and 28 April 2011 concerning its refusal to comply with PAIA and its violation of his fundamental right to information under section 32 of the Constitution.[448] To assist the SAHRC and to expedite the matter, the applicant's second (amended and further) complaint was accompanied by a second comprehensive memorandum he drew critically analysing and exposing the legal vacancy of the respondent's pretexts advanced for withholding the records he had requested and needed.[449]

289. Pursuant to its assurances that it was dealing with the matter,[450] the applicant afforded the SAHRC some weeks to mediate in terms of its statutory power and duty to do so,[451] and repeatedly and regularly enquired about progress,[452] but without joy, and

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[446] Page 394.
[447] Pages 401–14.
[448] Pages 353–61; and 395–400.
[449] Pages 401–14. The applicant's first memorandum is at pages 315–43.
[450] Page 362.
[451] Pages 192–3.

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on 28 June 2011 he finally resorted to filing a PAIA request on the SAHRC itself to find out.[453]

290. Notwithstanding that the SAHRC found 'cogent' the applicant's complaint that the respondent had violated his fundamental right to information, it responded the following day on 29 June 2011, pleading a lack of resources to mediate and formally determine it.[454] The applicant promptly appealed to the chairperson of the SAHRC on 1 July 2011,[455] copying the Public Protector having regard to her statutory function in 'resolving disputes relating to the operation of the Promotion of Information Act of 2000 ... as mandated by' the Act.[456] The appeal was acknowledged by the SAHRC on the 11th.[457]

291. On 18 July 2011 the chairperson of the SAHRC dismissed the applicant's appeal on the novel basis that Article 4.1.3 of its Complaints Handling Procedures provides that 'the Commission may reject any complaint, which is ... the subject of a dispute before a court of law'. Although the chairperson obviously misdirected himself in holding that 'the subject of the dispute' – the applicant's fundamental right to information – was 'shortly to be adjudicated upon by the Labour Court', he noted that 'this decision ... in line with Article 4.1.3 ... is final'.[458]

292. The applicant then launched his claim without all the records needed[459] for the full and proper pleading and presentation of his claim, thanks to the respondent's contempt for its obligations and for the applicant's fundamental right to information under PAIA, and the SAHRC's dereliction thereanent.

293. Any question of delay in referring the applicant's claim to this court for trial arises directly from Vedalankar's and Nair's persistent, deliberate unlawful refusal, with Mlambo's connivance, to comply with their legal obligations under PAIA to afford the

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[452] Pages 419–20; 421–2; 423–5; 480–1; and 486.
[453] Pages 487–495.
[454] Pages 498–501.
[455] Pages 508–20; and 537.
[456] Pages 521–4.
[457] Pages 538–9; and 540.
[458] Pages 541–3.
[459] Pages 401–14.

applicant access to the respondent's records that he duly requested for the purpose of pleading and presenting his case, thus intentionally hindering him in the perfection and launch of his claim in this court – to his prejudice and not the respondent's.

294. At all events, the applicant has sued for relief from this court three months after the conciliation hearing and within six months of obtaining the clear documentary evidence on 28 January 2011 that the justification Vedalankar advanced on 18 October 2010 for aborting his recruitment was a lie, supporting the inference in all the circumstances that the respondent had unfairly discriminated against him, which six-month period (a) is allowed by the EEA for referring unfair discrimination claims to the CCMA, and (b) is the international legal norm for launching unfair discrimination claims.

295. In the situation, the applicant has diligently and attentively prosecuted his unfair discrimination claim without any undue delay on his part, and has referred it to this court for trial within a reasonable time as the EEA impliedly requires.

THE LEGAL ISSUES ARISING FROM THE ABOVE FACTS

296. Whether in terminating the process for the applicant's appointment, following his selection and recommendation for appointment as Senior Litigator, Pietermaritzburg, the respondent directly and intentionally discriminated against him on prohibited grounds, namely on account of his 'conscience, belief, political opinion' (alternatively, his 'race').

297. If so, whether the respondent's covert, direct and intentional discrimination against the applicant on prohibited grounds, later camouflaged with a fake budgetary cover story, represents so egregiously and disgracefully flagrant a deviation from constitutional standards of ethical and transparent governance in the public service in the democratic era, and constitutes so grave a violation of the applicant's fundamental rights by an organ of state, that it warrants both punitive and exemplary elements in the orders made against the respondent.

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RELIEF SOUGHT

298. An order declaring that in aborting the applicant's recruitment to the post of Senior Litigator, Pietermaritzburg, for which he was duly selected and recommended for appointment, the respondent unfairly discriminated against him on prohibited grounds enumerated in section 6(1) of the Employment Equity Act 55 of 1998, namely on grounds of his 'conscience, belief, political opinion' (alternatively his 'race').

299. An order directing the respondent to appoint the applicant to the position of Senior Litigator, Pietermaritzburg, retrospective to 1 January 2010.

300. An order directing the respondent's chairperson Dunstan Mlambo, CEO Vidhu Vedalankar and HRE Amanda Clark to issue written retractions and apologies to the applicant for their false and demeaning accusations made against him, and to copy their retractions and apologies to the Minister and Deputy Minister of Justice and Constitutional Development; to the chairperson of the Portfolio Committee on Justice and Constitutional Development; to the respondent's Board of Directors; to the respondent's entire executive management structure including KwaZulu-Natal Regional Operations Executive Vela Mdaka; to KwaZulu-Natal Regional Human Resources Manager Baboo Brijlal; and to the chairperson of the Pietermaritzburg Bar Committee, KwaZulu-Natal Society of Advocates.

301. An order directing the respondent to pay the applicant damages for lost income in a sum equivalent to the salary he would have earned had he been appointed to the said post on 1 January 2010.

302. An order directing the respondent to pay the applicant general compensation in the sum of R500 00-00.

303. An order that the respondent pay the applicant mora interest on the aforesaid sums at the prescribed rate from the date on which the matter was referred to the CCMA, 22 March 2011, to the date of payment.

304. An order directing the respondent to take steps to prevent the same unfair discrimination from being perpetrated against other applicants for its vacant advertised posts in future.

305. An order directing that the order made in this case be published.

306. An order directing the registrar of this court to refer the judgment delivered in this case, for their respective interests in the matter, to:

(a) the Minister and Deputy Minister of Justice and Constitutional Development;

(b) the chairperson of the Parliamentary Portfolio Committee on Justice and Constitutional Development;

(c) the chairperson of the Judicial Services Commission;

(d) the Director of Public Prosecutions;

(e) the chairperson of the Public Service Commission;

(f) the Auditor General; and,

(g) the chairperson of the South African Human Rights Commission.

307. An order directing the respondent to pay the applicant's costs, including two counsel.

308. Further and/or alternative relief.

SCHEDULE OF DOCUMENTS

309. A schedule of documents material and relevant to the issue is annexed.

Signed at Pietermaritzburg this 20th day of July 2011.

ANTHONY ROBIN BRINK

TAKE NOTICE that if the respondent intends opposing this claim, it must deliver its response within 10 days of service of this statement of claim in terms of subrule 6(3) of the rules of the Labour Court, failing which the matter will be set down for default judgment with costs.

TAKE NOTICE FURTHER that the applicant will accept notices and service of all documents in this matter by telefax at 086 672 0776 or at the following address:

Adv AR Brink
25 Baker Road
Prestbury
Pietermaritzburg
KwaZulu-Natal

033 344 2420
083 779 4174

To:

The Registrar of the Labour Court of South Africa (Durban)
4th Floor
480 Smith Street
Durban 4001

And to:

The Board Secretary,
Bee-Mari Schoeman
Legal Aid South Africa
Private Bag X76
Braamfontein 2017

And to:

Guardian Employers Organization
334 Equestrian Road
Ruimsig, Gauteng
Ref: KNP 926-11 (Ms L Valentine)

And to:

The Minister of Justice and Constitutional Development,

Jeffrey Radebe MP

And to:

The Deputy Minister of Justice and Constitutional Development,

Andries Nel MP

Department of Justice and Constitutional Development

Private Bag X276

Pretoria 0001

And to:

The Chairperson of the Portfolio Committee on Justice and Constitutional Development,

Luwellyn Landers MP and all members of the Committee

PO Box 15

Cape Town 8000

And to:

The Chairperson of the Judicial Services Commission,

Chief Justice Sandile Ngcobo

Constitutional Court

Private Bag X 1

Constitution Hill

Braamfontein 2017

And to:

The Public Protector,

Adv Thulisile Madonsela

Private Bag X677

Pretoria 0001

And to:

The Chairperson of the Public Service Commission,

Dr Ralph Mgijima

Private Bag X121

Pretoria 0001

And to:

The Auditor General,

Terence Nombembe

PO Box 446

Pretoria 0001

And to:

The Director of Public Prosecutions,

Adv Menzi Simelane

Private Bag X752

Pretoria 0001

And to:

The Board and all national management executives,

Legal Aid South Africa

Private Bag X76

Braamfontein 2017

And, together with the respondent's response upon delivery, to all law school deans in South Africa, and to all media.

R3

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY ROBIN BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

APPLICANT'S AMENDED STATEMENT OF CLAIM

THE PARTIES

1.

Applicant is Anthony Robin Brink, a major male advocate of the High Court of South Africa, who resides at 25 Baker Road, Prestbury, Pietermaritzburg, KwaZulu-Natal.

2.

Respondent is Legal Aid South Africa, a statutory body established by the Legal Aid Act 22 of 1969, whose registered office and principal place of business is at 29 De Beer Street, Braamfontein, Johannesburg, Gauteng.

THE FACTS ON WHICH APPLICANT RELIES

3.

Respondent duly created nine Senior Litigator posts at seats of the High Court in South Africa, including at Pietermaritzburg ('the Pietermaritzburg post') and Durban ('the Durban post'), which posts were:

3.1 Created to address Parliament's concern about reported public perceptions of inadequate professional expertise in Respondent;

3.2 To be filled as an integral part of Respondent's Board's Strategic Plan to develop and increase Respondent's capacity to deliver expert litigation services to indigent litigants in complex matters in specialist and High Courts, including the Supreme Court of Appeal and Constitutional Court; and,

3.3 To be filled strictly in accordance with Respondent's Policies and Procedures on Recruitment, Induction, Probation and Relocation (hereinafter referred to as the 'Recruitment code') and Approval Framework, both prescribed by the Board.

4.

The vacant Pietermaritzburg and Durban posts were advertised simultaneously in June and again in August 2009, and Applicant was shortlisted for the Pietermaritzburg post, for which he had applied.

5.

5.1 On 12 November 2009 Respondent caused a duly constituted selection panel to interview the shortlisted candidates for the two posts.

5.2 Under the Recruitment code, the terms of reference of the selection panel were to identify the most suitable candidate for appointment to each of the posts.

6.

The selection panel:

6.1 Unanimously identified Applicant and an internal candidate Bongani Mngadi, Head of the High Court Unit in the Durban Justice Centre, as the most suitable candidates for appointment to the Pietermaritzburg and the Durban posts respectively;

6.2 Certified upon a proper demographic analysis of the Pietermaritzburg and Durban Justice Centres that the appointments of Applicant and Mngadi would comply with Respondent's employment equity targets.

7.

7.1 The correct process prescribed by the Recruitment code and the Approval Framework was that upon receiving such a recommendation for the appointment of a Senior Litigator, Respondent's National Operations Executive, Brian Nair, was required to decide whether or not to agree with it, subject to Chief Executive Officer Vidhu Vedalankar's final approval.

7.2 Their approval had to be recorded, and in the event that they did not approve the recommendation, they were obliged to record their reasons.

8.

The recommendation was cast as a recommendation for a 'second round interview', which purported 'second round interview' process had been irregularly devised by Nair, acting ultra vires, and this irregular 'second round interview' process neither had any lawful effect nor could it be lawfully imposed on the approval process by Respondent's officials.

9.

On 23 November 2009 the written recommendation of the selection panel identifying Applicant as the most suitable candidate for appointment to the Pietermaritzburg post, and Mngadi for the Durban one, was e-mailed by Respondent's KwaZulu-Natal Regional Human Resources Manager Baboo Brijlal to Respondent's KwaZulu-Natal Regional Operations Executive Vela Mdaka, in order that Mdaka forward the same to Nair so that Nair could fulfil his functions as contemplated by Respondent's Approval Framework.

10.

Contrary to Respondent's own procedure prescribed by the Recruitment code and the Approval Framework, and in breach of Applicant's rights:

10.1 Mdaka failed properly and in due course to forward the recommendation to Nair for approval, alternatively,

10.2 Nair, having received the recommendation, failed to fulfil his function to either approve or reject the recommendation of Applicant and present it to Vedalankar for her final approval or rejection of his appointment, and no approval or rejection of the recommendation, nor any reason for the negative decision was ever recorded by either of them.

11.

At all material times:

11.1 Both Mdaka and Nair were aware that Applicant was a white male and a controversial dissident activist in the South African AIDS treatment debate.

11.2 Respondent and its senior echelon management executives, including Nair and Vedalankar, were historically and culturally associated with and sympathetic to those vehemently opposed to Applicant's published position in the said debate.

12.

As a result of the irregular above-mentioned inaction of Mdaka, alternatively Nair, and their failure to follow Respondent's own procedures, Applicant's recommendation was wrongfully and unlawfully aborted in that it was neither dealt with according to the requirements of Respondent's Approval Framework, nor submitted to the (legally incompetent) 'second round interview' panel.

13.

Eleven months after Applicant was interviewed, and following his numerous enquiries, Respondent, through Vedalankar, alleged on 18 October 2010 that she, in consultation with Nair, had 'frozen' the Senior Litigator Posts at Pietermaritzburg, Durban and Mthatha in July 2010, due to budgetary constraints.

14.

The said budgetary justification for Respondent's failure to appoint Applicant was false and was contrived to camouflage the true reason, namely that Respondent was unwilling to appoint Applicant on prohibited grounds of his race, alternatively his conscience, belief or political opinion.

15.

The following facts show that this budgetary justification was false:

15.1 Respondent's executive management had no lawful power whether for budgetary or any other reasons to halt, abort, or 'freeze' recruitment to Respondent's vacant Senior Litigator posts and/or to deviate from Respondent's Business plan to employ Senior Litigators, without the authority of the Board.

15.2 No such authority was ever sought or granted in respect of the Pietermaritzburg Senior Litigator post or any other vacant Senior Litigator posts at any time material to this matter.

15.3 Furthermore, none of Respondent's executive management ever recorded any such purported decision until 18 October 2010 when Vedalankar wrote to Applicant, some eleven months after the recommendation had been forwarded to Mdaka, and in response to Applicant's persistent enquiries as to the upshot of the selection and approval process.

15.4 There was never any genuine budgetary shortfall during the financial year during which the purported decision was taken, and in that year Respondent had a substantial budgetary surplus.

15.5 Some temporary budget uncertainty experienced by Respondent during the 2010/11 financial year:

15.5.1 Had no bearing on Respondent's recruitment to the posts in question; and,

15.5.2 Had been resolved prior to 18 October 2010.

15.6 Subsequent to Applicant's referral of his claim to this court, Nair alleged, in direct contradiction of the budgetary justification previously advanced for Respondent not finalizing Applicant's appointment, that 'recruitment challenges' prevented Respondent filling its vacant Senior Litigator posts, including at Pietermaritzburg.

16.

In truth and in fact, Applicant's appointment was not duly processed because Respondent through Mdaka and/or Nair and/or Vedalankar and/or other office bearers unlawfully aborted the approval process on account of Applicant's race, alternatively his conscience, belief or political opinion.

17.

In the premises, Respondent unfairly discriminated against Applicant on grounds prohibited by section 9 (3) of the Constitution and section 6 (1) of the Employment Equity Act 55 of 1998.

18.

18.1 In dealing with Applicant's legitimate enquiries and petitions to Human Resources Executive Amanda Clark, CEO Vedalankar, Board chairperson Dunstan Mlambo JP and other Board members, and in its communications with the South African Human Rights Commission, the Minister of Justice and Constitutional Development, and the Portfolio Committee on Justice and Constitutional Development in the National Assembly, and in these proceedings, Respondent has repeatedly lied, concealed information, obstructed Applicant's requests for information and for documents, and falsely charged him with unethical, reprehensible, personally inappropriate and professionally improper conduct in his pursuit of his appointment.

18.2 Over and above Respondent's breach of Applicant's constitutional rights, Respondent's outrageous and unscrupulous conduct in the matter warrants a punitive general compensation award to Applicant, and punitive costs as a mark of this court's disapproval.

19.

Following a conciliation hearing at the CCMA on 20 April 2011 the commissioner issued a certificate of non-resolution, and Applicant referred his claim to the Labour Court for trial within a reasonable time thereafter.

THE LEGAL ISSUES ARISING FROM THE ABOVE FACTS

20.

Whether or not Respondent unfairly discriminated against Applicant in aborting his appointment to the Senior Litigator post at the Pietermaritzburg Justice Centre.

RELIEF SOUGHT

21.

21.1 An order declaring that in aborting Applicant's recruitment to the Pietermaritzburg Senior Litigator post, Respondent unfairly discriminated against him on prohibited grounds enumerated in section 6 (1) of the Employment Equity Act 55 of 1998, namely on grounds of his race, alternatively his conscience, belief or political opinion.

21.2 An order directing Respondent to appoint Applicant to the position of Senior Litigator at the Pietermaritzburg Justice Centre, retrospective to 1 January 2010.

21.3 An order directing Respondent to pay Applicant damages for lost income in a sum equivalent to the salary he would have earned had he been appointed Senior Litigator, Pietermaritzburg, on 1 January 2010.

21.4 An order directing Respondent to pay Applicant general compensation in the sum of R1 million.

21.5 An order that Respondent pay Applicant mora interest on his:

21.5.1 damages for lost income, computed month to month, at the prescribed rate from 1 January 2010 to date of payment; and,

21.5.2 general compensation, from date of judgment to date of payment.

21.6 An order directing Respondent to publish the order made in this case once in the *Sunday Times* newspaper and for a period of one year on Respondent's website in the 'About us' tab.

21.7 An order directing Respondent to pay Applicant's costs, including the costs of two counsel, on the scale as between attorney and client.

21.8 Further and/or alternative relief.

SCHEDULE OF DOCUMENTS

22.

A schedule of documents material and relevant to the issues is annexed, and will be supplemented after Respondent has fully and properly discovered.

Signed at Pietermaritzburg this day of March 2013.

L R CAIN

Applicant's attorney

LLEWELLYN CAIN ATTORNEYS
4 Stranack Street
Pietermaritzburg
Tel: 033 345 0767
Fax: 033 342 9080

KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201
P O Box 1454 | Pietermaritzburg | 3200
Tel: +27 (0) 33 345 1304 | Fax: +27 (0) 33 394 9544
Docex 25 | Pietermaritzburg
E-mail: infokzn@lpc.org.za

NATIONAL OFFICE
Thornhill Office Park | Block 20, 94 Bekker Road | Vorna Valley | MIDRAND | 1686
Tel: +27 010 001 8500

R3

LEGAL PRACTICE COUNCIL

Mr T V Matiti
Legal Aid Board

Email: thembileM@legal-aid.co.za

YOUR REF:

OUR REF : NADIRA/SH

Please Quote Our Reference

10 March 2020

Dear Sir

RE: COMPLAINT AGAINST ADVOCATE ANTHONY ROBIN BRINK

We refer to the above matter and advise that the National Legal Practice Council at its meeting held on 15 February 2020 considered the Complaints Committee's (Society of Advocates) recommendation that Advocate Brink be Struck Off the roll of and resolved that all investigations convene de novo, as the Society of Advocates had no authority to conduct such investigations. All pending complaints that were dealt with by the Society of Advocates had on 1 November 2018 been referred to the Legal Practice Council for consideration.

Kindly be advise whether you wish to supplement your complaints before the matter is referred to the Legal Practice Council's Investigating Committee for consideration.

Please provide us with your reply by the 1 April 2020.

Yours faithfully

MRS N HARRIPERSAD
SENIOR LEGAL OFFICER
DISCIPLINARY DEPARTMENT

Executive Committee: Ms. Kathleen Matolo - Dlepu – Chairperson, Adv Anthea Platt SC - Deputy Chairperson, Adv. Greg Harpur SC, Ms. Trudie Nichols, Mr Lutendo Sigogo, Mr Jan Stemmett, Adv. Phillip Zilwa SC, Executive Officer (acting): Ms. Charity Nzuza

KWAZULU-NATAL OFFICE - DIRECTOR: PEARL ARNOLD MFUSI

Shoba Harkhu

From: Microsoft Outlook
To: thembileM@legal-aid.co.za
Sent: 16 March 2020 02:06 PM
Subject: Relayed: COMPLAINT AGAINST ADVOCATE ANTHONY ROBIN BRINK

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

thembileM@legal-aid.co.za (thembileM@legal-aid.co.za)

Subject: COMPLAINT AGAINST ADVOCATE ANTHONY ROBIN BRINK

COMPLAINT AGAINST ADVO...

KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201
P O Box 1454 | Pietermaritzburg | 3200
Tel: +27 (0) 33 345 1304 | Fax: +27 (0) 33 345 3028
Docex 25 | Pietermaritzburg
E-mail: kzncomplaints@lpc.org.za
Website: www.lpc.org.za

NATIONAL OFFICE
Thornhill Office Park | Block 20, 94 Bekker Road | Vorna Valley | MIDRAND | 1686
Tel: +27 010 001 8500

R3

LEGAL PRACTICE COUNCIL

The Chief Executive Officer
Mrs Kola Mantiti
Legal Aid South Africa

Email: communications@legal-aid.co.za

YOUR REF:

OUR REF : Nadira

Please Quote Our Reference

25 August 2020

Dear Sir

RE: COMPLAINT BY LEGAL AID SOUTH AFRICA (MR T V MTATI) AGAINST ADVOCATE A BRINK

Our office is currently investigating a complaint that was lodged by Mr T V Mtati, the erstwhile Corporate Services Executive of Legal Aid South Africa. The complaint was initially lodged with the Society of Advocates of KwaZulu Natal, on 24 November 2015, and the matter was investigated by the Society. In September 2018, the Legal Practice Council took over all pending complaints from the Society of Advocates.

The abovementioned complaint was considered by the Legal Practice Council in January 2020 and it was resolved that all investigations regarding the pending complaints were to commence *de novo*. Advocate Brink was forwarded a copy of the complainant's affidavit and afforded an opportunity to reply to all the allegations raised by the complainant. Advocate Brink has since requested the following information/documents from your organisation in order for him to furnish our offices with his reply.

1) Confirmation of Mr Mtati's resignation.

2) Does the current Legal Aid South Africa CEO want to continue with the complaint. If yes, then confirmation who will be the complainant on behalf of the Legal Aid South Africa.

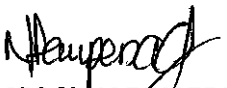
3) If the current Legal Aid South Africa CEO wants to continue with the complainant, a copy of the Resolution by the Legal Aid South Africa's Board authorising the new CEO to resubmit the complaint to the Legal Practice Council.

We await to hear from you.

Executive Committee: Ms. Kathleen Matolo - Dlepu – Chairperson, Adv Anthea Platt SC - Deputy Chairperson, Adv. Greg Harpur SC, Ms. Trudie Nichols, Mr Lutendo Sigogo, Mr Jan Stemmett, Adv. Phillip Zilwa SC, Executive Officer (acting): Ms. Charity Nzuza

KWAZULU-NATAL OFFICE - DIRECTOR: PEARL ARNOLD MFUSI

Yours faithfully



MRS N HARRIPERSAD
SENIOR LEGAL OFFICIAL
DISCIPLINARY DEPARTMENT

Nadira Harripersad

From: Nadira Harripersad
Sent: Monday, 28 September 2020 1:06 PM
To: nondumisot@legal-aid.co.za
Subject: RE : COMPLAINT AGAINST ADVOCATE BRINK.
Attachments: Untitled_28092020_130732.pdf

Good Day Ms Nondumiso,

I refer to our telephonic discussion of even date and attach herewith for your attention a copy of our email dated 27 August 2020.

We require your urgent reply by 2 October 2020 , failing which we shall no option but to close our file

Regards,

Nadira Harripersad
Senior Legal Officer
Discipline Department

KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201 P O Box 1454 | Pietermaritzburg | 3200
Tel: +27 (0) 33 345 1304 ext. 201 | Fax: +27 (0) 33 394 9544 Docex 25 | Pietermaritzburg
E-mail: nadirah@lpc.org.za

-----Original Message-----
From: pmblibrary@lpc.org.za <pmblibrary@lpc.org.za>
Sent: Monday, 28 September 2020 1:08 PM
To: Nadira Harripersad <nadirah@lpc.org.za>
Subject: Scan from samsung

Scan drom Downstairs

KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201
P O Box 1454 | Pietermaritzburg | 3200
Tel: +27 (0) 33 345 1304 | Fax: +27 (0) 33 345 3028
Docex 25 | Pietermaritzburg
E-mail: kzncomplaints@lpc.org.za
Website: www.lpc.org.za

NATIONAL OFFICE
Thornhill Office Park | Block 20, 94 Bekker Road | Vorna Valley | MIDRAND | 1686
P O Box 537 | Midrand | 1685
Tel: +27 010 001 8500

LEGAL PRACTICE COUNCIL

R3

Mr N Mhlongo

Email: NondumisoT@legal-aid.co.za

YOUR REF:

OUR REF : Nadira

Please Quote Our Reference

5 November 2020

Dear Sir

RE: COMPLAINT AGAINST ADVOCATE BRINK

The above mater and more especially your email dated 5 October 2020 refers.

We note that there has been no response by your Chief Executive Officer, despite your undertaking to revert o our offices by 7 October 2020.

Kindly note that should we not receive your response within two weeks from date hereof we will assume that you no longer intend to pursue the complaint.

Yours faithfully

Harripersad

MRS N HARRIPERSAD
SENIOR LEGAL OFFICIAL
DISCIPLINARY DEPARTMENT

Executive Committee: Ms. Kathleen Matolo - Diepu – Chairperson, Adv Anthea Platt SC - Deputy Chairperson, Adv. Greg Harpur SC, Ms. Trudie Nichols, Mr Lutendo Sigogo, Mr Jan Stemmett, Adv. Ghandi Badela, Executive Officer: Ms. Charity Nzuza

KWAZULU-NATAL OFFICE - DIRECTOR: PEARL ARNOLD MFUSI

Shoba Harkhu

From: Microsoft Outlook
To: nondumisoT@legal-aid.co.za
Sent: 09 November 2020 12:01 PM
Subject: Relayed: COMPLAINT AGAINST ADVOCATE BRINK

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

nondumisoT@legal-aid.co.za (nondumisoT@legal-aid.co.za)

Subject: COMPLAINT AGAINST ADVOCATE BRINK

COMPLAINT AGAINST ADVOC...

Nadira Harripersad

From: Nadira Harripersad
Sent: Tuesday, 06 October 2020 9:47 AM
To: 'Nondumiso Mhlongo'
Subject: RE: COMPLAINT AGAINST ADVOCATE BRINK.

Good Day Nondumiso,

Thank you for your email dated 5 October 2020, the contents of which have been noted.

We await you further report on 7th October 2020.

Regards,

Nadira Harripersad
Senior Legal Officer
Discipline Department

KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201 P O Box 1454 | Pietermaritzburg | 3200
Tel: +27 (0) 33 345 1304 ext. 201 | Fax: +27 (0) 33 394 9544 Docex 25 | Pietermaritzburg
E-mail: nadirah@lpc.org.za

-----Original Message-----
From: Nondumiso Mhlongo <NondumisoT@legal-aid.co.za>
Sent: Monday, 05 October 2020 10:20 AM
To: Nadira Harripersad <nadirah@lpc.org.za>
Subject: RE: COMPLAINT AGAINST ADVOCATE BRINK.

Good morning Ms Harripersad

Please note the Legal Aid SA will be continuing with the Brink matter. Our Chief Legal Executive is preparing a response for you and we will submit it to you by Wednesday, 07th October 2020.

Regards
Nondumiso

-----Original Message-----
From: Nadira Harripersad [mailto:nadirah@lpc.org.za]
Sent: Monday, 28 September 2020 13:06
To: Nondumiso Mhlongo <NondumisoT@legal-aid.co.za>
Subject: RE : COMPLAINT AGAINST ADVOCATE BRINK.

Good Day Ms Nondumiso,

I refer to our telephonic discussion of even date and attach herewith for your attention a copy of our email dated 27 August 2020.

We require your urgent reply by 2 October 2020 , failing which we shall no option but to close our file

Regards,

Nadira Harripersad
Senior Legal Officer
Discipline Department

KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201 P O Box 1454 | Pietermaritzburg | 3200
Tel: +27 (0) 33 345 1304 ext. 201 | Fax: +27 (0) 33 394 9544 Docex 25 | Pietermaritzburg
E-mail: nadirah@lpc.org.za

-----Original Message-----
From: pmblibrary@lpc.org.za <pmblibrary@lpc.org.za>
Sent: Monday, 28 September 2020 1:08 PM
To: Nadira Harripersad <nadirah@lpc.org.za>
Subject: Scan from samsung

Scan drom Downstairs
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Nadira Harripersad

From: Nadira Harripersad
Sent: Monday, 16 November 2020 10:01 AM
To: Nondumiso Mhlongo
Cc: Anthony Brink
Subject: RE : COMPLAINT BY LEGAL AID BOARD SA / ADVOCATE A BRINK.

Good Day Mr Mhlongo,

The above matter more especially our correspondences dated 28 September 2020, 6 October 2020 & 5 November 2020 refers. We note with regret that your Offices have failed to furnish us with a response to our letter dated 25 August 2020 despite our repeated requests.

Kindly be advised that in light of your non-response we have no option but to close the matter.

Regards,

Nadira Harripersad
Senior Legal Officer
Discipline Department

KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201
P O Box 1454 | Pietermaritzburg | 3200
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Docex 25 | Pietermaritzburg
E-mail: nadirah@lpc.org.za

LEGAL PRACTICE COUNCIL

Shoba Harkhu

From: Patrick Hundermark <PatrickH@legal-aid.co.za>
Sent: 30 November 2020 05:00 PM
To: Shoba Harkhu
Subject: RE: COMPLAINT AGAINST ADVOCATE BRINK

Dear Mrs Harripersad

The writer refers to the e-mail below. Our response was considered by the Legal Aid SA Board on 28 November 2020. Unfortunately our CEO has suffered a family bereavement and is currently unavailable to sign the response.

We will submit the response as soon as same has been signed by the CEO.

Kindly acknowledge receipt.

Regards

Patrick Hundermark
Chief Legal Executive
Legal Development Department

Address: 29 De Beer Street | Braamfontein | Johannesburg
Tel: +27 11 877 2051 | Cell: +27 82 600 3926

Twitter: @LegalAidSA1 | Facebook: LegalAidSA1
Advice Line: 0800 110 110 | Please Call Me: 079 835 7179
Website: www.legal-aid.co.za | Ethics Hotline: 0800 153 728

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Your voice. For justice.

Independent and within reach.

TARGET 16.3 Promote the rule of law at the national and international levels, and ensure equal access to justice for all

Legal Aid SA supports environmental sustainability.
Please consider the environment before printing this email.

Correct Abbreviation of Legal Aid South Africa

We have noted that a few of our stakeholders refer to us as LASA. Please be reminded that the organisation, Legal Aid South Africa, is correctly abbreviated as Legal Aid SA and not LASA. W request that you assist us in building and maintaining our brand through our name 'Legal Aid S representative of and affirms our Mission to deliver quality legal aid services to the poor and vulner Africa. The acronym 'LASA' has no meaning and adds no value, whereas the correct usage of our Aid SA' builds awareness with the term legal aid and hence builds our brands.

Vision: A South Africa in which the rights enshrined in the Constitution are realised and upheld and responsibilities are complied with to ensure equality, justice and quality of life for all

Legal Aid South Africa
Your voice. For justice.

Mission: To be a leader in the provision o sustainable, ethical, independent and quali the poor and vulnerable

From: Patrick Hundermark
Sent: Thursday, 19 November 2020 17:06
To: 'shobah@lpc.org.za' <shobah@lpc.org.za>
Subject: FW: COMPLAINT AGAINST ADVOCATE BRINK
Importance: High

Dear Mrs Harripersad

We refer to your attached letter and advise that we are engaging our Board Exco on the matter and thus require until 30 November 2020 to provide our response.

Kindly confirm that this will be in order.

Regards

Patrick Hundermark
Chief Legal Executive
Legal Development Department

Address: 29 De Beer Street | Braamfontein | Johannesburg
Tel: +27 11 877 2051 | Cell: +27 82 600 3926

Twitter: @LegalAidSA1 | Facebook: LegalAidSA1
Advice Line: 0800 110 110 | Please Call Me: 079 835 7179
Website: www.legal-aid.co.za | Ethics Hotline: 0800 153 728

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top

16 PEACE, JUSTICE AND STRONG INSTITUTIONS

TARGET 16.3 Promote the rule of law at the national and international levels, and ensure equal access to justice for all

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We have noted that a few of our stakeholders refer to us as LASA. Please be reminded that the organisation, Legal Aid South Africa, is correctly abbreviated as Legal Aid SA and not LASA. W request that you assist us in building and maintaining our brand through our name 'Legal Aid S representative of and affirms our Mission to deliver quality legal aid services to the poor and vulner Africa. The acronym 'LASA' has no meaning and adds no value, whereas the correct usage of our Aid SA' builds awareness with the term legal aid and hence builds our brands.

Vision: A South Africa in which the rights enshrined in the Constitution are realised and upheld and responsibilities are complied with to ensure equality, justice and quality of life for all

Legal Aid South Africa
Your voice. For justice.

Mission: To be a leader in the provision o sustainable, ethical, independent and quali the poor and vulnerable

From: Nondumiso Mhlongo
Sent: Monday, 09 November 2020 12:03
To: Patrick Hundermark <PatrickH@legal-aid.co.za>
Subject: FW: COMPLAINT AGAINST ADVOCATE BRINK
Importance: High

Good day Patrick

Please see the attached letter.

Regards
Nondumiso

From: Shoba Harkhu [mailto:shobah@lpc.org.za]
Sent: Monday, 09 November 2020 12:01
To: Nondumiso Mhlongo <NondumisoT@legal-aid.co.za>
Subject: COMPLAINT AGAINST ADVOCATE BRINK

9 November 2020

Mr N Mhlongo

Dear Sir

We are forwarding herewith our letter dated 5 November 2020

Regards,
Shoba Harkhu
Disciplinary Department
KWAZULU-NATAL PROVINCIAL OFFICE
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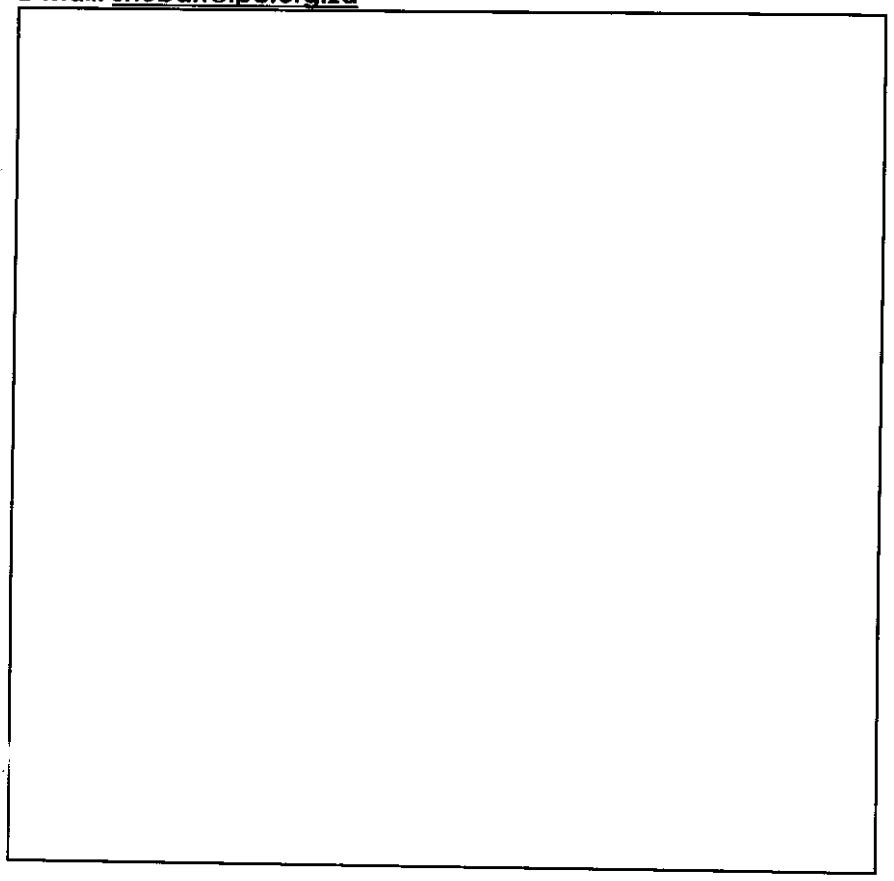

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Sent: 09 November 2020 09:25 AM
To: Shoba Harkhu <shobah@lpc.org.za>
Subject: Attached Image

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R3

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LEGAL PRACTICE COUNCIL

R3

Mr Patrick Hundermark
Chief Legal Executive
Legal Aid of South Africa

Email: PatrickH@legal-aid.co.za

YOUR REF:

OUR REF : Nadira

Please Quote Our Reference

3 December 2020

Dear Sir

RE: COMPLAINT AGAINST ADVOCATE BRINK

Your letter dated 30 November 2020 bears reference.

The Legal Practice Council at its meeting held in January 2020 resolved that the investigation in the above mentioned matter commence de novo as the Society of Advocates had no authority to deal with the complaint as the Society ceased and the Legal Practice Council took office on 1 November 2018.

Advocate Brink was forwarded a copy of the initial complaint lodged by Mr T V Mtati, the erstwhile Corperate Service Executive of Legal Aid South Africa and he was afforded an opportunity to reply to all the allegations raised by the complainant at the time. Advocate Brink had required certain information/documents from your organisation in order for him to furnish our offices with his reply.

Our offices had addressed the following correspondences dated 25 August 2020, 28 September 2020, 6 October 2020, 5 November 2020, 16 November 2020 to the Legal Aid South Africa, to which we have not yet received the requested information in order for our offices to investigate the matter. We advised your offices that in the event we do not receive the Legal Aid South Africa Boards reply to the request, then our offices will proceed to closed its file, as we cannot keep the complaint pending indefinitely as this will severely prejudice Advocate Brink.

Please note that Advocate Brink is putting extreme pressure on our offices to obtain you Boards response, so that he can file his Answering Affidavit to the complaint and have the matter finalised. We note that your Chief Executive Officer has suffered a family bereavement and we express our condolence in this regard, however our offices would require a definitive date on which your response would be forwarded to us for onward transmission to Advocate Brink.

Executive Committee: Ms. Kathleen Matolo - Diepu – Chairperson, Adv Anthea Platt SC - Deputy Chairperson, Adv. Greg Harpur SC, Ms. Trudie Nichols, Mr Lutendo Sigogo, Mr Jan Stemmett, Adv. Ghandi Badela, Executive Officer: Ms. Charity Nzuza

KWAZULU-NATAL OFFICE - DIRECTOR: PEARL ARNOLD MFUSI

We would like to brink to your attention Rule 39.3 which states:-

"In order to establish whether grounds for referring the complaint to the Investigating Committee exist, the executive officer or the legal officer, or any other person in the employ of the Council to whom the authority hos been delegated by the Council , may, in his or her discretion:-

39.3.1 notify the respondent in writing of the nature of the complaint and call upon the respondent to furnish a written explanation in answer to the complaint within 30 days of such notice; and

39.3.2 request the complainant to provide further particulars on any aspect of the complaint."

Yours faithfully

MRS N HARRIPERSAD
SENIOR LEGAL OFFICIAL
DISCIPLINARY DEPARTMET

Shoba Harkhu

From: Microsoft Outlook
To: Patrick Hundermark
Sent: 03 December 2020 09:40 AM
Subject: Relayed: COMPLAINT AGAINST ADVOCATE BRINK

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Patrick Hundermark (PatrickH@legal-aid.co.za)

Subject: COMPLAINT AGAINST ADVOCATE BRINK

Shoba Harkhu

From: Patrick Hundermark <PatrickH@legal-aid.co.za>
Sent: 04 December 2020 02:21 PM
To: Shoba Harkhu
Cc: anthonybrink.sa@gamil.com
Subject: RE: COMPLAINT AGAINST ADVOCATE BRINK

Dear Mrs Harripersad

The writer acknowledges receipt of your e-mail enclosing your letter dated 3 December 2020.

I do not intend to deal with the contents of your letter save to apologise for the delay in providing our response to your correspondence but as indicted in my e-mail of 19 November 2020, the current CEO was engaging with our Board and thus we required until 30 November 2020 to respond. The Board dealt with the matter on 28 November 2020 and the CEO is required to sign off the response. I am expecting the CEO to return to office next week and thus undertake to ensure that our response is delivered on or before 11 December 2020.

After more than 5 years of relative inaction, I am sure the prejudice you allude to in your letter will not be exacerbated by the extension to 11 December 2020.

Your sincerely

Patrick Hundermark
Chief Legal Executive
Legal Development Department

Address: 29 De Beer Street | Braamfontein | Johannesburg
Tel: +27 11 877 2051 | Cell: +27 82 600 3926

Twitter: @LegalAidSA1 | Facebook: LegalAidSA1 Advice Line: 0800 110 110 | Please Call Me: 079 835 7179
Website: https://eur01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.legal-aid.co.za%2F&data=04%7C01%7Cshobah%40lpc.org.za%7C2e1a01e67feb4e3e45f108d8984f16ba%7C87621f63574da8993efbab081227ce%7C0%7C0%7C637426812796088595%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=ttVLAmdJ9ldluHVv32QdvhHHk2ECbcN%2BMejU0YYAa6Q%3D&reserved=0 | Ethics Hotline: 0800 153 728

-----Original Message-----
From: Shoba Harkhu [mailto:shobah@lpc.org.za]
Sent: Thursday, 03 December 2020 09:40
To: Patrick Hundermark <PatrickH@legal-aid.co.za>
Cc: anthonybrink.sa@gamil.com
Subject: COMPLAINT AGAINST ADVOCATE BRINK

3 December 2020

Mr Patrick Hundermark

Dear Sir

We are forwarding herewith our letter dated 3 December 2020

Regards,
Shoba Harkhu
Disciplinary Department
KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201 P O Box 1454 | Pietermaritzburg | 3200
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To: Shoba Harkhu <shobah@lpc.org.za>
Subject: Scan from samsung

Scan from Downstairs

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Report of Complaints Committee 2

Complaint against Advocate A. R. Brink

1. **Membership**

According to the latest membership list, Brink is no longer a member of the Society. Brink is apparently presently a contracted additional Magistrate, stationed in Eshowe.

2. **The identity of the complainant**

An attorney employed as a corporate services executive by Legal Aid South Africa (henceforth 'LASA').

3. **The nature of the complaint**

The complainant has alleged that Brink's conduct is not befitting of an officer of the court, nor that of a Magistrate. The complaint is in excess of 500 pages in length. The complainant alleges

that Brink's language is '**unprofessional**' and he requires sanctioning.

4. **Summary of facts**

4.1 Brink applied for a job at LASA as a senior litigator at the Pietermaritzburg Justice Centre and progressed to the second round of interviews. The second round of interviews did not proceed as a result of budgetary uncertainties, according to LASA. Brink, however, believed that he had not been successful in securing employment because of his controversial views on the effect of anti-retroviral drugs in treating AIDS (he is a well known, self taught, dissident in this field, believing that ARV's kill rather than cure). He consequently instituted litigation against LASA in the Labour Court alleging, **inter alia**, that he had been unfairly discriminated against in terms of the Employment Equity Act 55 of 1998.

4.2 The litigation was conducted in Brink's name, he being the Applicant. It appears that he drafted the

papers. Brink testified at the hearing. At the hearing in the Labour Court, Brink was initially represented by counsel (Hunt) and an attorney, but at the beginning of the matter dismissed both of them and represented himself.

4.3 The matter served before Mr. Justice Cele (henceforth 'Cele J'). On 18 September 2014, Brink's application was dismissed by Cele J, with costs. On 27 November 2014, Cele J refused Brink's application for leave to appeal and to lead new evidence on appeal.

4.4 On 7 December 2013 (this should perhaps have been dated 2014), Brink petitioned the Judge President of the Labour Court. His petition was refused on 18 February 2015.

4.5 On 7 October 2015, Brink brought an urgent application in the High Court in Pietermaritzburg in an attempt to interdict the Taxing Master in the Labour Court from finalising the taxation of the costs he was ordered to pay by Cele J in the Labour Court. The

Order sought by Brink (who appears to have been represented on this occasion) was pending an application to declare that the dismissal of his petition to the Judge President was a nullity and that it be set aside (he claimed that the Registrar who signed the Order recording the dismissal of the petition was not a Registrar in Durban, that there was no evidence in his petition file that his petition had, in fact, been refused nor was there any evidence that the three Judges who considered it were in Durban on the date the Order issued). This application was dismissed on the day that it was first set down, with costs ordered against Brink on the attorney client scale.

5. **The specific complaints**

5.1 The conduct that the complainant refers to stems largely from allegations that Brink made in his '**Statement of Claim**' in the Labour Court. In that document Brink, **inter alia**, stated that:

5.1.1 Mr. Justice Dunstan Mlambo, the Chairperson of LASA (henceforth 'the Judge'), and the CEO of LASA (henceforth 'the CEO) had been motivated by unlawful political prejudice, alternatively racial prejudice, directed at himself;

5.1.2 the Judge and the CEO had orchestrated a cover up in order to disguise the true reason why Brink was not appointed to the position in LASA;

5.1.3 the Judge had lied about the matter when reporting on the matter to the Minister of Justice and Constitutional Development in order to cover up his and the CEO's unfair discrimination against Brink;

5.1.4 the Judge lied to the chairperson of the Parliamentary Portfolio Committee when reporting to it on the matter and thereby misled, **inter alia**, parliament;

5.1.5 the financial justification for not appointing him was a bogus reason concocted by the Judge and the CEO.

5.2 Under cross examination at the hearing, Brink was forced to retract all the allegations that he had made against the Judge and the CEO. He now indicated that he exonerated the Judge and the CEO from any accusations of dishonesty and discrimination. He, however, now stated that another person had concocted the plot against him.

5.3 Brink claimed his statements about the Judge and the CEO were based on '**misconceptions**'. He also stated that he had made the allegations against the Judge and the CEO '**inadvertently**'.

5.4 In his petition to the Judge President of the Labour Court Brink, notwithstanding his earlier retraction of all the allegations against the Judge and the CEO at the trial, stated that:

5.4.1 the matter continued to involve

'the personal and professional integrity of a sitting judge president, formerly of this court,

and that of the the most senior management executives of a major public entity.'

This is clearly a continued reference to the Judge and the CEO.

5.4.2 as a consequence of

'multiple, objectively demonstrable lies'

there had been a perversion of separate Ministerial Parliamentary enquiries. This again refers to a proposition that he had allegedly previously distanced himself from.

5.4.3 the Judge had known that a

'new explanation'

that the Judge had advanced

'was false'

and that the budgetary constraints reason advanced by him

'was another lie'.

5.4.4 The Judge had participated in

'a grossly irregular, prejudicial, and unlawful recruitment process.'

5.4.5 The Judge is an active political promoter of the American and European medical industrial complex's HIV-AIDS-ARV business model,

'under the mantle of human rights.'

5.4.6 Both the Judge and the CEO are partisans of pharmaceutical interests and

'the chemical merchandise they promote'.

5.4.7 The Judge and the CEO concocted a false explanation to cover the true reason for aborting Brink's recruitment.

5.4.8 The Judge

> **'would later consciously and deliberately tell the same lies, and more lies of his own ... to the Minister of Justice and Constitutional Development, which lies he repeated some months later to the chairperson of the Portfolio Committee.'**

5.4.9 Cele J, who heard the matter in the Labour Court, was guilty of

> **'gravely prejudicial misconduct'**

that resulted in him thwarting a full and proper ventilation of the issues and had made several errors in law.

5.4.10 Cele J's judgment against him was a

> **'deplorably inattentive, glib, crude and perfunctory judgment...'**

6. Discussion

6.1 Brink has consistently identified himself as an advocate in the papers that he has drawn, even at a time when acting as a Magistrate. However, it is difficult to discern whether in making the allegations that he has made whether he was acting in his capacity as an advocate or in his capacity as a litigant in person. At best for Brink, the line between these capacities is blurred. He will no doubt allege that he was not expressing himself as an advocate but as a litigant. However, he ought to have conceived that the unsubstantiated allegations that he made might be attributed to him in his role as an advocate. Certainly this is the view adopted by the complainant, and he is justified in taking that view.

6.2 The allegations that Brink made are serious: to call the Judge dishonest and to allege that he has lied cannot be anything but serious. In addition, his disdain for the Bench is further demonstrated in the unpalatable way he has referred to Cele J. To wilfully impugn another's integrity in a profession, such as

law, where integrity is crucial is impermissible. Such allegations ought not to have been made without any evidence justifying them being made. They appear to have been gratuitously made in order to advance Brink's personal agenda of a conspiracy against him.

6.3 The fact that the allegations were withdrawn in the proceedings before Cele J does not stand to Brink's credit. Firstly, in the absence of evidence, they ought not have been made at all. Secondly, it does not appear to have been a true withdrawal, as in his petition he appears to have persisted in the scandalous allegations he had apparently withdrawn. He had had time to reflect on what he had said and pleaded and decided, in drawing his petition, to continue with allegations that he had admitted under oath were not true.

6.4 The statement that Brink had '**inadvertently**' slandered the Judge in a most disgraceful way must be considered as a dishonest statement. There was nothing inadvertent about Brink's conduct: it was deliberate and formed part of his strategy.

7. **Finding**

It is found that there is merit in the complaint.

8. **Recommendation**

Notwithstanding that Brink is not a member of the Society of Advocates, it is recommended that a striking off application be launched.

Complaints Committee 2

R. G. Mossop S.C.

M. Konigkramer

M. Manikam

17 February 2017.

REPORT TO THE BAR COUNCIL

COMPLAINT CONCERNING ADVOCATE A. R. BRINK

1. As the Bar Council will recall, Legal Aid South Africa laid a complaint against Advocate A. R. Brink concerning his conduct in certain litigation in which he, **inter alia**, called Mr Justice D. Mlambo a liar and claimed that the Judge had misled a select committee of parliament. The nature of the complaint is dealt with fully in the report of this committee dated 17 February 2017.

2. Advocate Brink is not a member of the Bar, but serves the State as an additional magistrate.

3. Following receipt of the complaint and its consideration by this committee, a decision was taken by the Bar Council to proceed with a striking off application against Advocate Brink.

4. When Advocate Brink was informed of this decision, he demanded a right to respond to the allegations made about him by Legal Aid South Africa. This had not been afforded him before the decision to strike off was taken.

5. The request of Advocate Brink was acceded to and he was

invited to make submissions in response to the allegations made by Legal Aid South Africa.

6. Ultimately, Advocate Brink submitted his representations. They consisted, primarily, of eight complaints that he has either submitted, or intends submitting, to the Judicial Services Commission concerning the conduct of Mr. Justice Mlambo. The eight complaints (and therefore the representations), contained in nine volumes, cover 264 pages.

7. Legal Aid South Africa were invited to reply to the answer of Advocate Brink and were sent his representations. After substantial reflection, Legal Aid South Africa decided that it would not reply in detail but contented itself with a general statement that Advocate Brink had raised nothing new in his answer but persisted in his allegations made against Mr. Justice Mlambo as well as another Judge.

8. This committee has considered the answer of Advocate Brink. He has persisted in his allegations against the Judge and has constructed the most elaborate conspiracy theory in an attempt to try and prove what he alleges. He has failed in this regard as the response is verbose and rambling but ultimately lacks substance. The committee, after a fresh consideration of the

matter, believes that the matter still warrants that a striking off application be brought.

9. The committee again comments that a striking off application will offer Advocate Brink the sort of platform (and, potentially, publicity) that he appears to relish in order to advance his theories. He has apparently made contact with international organisations seeking their support for his position and allegations and he has drawn the matter to the attention of Noseweek magazine.

10. The recommendation is therefore made to the Bar Council that the striking off application continues and that Advocate Brink be so advised, as well as Legal Aid South Africa.

Complaints Committee 2

R. G. Mossop SC

M. Sponneck

M. Manikam

14 September 2017.

Note from Mahen Manikam, member of Complaints Committee 2:

I agree with the views of Mossop SC in the report of committee 2 regarding Adv Brink. However, I raise a concern for consideration.

In terms of section 8 of the Judicial Service Commission Act 9 of 1994, the judicial conduct committee is chaired by the Chief Justice and the rest of the committee's members consist of judges. Therefore, by its nature such a disciplinary organ would be construed to be a higher forum than our committee and we would be expected to show deference to the former committee. Brink's allegations to the JSC overlap with his responses made by him to our committee. Gauging from the litigious history of the matter and noting also that Brink has made representations to the Human Rights Commission, he may consider it appropriate to take the decision of the bar council on review and he may contend that we ought to have allowed the JSC to rule on his complaints first before the bar council made a finding against him."

R3

	STRIKE OFF APPLICATION: ADVOCATE ANTHONY ROBIN BRINK: COMPLAINT BY MR T.V.	**It was resolved that the matter should be referred to an Investigating Committee of the LPC as it had been noted that the KZN Society of Advocates had not acquired the necessary authority from the Council after it had assumed office on 1 November 2018, to proceed with the investigation**	7 MARCH 2020

R3

	MTATI OBO LEGAL AID SOUTH AFRICA	**into the alleged conduct of Advocate Brink.**

EIGHT COMPLAINTS OF GROSS MISCONDUCT AGAINST MLAMBO JP

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INTRODUCTION

In June and July 2017, I submitted eight gross misconduct complaints under section 14(3)(e) of the Judicial Services Commission Act 9 of 1994 to the Judicial Service Commission ('JSC') against Legal Aid SA ('LASA') Board chairperson Dunstan Mlambo, Judge President of the Gauteng Division of the High Court of South Africa.

On 31 October 2017, the JSC secretariat conveyed the Judicial Conduct Committee's request that I index and paginate my complaints and that they be resubmitted together 'to avoid a piecemeal consideration and determination of these matters.'

The black-and-white contrast of the scanned copies I made of the signed and attested complaints before lodging them with the JSC is less than optimal (see https://goo.gl/Lp5Bu2), so for best print resolution, contrast and legibility I've compiled this bundle from the final PDFs of each complaint before signature. If the Committee requires further copies, the indexed bundle may be downloaded in PDF from goo.gl/zFqSQz.

The Committee may be interested to learn that on 27 October 2017, a few days before it requested this resubmission, the High Court at Pietermaritzburg quickly dismissed LASA's application, mentioned incidentally in my complaints, to have me declared a vexatious litigant, stripped of my ordinary constitutional right of access to the courts, and barred from accessing its records duly requested under the Promotion of Access to Information Act 2 of 2000, for which I'd repeatedly had to sue under section 78 of the Act: six applications, and a further application to compel full and proper compliance with a settlement agreement it made with me at court after totally capitulating to the first five.

A major plank of LASA case against me was my forthright criticism of Mlambo JP's gross misconduct in my pleadings and affidavits in the Labour- and Labour

Appeal Courts (irrelevant to the application, as I pointed out in my heads and the judge agreed). My answering and supplementary affidavits and my heads of argument in LASA's application are accessible at goo.gl/GUKfNj.

The preamble to an offer of settlement I made before argument of the case, and my letter to CEO Vidhu Vedalankar after LASA lost it, will quickly apprise the Committee as to what the whole thing is really all about, accounting for Mlambo JP's otherwise inexplicable persistent egregious misconduct detailed in my complaints. For this reason I've included my settlement offer and letter in the Appendices to these complaints. Under the title 'LASAGATE', I've also included a collection of illuminating quotations pointing up the several striking parallels between the infamous Watergate scandal and this one.

But in short: as Board chairperson of LASA, Mlambo JP quite naturally preferred a long-time former judicial colleague of his in the Labour Court, which he headed at the time, for appointment to LASA's top legal professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg (there's a twin post at Durban), rather than an unknown stranger, me, unexpectedly unanimously recommended by the selection panel instead. Mlambo JP's former brother judge was actually eliminated from the running for the post when it emerged at his interview for it that, notwithstanding his long judicial experience, he lacked right appearance in the High Court as an attorney.

Bearing out the adage after Watergate, 'The cover-up is always worse than the crime', Mlambo JP and LASA's top management executives responded to my enquiries after five strangely silent months about the outcome of the interviews for the post, and then my pursuit of my appointment after my selection for it was backhandedly confirmed to me, with an elaborate, cunning, escalating cover-up, involving inter alia repeated illegal and unconstitutional refusal of access to duly requested records (a key one mutely then expressly refused, then illegally redacted to conceal the potently relevant professional relationship just mentioned, then refused again, then finally surrendered uncensored, after being

sued for, at the point of argument in court – five and a half years after I requested it), and a shambles of radically contradictory, ultimately criminal lies told variously to me, to LASA's Board, to the SAHRC, to the Justice Minister, to the Justice Portfolio Committee of the National Assembly, and to the courts.

As also mentioned in my Eighth Complaint (at pp 179–80, para 6.10–14): in addition to its abortive go at having me banned as a vexatious litigant, LASA succeeded in getting summarily dismissed from my post as an acting magistrate for impeaching Mlambo JP's integrity in his conduct as chairperson of LASA's Board. And it's currently trying to have me struck off the roll of advocates for this: I'm still awaiting Rob Mossop SC and his Complaints Committee's final decision of LASA's complaint to the Society of Advocates of KwaZulu-Natal.

This is to say, after LASA's top officers' defensive and ultimately criminal strategies – calculated silence; dishonest evasion and stonewalling; unlawful and unconstitutional refusal of access to records; lying; illegal alteration of a key requested record with a black Koki pen to conceal critically material information; lying and false reporting to the Minister and to the National Assembly; and perjury – failed to deter me, they turned to adopting a multi-pronged aggressive strategy to destroy me personally and professionally, in doing so casting me as the miscreant in the matter rather than those – particularly Mlambo JP – involved in the broad-ranging, extremely grave misconduct, including criminal misconduct, described in my complaints to the JSC. (My comprehensive answering affidavit linked above details it more fully.)

Thus have LASA's top officers 'appeared indignant and played the victim' and 'attempted to turn turpitude into rectitude' – as the Supreme Court of Appeal deplored such behaviour in Gauteng Gambling Board and Another v MEC for Economic Development, Gauteng Provincial Government (620/2012) [2013] ZASCA 67; 2013 (5) SA 24 (SCA); [2013] 3 All SA 370 (SCA) (27 May 2013).

In view of the extraordinary, unprecedented gravity of this matter, and of LASA's endeavour to annihilate me for exposing the top-level corruption that I've encountered in my pursuit of my appointment, I should disclose that I've copied these complaints under the title 'Rotten to the Core: Corruption at Legal Aid SA' inter alia to the Justice Portfolio Committee, to the Justice Minister, to several anti-corruption and information transparency NGOs, and to various national print media, including centres for investigative journalism. I also copied them to the Society of Advocates of KwaZulu-Natal as my complete answer to LASA's professional misconduct charge that I disgracefully impugned Mlambo JP's integrity in my litigation against LASA and should be struck off for it. And I annexed them to my supplementary affidavit in LASA's failed application to have me banned as a vexatious litigant. (LASA tried but failed to get it struck out.) In sum, my capital complaints against Mlambo JP are both in the public domain and on the official court record.

ANTHONY BRINK
10 November 2017

'Our office seeks to be the conscience of the state and ensure that it acts with integrity and justice at all times. We investigate public sector maladministration, fraud and corruption, report on it, and take appropriate action against it. ... [C]orruption is a form of maladministration that needs to be fought not just by those in the affected organisations themselves, but also by the media and by society in general. Through our work we've also helped highlight specific forms of public sector corruption that don't necessarily involve bribery ... I would like to see South Africans recognising that corruption hurts – it eats away at the soul of the nation. I'd like us to get to a stage of realising that we all have a role to play in combating corruption: every time people act they should ask themselves: "Am I adding to the problem of corruption or am I helping solve it?" ... [T]he name and status of the people we investigate doesn't matter. Acting without fear or favour means you can investigate anyone. ... We must retain respect for the rule of law ... There also needs to be better enforcement of codes of conduct. Increasingly, we are seeing emphasis placed on being found guilty in a court of law. That suggests that you can break codes of conduct until a court of law calls it crime. It's unfair to say to people their defence against public sector corruption is the criminal justice system. People entrusted with public power should not claim privileges of criminals.'

Adv Thuli Madonsela, (then) Public Protector, interviewed by Transparency International in Berlin on winning its Integrity Award in October 2014

'[Her] work embodies Transparency International's ... belief that the corrupt should not be allowed to get away with their misdeeds.'

JC Weliamuna, Chair of Transparency International's Integrity Awards Committee

'Former public protector Thuli Madonsela has urged the public to support whistleblowers in the fight against ... corruption. Both Madonsela and former finance minister Pravin Gordhan were speaking at the Democracy Defenders Dialogue at the University of Witwatersrand in Johannesburg on Monday. ... Madonsela, who was part of a panel that discussed whistleblowers in the South African context, said for those who speak out against fraud and corruption, it is a "lonely journey". ... "There are gaps in the whistleblower protection laws. For true protection of whistleblowers, we have to empower people to know what needs to be done. What I would like to see more is ordinary people writing to parliament and the president in terms of the access to information act," Madonsela said. ... "We want our leaders to be accountable, and to be honest – that's a true democracy."

Gordhan emphasized the need for an active citizens' movement against corruption ... "At the end of the day, we can be activists, leaders, catalysts for the revitalization of democracy, but it is the masses that make history... There's space for all of us to become activists. If you look around the world, that's when change really happens. It's when citizens themselves take up these sorts of issues," he said. He warned of certain impending dangers like ... creeping authoritarianism. How do we hold people accountable for that? The third danger is one where you can have laws in your books, but laws only exist to the extent they are enforced. It is the abuse of legitimate processes for illegitimate purposes," Gordhan said.'

Huffingtonpost.co.za, 1 August 2017

FIRST 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, admitted to practice on 12 April 1983. I reside 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 brought 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. I charge the respondent with suborning perjury to defeat the ends of justice, an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act.

4. Although the gross misconduct to be described below was committed by the respondent in his capacity as LASA Board chairperson, and not as a judge, the Judicial Service Commission ('JSC') has jurisdiction to deal with this complaint by virtue of Articles 5 and 6 of the Code of Judicial Conduct and its Notes, which require judges 'always, and not only in the discharge of official duties, [to] act honourably and in a manner befitting judicial office ... in a manner that enhances public trust in, or respect for, the judiciary and the judicial system ... [to] avoid impropriety or the appearance of impropriety in all the judge's activities', and 'at all times, also in relation to extra-judicial conduct, [to] comply with the law of the land.'

5. On 31 October 2012, I sued the respondent under section 25 of the Supreme Court Act 59 of 1959 for leave to subpoena him for cross-examination at the trial of my claim against LASA in the Durban Labour Court. The nature of the claim and my reason for wishing to cross-examine the respondent will be detailed later in this affidavit.

6. Redacted for relevance to this complaint and annexed hereto marked 'A' is a material excerpt of the 'RESPONDENT'S ANSWERING AFFIDAVIT' opposing my application, deposed to by LASA's lead in-house attorney, Corporate Services Executive Thembile Mtati.

7. Paragraph 4 records that the respondent 'duly authorised' Mtati to make his answering affidavit on his behalf, and that before he did so he'd had 'consultations' with him.

8. The affidavit was saturated with objectively demonstrable perjury, to be treated in separate complaints.

9. Paragraph 51 makes the following allegation:

> The most disturbing, reprehensible and brazen act of disrespect came recently when the Applicant left the KZN province and attended unannounced and without warning at the office of the Respondent in the South Gauteng High Court. The Respondent did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is represented the Applicant's conduct amounts to professional misconduct.

10. This allegation on oath was false in every particular.

11. In truth, I've no idea where the 'South Gauteng High Court' is, much less have I ever set foot in it, never having litigated there or gone there for any

other reason, as any CCTV records will bear out; and the claim that I 'left the KZN province and attended unannounced and without warning at the office of the Respondent in the South Gauteng High Court' is pure perjury.

12. The allegation that the respondent 'did not take kindly to the Applicant's conduct' is further perjury to corruptly amplify and lend credibility to the first.

13. Compounded by the concluding third charge in the paragraph that 'In the face of litigation where Legal Aid SA is legally represented the Applicant's conduct amounts to professional misconduct', these two lies under oath were a criminal concoction calculated to defeat the ends of justice by corruptly prejudicing the Labour Court against me with poisonously inflammatory lying defamation falsely attacking my character and professional integrity.

14. This is precisely the especially wicked crime for which US President Richard Nixon's equally corrupt Special Counsel Charles Colson was disbarred and jailed; see annexed reports marked 'B'.

15. One of my reasons for not pursuing my application for leave to subpoena the respondent after reading this chilling, depraved perjury was my apprehension that it would be too dangerous to bring him to court, because he was evidently capable of saying absolutely anything, no matter how perversely false, confident that the trial judge – until quite recently the respondent's judicial colleague and superior as head of the Labour Court – would take him at his word without question as a senior judge.

16. As to the respondent's specific charge quoted above, I sharply perceived that in a contest in court between the respondent and me as to who was telling the truth and who was telling lies about this, no judge would disbelieve this detailed charge levelled by the just-appointed head of the biggest division of

the High Court in the country, conveyed by his attorney on oath, against a bare denial proffered by a mere advocate.

17. Indeed, as paragraph 59.2 of the affidavit very correctly calculated with low criminal cunning: 'there is a well-founded presumption in law in favour of the Respondent' and that as 'a senior Judge of the High Court in South Africa … enjoined by the Constitution of this country … to uphold it in all his dealings and in his actions towards others', the respondent 'will always act as Judges do' – and not tell criminal lies, animated by fear and loathing as I was closing in (see below), to falsely discredit as an unprofessional lunatic an advocate threatening to call him to account in a law court like any other public servant summoned to the witness stand, to be sworn in and examined on oath under penalty of perjury before a judge experienced and skilled in telling truth from lies, about the illegal things he'd said and done.

18. Briefly stated here, the shocking background to the respondent's false charge against me on oath will make sense of his otherwise inexplicable impeachable misconduct.

19. I'll show that the respondent's false charge is consistent with his past modus operandi in attempting to discredit me with false personal and professional misconduct accusations to distract from the gravity of my complaints about the corruption and lawlessness at LASA that I'd run into – pertinently brought to his attention again and again in finely detailed petitions, but to which he'd turned a blind eye.

20. In November 2009, I was interviewed by a duly constituted selection panel of LASA's most senior lawyers in KwaZulu-Natal for its top legal professional position in the province, its Senior Litigator post at Pietermaritzburg, for which I'd applied and been shortlisted. (There's a twin post at Durban.)

21. In August 2010, after long, strange, unexplained silence, and then evasion, hostility, obvious bad faith and prevarication in response to my repeated enquiries about the outcome of the interviews for the post, I requested access to the record of the selection panel's recommendation, among other documents, under the Promotion of Access to Information Act 2 of 2000 ('PAIA').

22. My request was illegally ignored – a deemed refusal under section 27 of PAIA and a violation of my fundamental right to information guaranteed by section 32(1)(a) of the Constitution.

23. So I appealed to the PAIA Unit of the South African Human Rights Commission ('SAHRC') to assist me under its power to do so vested by section 83(3)(c) of PAIA. Which it helpfully did, by obtaining LASA's agreement to respond to my PAIA request.

24. Immediately reneging on its undertaking given to the SAHRC, LASA CEO and information officer Vidhu Vedalankar now expressly refused my entire request in October 2010, on wholly spurious grounds, namely that (my footnotes interpolated): 'it was decided that ... your request goes beyond your individual circumstances and extends to information on other third parties[1] ... Accordingly your request for the detailed information[2] contained in your letter,[3] other than the information and explanation provided above,[4] is declined as it is not relevant to you exercising any right you may have in law.'[5]

    1. This incompetent justification is not among the 'Grounds for Refusal' of public body records enumerated in Chapter 4 of Part 2 of PAIA – certainly not section 34(1) protecting against 'the unreasonable disclosure of personal information about a third party' as defined by section 1 – and indeed it was ultimately abandoned.

    2. I did not request 'detailed information' from Vedalankar; I requested access to specified public documents in LASA's possession.

3. I did not write a 'letter' asking for 'detailed information'; I delivered a Form A request for records in compliance with the prescribed formalities.

4. Vedalankar's 'information and explanation provided', unsupported by any record, was that LASA had received insufficient budget for 2010/11 from the Department to fill its vacant Senior Litigator posts, and that in July 2010 Vedalankar and National Operations Executive Brian Nair had decided to freeze them accordingly. As I later established via PAIA, no record whatsoever exists of any such decision, and these still vacant critical posts were and to date remain budgeted for by LASA and fully funded (disclosing major contraventions of sections 52 and 55 of the Public Finance Management Act 1 of 1999 in failing to 'keep full and proper records of the financial affairs of the public entity' in regard to (unauthorised and irregular) decisions involving many millions of rands, and the deliberate unauthorised failure at executive management level, for irregular and unlawful reasons, to fully and properly implement LASA's Strategic Plan 2009–12 concerning the recruitment of legal professional specialist personnel). I was given the further false 'information and explanation' that I'd been recommended 'together with other candidates'. The contrary truth of it, revealed by the recommendation report eventually surrendered, is stated below.

5. Here the CEO and information officer of the country's biggest law firm headed by a judge president, and its most senior attorneys advising her, confused my fundamental unconditional right to public body information with my fundamental right to private body information, contingent on being 'required for the exercise or protection of any rights', per section 50(1)(a) of PAIA. C.f. sections 32(1)(a) and (b) of the Constitution, and Parts 2 and 3 of PAIA.

25. To access the record of the selection panel's recommendation for the post, which LASA's top officers were strangely concerned I shouldn't see and were therefore hiding from me, I appealed for the SAHRC's intervention again.

26. In January 2011, Vedalankar responded by providing me with a copy of the selection panel's recommendation report at last, but heavily redacted with a Koki pen to carefully black out the selection panel's 'SUMMARY OF CANDIDATES', besides of me.

27. The report confirmed I'd been recommended for the post and no one else – thus exposing and refuting Vedalankar's lie told me in her October letter, initially refusing me the report, in which she falsely alleged that I'd been recommended for the post 'together with other candidates', so as to obfuscate the unwelcome fact that I'd been the successful applicant for the post, following the interviews of all shortlisted candidates.

28. The very object of the selection process, closely regulated by LASA's Policies and Procedures on Recruitment ('Recruitment code'), was to 'identif[y] the most suitable candidate for appointment', per section 1.2.3.4.

29. LASA's High Court Unit Manager in Durban, Bongani Mngadi, was recommended for a different simultaneously advertised post in his office at Durban, for which he'd applied.

30. It's not material to canvass here the incompetence and unlawfulness, in light of LASA's peremptory Recruitment code and Approval Framework (internal regulations, prescribed by the Board, governing staff recruitment and appointment), of the selection panel's recommendation that I be interviewed again by a so-called 'second round' panel – the alleged 'brainchild' of non-executive director Mlambo JP, and presided over by him in committee with various equally unauthorised national office executives – rather than that I be appointed directly to the post, subject to Vedalankar's and National Operations Executive Brian Nair's joint approval, as required by the Approval Framework for such senior appointments.

31. Launched in July 2011, I based my claim to my appointment on unfair discrimination – mistakenly, I discovered nearly five years later, and after the dismissal of my claim in September 2014 – the true reason for the abortion of my appointment determinedly concealed from me all the while.

32. In April 2016, under a settlement agreement signed at court in February, recording LASA's total, unconditional capitulation to my several applications to compel its compliance with my further PAIA requests made in 2013–15, just as I was on the point of arguing for an order that it disgorge all requested documents, I finally forced out of LASA very reluctantly the selection panel's complete and uncensored recommendation report.

33. What this report revealed to me, years after the trial of my unsuccessful, wrongly founded labour claim, was that my rival for the post, whom I'd beaten out at the interviews, was the respondent's long-time brother in the Labour Court, of which he'd been Judge President at the time: Mzochitwayo Ngcamu AJ, as he used to be, for six-and-a-half years.

34. The recommendation report further revealed that Ngcamu had been eliminated by the selection panel for not meeting the qualifying criteria for a Senior Litigator post: he didn't have right of appearance in the High Court, which means he'd never litigated a case on his feet there.

35. He sure wasn't 'recommended together with [me]', as Vedalankar had unequivocally and falsely implied to me.

36. The recommendation report also exposed and refuted Human Resources Executive Amanda Clark's preceding lie to me, among others, in her very unpleasant don't call us, we'll call you email on 30 April 2010: 'At this stage it is not even clear which applicants will be considered in the second round'. In truth and in fact, it was perfectly clear: I was the only applicant recommended for the post for which I'd applied, been shortlisted and interviewed.

37. I finally understood what Vedalankar meant when illegally refusing my request for the recommendation report in October 2010 on the then most

puzzling and surprising basis that my 'request extends to information on third parties'.

38. She was alluding to the critically relevant 'information on third parties' being concealed from me that my rival applicant for the post was the respondent's long-time judicial colleague, noted, in as many words, by the selection panel in its recommendation report; and that he'd been eliminated by the panel from the running for appointment.

39. Which latter fact, in the lawless, ethically and procedurally corrupt recruitment regime at LASA under the respondent's chairmanship wasn't going to prevent this former Labour Court judge, as the respondent's favoured candidate, being appointed instead me, the selected and recommended one – except that instead of just walking away as hoped, I boggled the plan by insistently pressing for the outcome of the interviews after five silent months, and then for my appointment after HRE Clark backhandedly confirmed I'd been recommended by insolently inviting me to 'withdraw' my application if I didn't like 'the pace we have decided'.

40. I have it from a former LASA Regional Operations Executive (also, like me, disparaged by LASA as a 'vexatious litigant', but who in April finally won his case against it) that the respondent irregularly and unlawfully fixed the appointment of a candidate for another Senior Litigator post whom this ROE and his selection panel had rejected, and that their duly recommended candidate was passed over.

41. The respondent's unlawful central misconduct in recruitment corruption at LASA (even at the JSC itself), both procedural and ethical, will be the subject of multiple separate complaints.

42. As stated in my founding affidavit supporting my application for leave to subpoena the respondent, I wished to cross-examine him on:

(a) his astonishingly derelict and untoward repeated dismissals of my persistent petitions to him and other members of the Board to exercise their fiduciary duty to ensure LASA management's compliance with the Constitution and the law in conducting its operations, and to see to Vedalankar's compliance with my PAIA requests for access to specified records, including and especially the recommendation report, which she'd illegally refused; and her finalisation of my appointment to the said post, after I'd investigated, found, and clearly shown to him that her budgetary insufficiency excuse for cancelling my recruitment to have been a lie; and,

(b) the contents of his 'Confidential Report Re: Adv Anthony Brink', replete with lies (one later feebly retracted in the lying answering affidavit in question as 'an error', 'palpably an error' after I'd categorically refuted it as a lie), submitted to the Minister of Justice and Constitutional Development (as he was then called) in March 2011 and then a couple of months later in 'updated' form in June, to the chairperson of the Justice Portfolio Committee in the National Assembly.

To put down my complaints about Vedalankar's repeated illegal refusal to comply with my PAIA requests and manifestly false budgetary insufficiency story for not finalising my appointment, the respondent falsely alleged in his 'Confidential Report' (I learned about it and sourced it from the chairperson of the Portfolio Committee) that my three PAIA requests in 2010–11 had been duly responded to, and that the process to finalise my recruitment had been delayed by a logistical problem (a lie, later twice retracted on oath, as said) and then aborted for a due and proper financial reason (no record exists of any such decision; the extant records refute the lying excuse; and NOE Nair advanced totally different lying excuses in his 'Report to Board' in November 2011, after I'd exposed

and refuted the lying logistical and financial excuses in my original very detailed statement of claim in the Labour Court).

The respondent's deliberate misleading and successful deception of the Minister, and then the Portfolio Committee, in his covering letter and 'Confidential Report' – in the case of the Portfolio Committee crimes under sections 17(2)(d) and (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 – will be addressed in separate complaints.

43. As said, the respondent's attempt to discredit me in the Labour Court by smearing me as a demented stalker was in keeping with previous similar false charges against me. (The following instances will be the subject of separate complaints.)

44. When in January 2011 I duly appealed to the respondent and to other Board members for the second time to intervene in Vedalankar's illegal total refusal of my August 2010 PAIA request and the irregular abortion of my appointment under cover of a bogus budgetary excuse, the respondent rebuked my second petition in a late-night email the same day with a similar false accusation: 'Your conduct is unbecoming to say the least and borders on harassment.' His email is annexed marked 'C'.

45. On 22 June 2011, in a letter to the chairperson of the Portfolio Committee, the respondent repeated this malicious calumny and false mischaracterisation of my due and proper approaches to him and the Board, the better to prejudice the Committee against me and pervert its enquiry into the constitutional violations by LASA's top officers of which I'd complained. The respondent's letter, forwarded to me by the chairperson of the Portfolio Committee, is annexed marked 'D'.

46. I should mention that in response to the respondent's earlier false professional misconduct charges I duly reported myself to the Pietermaritzburg Bar Committee for investigation, but chairperson Roberts SC declined jurisdiction to deal with the matter.

47. After the stunningly irregular, premature dismissal of my petition to the Judge President of the Labour Appeal Court for leave to appeal the dismissal of my labour claim – before all the papers were in; I'd yet to answer LASA's application for condonation for opposing me out of time – an inspection of the court file (DA21/14) in April 2016 in the course of my investigation of the gross irregularity turned up an anonymous, unsigned, undated, and unstamped 'Memorandum' inadvertently left in it, persisting with this characteristic high-toned, magisterial, aggressive ad hominem denigration to improperly influence and prejudice against me Judge President Basheer Waglay, the respondent's immediate successor as head of the Labour and Labour Appeal Courts, and his former deputy: My 'vulgar and insulting language is prevalent throughout [my] affidavits. Such conduct is unacceptable for a practising advocate ... [my] vulgarity has clouded [my] mind'.

48. The anonymous 'Memorandum' – also lying about the issues tried and about my case on petition – which found its way behind and past the court registrar and his date stamp and straight into the file, unsigned and unstamped, is annexed marked 'E'. A registry clerk's certification of an inventory of the file's contents, including this criminal 'Memorandum', is annexed marked 'F'. (As at August 2016, when I had the file inspected again, the 'Memorandum' was still there.)

49. Again, this further instance of defeating the ends of justice, this phenomenal corruption at LASA under the respondent's chairmanship, which has now seeped into the judiciary, will be addressed in a separate complaint.

50. In the situation, I request that the JSC investigate the respondent's subornation of perjury to defeat the ends of justice, described herein.

Signed at Mtunzini on 4 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 4 June 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

Name:
Address:
Capacity:

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY, ROBIN BRINK — Applicant

and

DUNSTAN MLAMBO JP — Respondent

In re:

ANTHONY BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

THEMBILE VUYO MTATI,

do hereby make oath and swear that,

1. The facts deposed to herein are, unless the context indicates otherwise, within my personal knowledge, and are true and correct. Where I make submissions of a legal nature I do so on the advice of the legal representatives of the Honourable Mr Justice Mlambo (hereafter "the Respondent".

2. I am the Corporate Services Executive of the Legal Aid South Africa (hereinafter "Legal Aid SA") with offices at 29 De Beer Street, Braamfontein, Johannesburg.

3. I am the deponent to all the affidavits and signatory to all pleadings in all the proceedings instituted by the Applicant against the Legal Aid SA.

4. I have been duly authorised by the Respondent to depose to this affidavit. Where I make propositions of a legal nature I do so on the basis of the consultations I had with the Respondent and Legal Aid SA's's legal advisors which advice and information I verily regard as correct. It is important that I provide a brief background in respect of this application and particularly the Applicant.

BACKGROUND TO THE MATTER

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

51. The most disturbing, reprehensible, unprofessional and brazen act of disrespect came recently when the Applicant left the KZN province and attended unannounced and without warning at the office of the Respondent in the South Gauteng High Court. The Respondent did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is legally represented the Applicant's conduct amounts to professional misconduct.

[redacted]

59.2 I submit that the Respondent as a senior Judge of the High Court in South Africa is enjoined by the Constitution of this Country, to uphold it in all his dealings and in his actions towards others. The law recognises that as a Judge, the Respondent will always act as Judges do. Accordingly, there is a well-founded presumption in law in favour of the Respondent.

[redacted]

WHEREFORE, it may please this Court to dismiss this application accordingly.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at Johannesburg on this 16 January 2013. The regulations contained in the Government Notice No. 1258 dated 21st July 1972 (as amended) and Government Notice No. 1648 dated 19th August 1977 (as amended) having been complied with.

COMMISSIONER OF OATHS

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R4

On June 3, 1974, Colson pleaded guilty to a criminal information that read in part:

B

On or about June 28, 1971, and for a period of time thereafter, in the District of Columbia and elsewhere, CHARLES W. COLSON, the DEFENDANT, unlawfully, willfully and knowingly did corruptly endeavor to influence, obstruct and impede the due administration of justice in connection with the criminal trial of Daniel Ellsberg under indictment in the case of *United States* v. *Russo*, Criminal Case No. 9373, United States District Court, Central District of California, by devising and implementing a scheme to defame and destroy the public image and credibility of Daniel Ellsberg and those engaged in the legal defense of Daniel Ellsberg, with the intent to influence, obstruct, and impede the conduct and outcome of the criminal prosecution then being conducted in the United States District Court for the Central District of California. (Book VII, 918–23)

In the early 1970s, Nixon officials such as John Ehrlichman and Henry Kissinger planted accusations in the U.S. media that Daniel Ellsberg had secretly given the Pentagon Papers and other key documents to the Soviet Union; everyone now knows this was a lie, but at the time, American journalists repeated it constantly, helping to smear Ellsberg. That's why Ellsberg has constantly defended Snowden and Chelsea Manning from the start: because the same tactics were used to smear him.

This is the first of two articles on the former secret White House investigative unit known as the plumbers.

One was a fear—nourished in part, some sources said, by Henry A. Kissinger, then the President's national security adviser—that Daniel Ellsberg, who said he turned over the Pentagon papers to the press, might pass on to the Soviet Union secrets far more important than any information contained in the Pentagon study of the Vietnam war.

Specifically, the sources said, the White House feared that Dr. Ellsberg, a former Rand Corporation and Defense Department official, may have been a Soviet intelligence informer who, in the weeks after publication of the Pentagon papers in June, 1971, was capable of turning over details of the most closely held nuclear targeting secrets of the United States, which were contained in a highly classified document known as the Single Integrated Operation Plans, or S.I.O.P.

The second major concern was that a highly placed Soviet agent of the K.G.B., the Soviet intelligence agency, operating as an American counterspy, would be compromised by continued inquiry by the special prosecutor and the Senate Watergate committee into the Ellsberg case. The agent informed his F.B.I. contacts that a set of the Pentagon papers had been delivered to the Soviet Embassy in Washington shortly after a Federal court had ordered The Times to stop print-

Continued on Page 76, Column 1

EHRLICHMAN SCORED ON ELLSBERG CHARGE

WASHINGTON, Aug. 10 (UPI) An attorney for Dr. Daniel Ellsberg has chided the Senate Watergate committee for failing to challenge what he called "totally false and slanderous" testimony by the former White House aide, John D. Ehrlichman, suggesting that Dr. Ellsberg delivered copies of the Pentagon papers to the Soviet Embassy.

Anthony Brink C

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

Mr Brink

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

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

I trust that you find this in order.

D Mlambo
Chairperson- Legal Aid SA and
Judge President
Labour Courts
dmlambo@justice.gov.za
Tel +27113595735/6
Fax 0866447932

Legal Aid South Africa

National Office
29 De Beer Street
Braamfontein
2017
Tel: 011-877-2055
Fax: 011-877-2222
www.legal-aid.co.za

22 June 2011

Mr L Landers MP
Chairperson Justice Portfolio Committee
National Assembly
P O Box 15
Cape Town
8000

Dear Mr Landers

Adv A Brink

Your letter dated 23 March 2011 on the above matter refers. Please accept my sincere apology for the delay in responding to your letter. Attached please find a report on this matter which was submitted to the Minister of Justice and Constitutional Development in March 2011 and which has since been updated. In summary I wish to reiterate what I said to Mr Brink when he wrote and complained to me :

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

I trust that the attached report and this letter clarify the matter concerning Mr Brink.

Yours faithfully

Judge Dumstan Mlambo
Chairperson
Legal Aid South Africa

DA21/14

ANTHONY ROBIN BRINK **Petitioner**

and

LEGAL AID SOUTH AFRICA **Respondent**

MEMORANDUM

The petitioner's vulgar and insulting language is prevalent throughout his affidavits. Such conduct is unacceptable for a practising advocate. His vulgarity has clouded his mind so that his application does not say in what respect the Labour Court erred in rejecting his claim.

What is common cause is that the petitioner applied and was shortlisted for the position of senior litigator Pietermaritzburg. He was recommended for a second round interview but the position for which his applied for was frozen due to budgetary constraints. He was only made aware of that decision after numerous telephone calls and correspondence. There is a dispute about the veracity of the decision to stop the process of the appointment for which the petitioner had requested recording of the board meeting in terms of the Promotion of Access to Information Act 2 of 2000.

Notwithstanding the above dispute, the petitioner does not say in what respect the court *a quo* erred in dismissing his claim. All is said in his affidavit is his judgmental comments about the credibility of employees of the respondent.

CONTENTS OF CASE FILE DA21/14

1) Blank Petitions Control Sheet with notification of case number on 10 Dec 14 attached

2) Brown cover page 3/3/2 headed Held in Durban-in the Labour Court of SA, petition set down for 18 Feb 2015, judges Waglay, Davis and Sutherland, order petition refused. Attached fax sheet of 2 page decision sent 15-13 on 18 Feb 2015

3) Letter of 27 Feb 2015 from C.Phophi to A.Brink

4) Petition refusal order stamped 18 Feb 2015 , Juta Street, Phophi, LAC

5) Respondent's notice of objection to late hearsay affidavit signed by T.Mtati 11 Feb 2015

6) Service affidavit:objection to opposing affidavit dated 12 Feb 2015 signed A.Brink 2 Feb 2015

7) Affidavit in support of proof of service Rule 4(2)(b) by Akhona Lucas Nobetsu filed Juta Street 17 Feb 2015 confirming that on 13 Feb 2015 he served a condonation application and notice of objection on the petitioner

8) Undated, unsigned memorandum regarding petitioner's vulgar and insulting language, brief summary of the dispute with conclusion that the petitioner does not say in what respect the court a quo erred in dismissing his claim as his affidavit is only his judgemental comments about the credibility of employees of the respondent.

9) Respondent's notice of objection to the petitioner's affidavit filed in support of a notice of objection dated 2 Feb 2015, filed Juta Street 11 Feb 2015 signed by T.Mtati 11 Feb 2015

10) Objection to opposing affidavit filed Juta Street 4 Feb 2015 signed A.Brink at Eshowe 27 Jan 2015 sworn Eshowe 1 Feb 2015

11) Bound red cover Petition for leave to appeal original filed Juta Street 9 Dec 2015 signed A.Brink at Eshowe 7 Dec 2014 with attached refusal of application for leave to appeal by Cele J in chambers 27 Nov 2014 with Appearances- for the applicant:in person, for the respondent Mokeoena and Machaba, the Judgement by Cele J, application for leave to appeal signed Eshowe 3 Oct 2014 and Heads signed at Pietermaritzburg 16 Sep 2013.

12) Affidavit of service of answering affidavit to the supporting affidavit in the petition for leave to appeal filed Juta Street 23 Jan 2015 sworn by Sekgota, attaching email of 22 Jan 2015 to Ngcamu, copying Mehta, Vilakazi and Brink.

13) Notice of objection to respondent's opposing affidavit signed Brink at Eshowe 27 Jan 2015

14) Notice of intention to oppose petition for leave to appeal filed Liberty House 21 Jan 2015 dated at Durban January 2015 with attached affidavit filed Durban 21 Jan 2015 signed by Sekgota confirming he sent email to Brink on 20 Jan 2015 at 3-42pm followed by a telephone call, sworn and signed at Braamfontein on 21 Oct 2014.

15) Notice of filing of respondent's opposing affidavit at Juta Street on 23 Jan 2015 with 33 page affidavit signed and sworn by Mtati on 22 Jan 2015.

P.T.O.

16) Respondent's notice of motion : application for condonation filed Juta Street 5 Feb 2015 signed Pp Mtati Johannesburg 5 Feb 2015 attaching 8 page founding affidavit sworn by Mtati 4 Feb 2015, attaching email from Mtati to Machaba copying Sekgota on 15 Jan 2015 saying he had not received a copy of the petition and a confirmatory affidavit, application for condonation sworn by Sekgota at Johannesburg on 4 Feb 2015.

17) Affidavit of service of notice of intention to oppose the petition for leave to appeal, two copies, filed Durban 28 Jan 2015 sworn by Sekgota 21 October 2014 attaching email to Brink 20 Jan 2015

18) Notice of filing of respondent's opposing affidavit at Durban on 28 Jan 2015 sworn by Mtati 22 Jan 2015

19) Letter from A.Brink to James Kamanga, Durban Labour Court, re petition case number.

20) Service affidavit sworn by Brink at Eshowe on 10 Dec 2014

21) Notice of intention to oppose petition for leave to appeal filed Durban 21 Jan 2015 with affidavit of service by Sekgota sworn at Braamfontein on 21 October 2014.

Contents listed by C.F.M. Rawlins 2 April 2015 C.F.M Rawlins.

ARBEIDSHOF
PRIVAATSAK/PRIVATE BAG X54370
DURBAN 4000
2015 -04- 02
1ST FLOOR LIBERTY HOUSE
L.A.

SECOND 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. I charge the respondent with collusion in LASA CEO and information officer Vidhu Vedalankar's violation of my fundamental right to public body information entrenched by section 32(1)(a) of the Constitution, an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act.

4. Although the respondent's gross misconduct, detailed and vouched below, was committed by him in his capacity as chairperson of LASA's Board, and not as a judge, the Judicial Service Commission has jurisdiction to decide this complaint by virtue of Articles 5 and 6 of the Code of Judicial Conduct and its Notes, which require judges 'always, and not only in the discharge of official duties, [to] act honourably and in a manner befitting judicial office', 'in a manner that enhances public trust in, or respect for, the judiciary and the judicial system', to 'avoid impropriety or the appearance of impropriety in

all the judge's activities', and 'at all times, also in relation to extra-judicial conduct, [to] comply with the law of the land.'

5. Crucially to this complaint, the respondent's judicial office is not just coincidental to his leadership of LASA, it's precisely a legal requirement. Section 4(1)(a) of the Legal Aid Act 22 of 1969, in operation at the material time, required that LASA's Board include a judge, impliedly and in practice to chair it; and section 8(1) of the succeeding and current Legal Aid South Africa Act 39 of 2014 now explicitly prescribes: 'The judge appointed in terms of section 6(1)(a) is the chairperson of the Board.'

6. This is to say, LASA's top officer must be a person who has taken the judge's oath to 'uphold and protect the Constitution and the human rights entrenched in it'.

7. The Legislature evidently intended by this unique qualifying requirement for the head of a public entity in our country – that it be headed by no less than a judge – that LASA's most senior public officer can confidently be relied upon to 'uphold and protect' the country's hard-won constitutional rights in the democratic era after the apartheid one – by which former baleful epoch I'm referring, in the language of the Preamble to the Promotion of Access to Information Act 2 of 2000 ('PAIA'), to 'the system of government in South Africa before 27 April 1994, [which] amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'.

8. The Legislature's further intention in having a judge head LASA is undoubtedly to ensure that under his watch its officers will observe the rule of law, act ethically, and respect the basic civil liberties guaranteed by the Constitution, as far as he can reasonably possibly achieve this, and that he'll act to remedy problems in this regard when brought to his attention.

9. All the more since LASA is a state-funded law firm, billing itself on its website as 'the largest legal institution in Africa', which former Deputy Justice Minister Andries Nel praised in Business Day on 12 January 2011, less than a fortnight after the atrocity described in this complaint (after which the cover-up escalated, ultimately into crime, to be described in separate complaints): 'The world would be a better place if it were run by Legal Aid.'

10. Most importantly, it's expected of the judge heading LASA that he will himself observe the rule of law, act ethically, and 'uphold and protect the Constitution and the human rights entrenched in it' as sworn to do, and not tolerate, much less connive at, the 'secretive and unresponsive culture' practised at LASA with the object of covering up 'an abuse of power' by him.

11. Also that he will be especially cognisant of section 195 in Chapter 10 of the Constitution, headed 'Public Administration' (my ellipses for relevance):

> 195 Basic values and principles governing public administration
>
> (1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
>
> (a) A high standard of professional ethics must be promoted and maintained.
>
> …
>
> (f) Public administration must be accountable.
>
> (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
>
> (2) The above principles apply to –
>
> …
>
> (b) organs of state[.]

12. Indeed, at his interview by the Judicial Service Commission in May 2012 for his current post, the respondent alleged LASA's stellar compliance with the Constitution under his leadership as an additional commendation for his appointment: 'I want to believe that Legal Aid SA is a shining example of how things should have been done constitutionally'.

13. The very contrary, abysmal reality, thanks to the respondent's deliberate failure to 'uphold and protect the Constitution and the human rights entrenched in it', will be shown in this complaint and in further complaints to follow.

14. For concision, I'll refer immediately below to part of my First Complaint against the respondent lodged on 4 June 2017 (JSC/533/17), and I request that it be read as incorporated in this Second Complaint.

15. In paragraphs 20–24 of my First Complaint, I described Vedalankar's clearly illegal and unconstitutional total refusal of my request for access to LASA's public records, which I'd made under PAIA in August 2010, inter alia for the 'minute of … the selection board's interview with Brink on 12 November 2009' and the 'notification of [National Operations Executive Brian] Nair ... of the senior legal professionals selected by the ... selection board for the Pietermaritzburg and Durban Senior Litigator posts after interviewing the shortlisted candidates', in other words the selection panel's recommendation report.

16. Claimed to support her refusal, Vedalankar, or the low person writing for her:

    16.1. outrageously dishonestly fabricated, and purported to quote, fake dicta from a court judgment on PAIA (I'll revert to this);
    16.2. invoked sections of PAIA against me having no bearing on the decision of requests for public body records, namely 'sections 62 to 70', which

are found in Chapter 4, 'GROUNDS FOR REFUSAL OF ACCESS TO RECORDS', in Part 3 of PAIA, 'ACCESS TO RECORDS OF PRIVATE BODIES';

16.3. and asserted:

> the information officer of a public body must refuse access to information falling into the following categories, save in circumstances provided for in the Act:
>
> a) Mandatory privacy of a third party who is a natural person.
> b) Mandatory protection of certain confidential information of a third party. [...]

17. In most strangely and surprisingly citing these provisions regarding the 'privacy of a third party' and 'confidential information of a third party' to justify her refusal of my entire PAIA request, including for access to the recommendation report, the 'information' about a 'third party' that Vedalankar was anxiously suppressing as 'priva[te]' and 'confidential' (under PAIA it was neither), turned out to be the key information noted in the recommendation report that my rival for the post for which I'd been selected, and for which he'd been rejected (not having right of appearance in the High Court as an attorney, and therefore never having litigated there on his feet) was the respondent's long-time brother in the Labour Court, Ngcamu AJ, as he used to be for '±6 years'.

18. This was finally revealed to me in April 2016, when after a long and bitter struggle I eventually succeeded in disgorging from LASA the selection panel's full uncensored recommendation report, many years after I'd first requested it in August 2010, and it had been illegally refused; then several months later, under renewed pressure of the South African Human Rights Commission's PAIA Unit, supplied heavily redacted with a Koki pen to unlawfully conceal this potently relevant fact; and then finally – after

another illegal refusal and then protracted meritless opposition to my application to court to compel its production – supplied complete and uncensored at last, as I was on the point of moving for and being granted an order that it be surrendered.

19. In view of the respondent's and the Board's fiduciary duty to ensure compliance by LASA's management executives with PAIA and other statutes governing their operations, I petitioned the respondent on 30 November 2010 to entreat his intervention in and remediation of, inter alia, Vedalankar's illegal and unconstitutional refusal of my PAIA request for access to the selection panel's recommendation, among other many other specified records.

20. A material excerpt from my petition is annexed marked 'A'. In paragraphs 8–13, I underscored the respondent's and his Board's oversight obligations over LASA as a public entity, preliminary to showing in paragraphs 17–43 that Vedalankar's refusal to allow me access to LASA's public records that I'd duly requested was clearly and incontestably illegal and unconstitutional. And dishonest: in paragraph 23 of my petition, I quoted her fake citation from a court judgment on PAIA claimed falsely to justify her refusal; whereas the judge's actual dicta, which I accurately quoted, squarely supported my claim to access to the public body records I'd requested.

21. The Board Secretary emailed me a week later on 6 December 2010, to 'confirm that the Chairperson of the Board of Legal Aid SA, Judge Dunstan Mlambo, is in receipt of your letter dated 30 November 2010. Judge Mlambo is however presently out of the country and has asked me to advise you that he will respond to your letter as soon as he is able to do so.'

22. In breach of his said fiduciary obligation to LASA as chairperson of its Board, the respondent did not act to remedy my extraordinarily serious complaint that in breach of her obligations imposed by PAIA, Vedalankar had illegally refused me access to LASA's business records duly requested under the Act,

and had thus violated my constitutional right to information guaranteed by the Bill of Rights, a basic civil right entrenched in the democratic era to combat the apartheid-like 'secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'.

23. Instead, after his 'interaction with' Vedalankar about my petition to him, which commenced with my detailed complaint about her illegal, unconstitutional and dishonest total refusal to comply with my PAIA request, the respondent colluded with Vedalankar, the very subject of my complaint to him, by permitting her to forge a letter on her office computer rebuffing my petition and, 'with his knowledge and consent', to paste a scanned image of his signature below it to dissemble to me that he'd written it.

24. The words just quoted are LASA's. Under 'Facts that are common cause' in my agenda for the first pre-trial conference in my subsequent action against LASA in the Durban Labour Court (LC 529/11) for my instatement to the top post, I truly averred for LASA's admission to shorten the trial:

> 79. Mlambo did not consult the Board to discuss the applicant's extraordinarily serious complaints raised in his petition, but instead instructed Vedalankar to prepare a letter cursorily dismissing it. He was overseas at the time.
>
> 80. On 15 December 2010 Vedalankar obliged, pasting a scanned image of Mlambo's signature into the letter she'd drawn for him, and emailed him the PDF of the letter she'd created. On 30 December Mlambo emailed it in turn to the applicant.

25. A material excerpt of my pre-trial conference agenda pleading this is annexed marked 'B'. ^

26. LASA responded by admitting my paragraph 79, and denying then admitting my paragraph 80:

> Ad 79. Agreed. Mlambo JP found, upon a perusal of the Applicant's letter and the explanation received from the CEO, nothing untoward that was done by the CEO and was correct in dismissing the Applicant's complaint.
>
> Ad 80. Disagreed. The said letter was created as a direct result of Mlambo JP's interaction with the CEO and there is nothing untoward thereabout. The electronic signature by Mlambo JP could not have been used without his knowledge and consent.

27. A material excerpt of this pleading by LASA for the true information of the trial judge is annexed marked 'C'.

28. A copy of the letter in PDF which Mlambo JP emailed me is annexed marked 'D'.

29. The basis of my above-quoted averments, pleaded in my agenda for LASA's admission, was my staggering discovery in the PDF 'Author' properties of the respondent's letter that 'VidhuV' (Vidhu Vedalankar), the very subject of my complaint to the respondent, had written it on her own office computer. A screenshot reflecting this is annexed marked 'E'.

30. Such author information is automatically entered by the user's computer programme.

31. The letter is mistakenly dated 9 November, which is three weeks before the date and delivery of my petition. Its 'File', 'Title' and 'Created' information in its PDF properties, however, all show that it was created on 15 December 2010, which was Vedalankar's last day at work before LASA closed for its annual national one-month holiday.

32. In two sentences the letter dismissed my 57-page, 254-paragraph petition to the respondent, which had commenced with a closely detailed, unanswerable complaint about Vedalankar's illegal and unconstitutional refusal of my PAIA request, but which went completely ignored:

> 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.

33. The respondent knew full well that the financial insufficiency excuse given me by Vedalankar the month before for not proceeding with my appointment was a lie. In my petition, I presented the then already available clear evidence of this, and much more would later emerge. The respondent's dishonest pretence to me that all was above board in the back-room abortion of my appointment (for which NOE Nair later gave the Board two totally different false explanations, and then in court told another completely different story still) will be the subject of a separate complaint, as will the respondent's own false assertion of the bogus financial excuse, along with another lying excuse later feebly retracted on oath on his behalf as 'an error', 'palpably an error' after I'd exposed it as another flat-out lie, advanced to the Minister of Justice and Constitutional Development (as the Department was then called) and then to the Portfolio Committee of the National Assembly for the same Department.

34. In sum, in the words of Chief Justice Mogoeng Mogoeng delivering the Constitutional Court's unanimous judgment in Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11 ('the Nkandla case'), the respondent as Judge President of the country's biggest High Court and heading its biggest law firm 'failed to uphold, defend and respect the Constitution' when I pertinently called his attention to Vedalankar's

violation of my constitutional right to information by illegally and dishonestly refusing my duly made PAIA request for access to LASA's records, and implored his intervention in the exercise of his oversight authority to remedy it.

35. Obviously as one of South Africa's most senior judges, no defence that 'He might have been following wrong legal advice and therefore acting in good faith' (per the Nkandla judgment) is available to the respondent to raise against the charge that he disgracefully and culpably 'failed to uphold, defend and respect the Constitution'.

36. In other words, it is not open to the respondent to answer that he was too grossly ignorant a layman to appreciate the egregious wrong he was doing when conniving in Vedalankar's illegal, unconstitutional and dishonest obstruction of my access to LASA's records, so as to conceal from me the key fact that my rival for the top professional post for which I'd been recommended had been his long-time fellow judge in the Labour Court – entirely explaining why my recruitment had been strangely silently aborted, totally off the record. And that contrary to Vedalankar's lie to me that I'd been 'recommended together with other candidates', namely this judicial fellow, he'd actually been eliminated from the running for the post.

37. Any such 'wrong legal advice and therefore ... good faith' defence by the respondent, based on being too grossly ignorant to understand the gravity of his connivance in Vedalankar's illegal, unconstitutional and dishonest obstruction of my access to LASA's records, is further precluded by the provisions of LASA's Code of Ethics and Conduct ('Ethics Code').

38. Section 1.2 prescribes that 'Compliance with the code by all employees is mandatory', and that it 'applies equally to all ... Board Members'. Section 7.5 requires the respondent as a Board Member to 'maintain knowledge of and comply with all applicable laws' – such as PAIA, concerning which, section 13

requires: 'A prompt, courteous and accurate response should be made to all reasonable requests for information'. Section 7.3 requires Board Members to act in such a manner as to 'ensure that their conduct cannot be interpreted as being in any way in contravention of applicable laws'. And section 15.1.5 requires that they 'act honestly and in good faith at all times and report any harmful activity they observe in the workplace'.

39. Compounding the respondent's contraventions of these provisions, and his demonstrated contempt for the rights and principles stated in sections 32 and 195 of the Constitution, the respondent did not fail 'to uphold, defend and respect the Constitution' through passive dereliction and indolent neglect of his sworn obligation to do so. By conspiring with Vedalankar, about whose violation of my rights and multiple lies I'd complained in fine detail, to forge a letter dismissing my petition, and by then sending it to me from his own email address, after mulling on its untruthful contents for a further two weeks, he actively 'failed to uphold, defend and respect the Constitution' in contempt of his oath of office, in the manner of a corrupt judge conniving out of court behind the scenes with an obviously guilty criminal accused facing an extraordinarily serious charge; batting aside the complaint's clearly substantiated and unanswerable case; and allowing the accused with whom he has long been a friendly colleague, and whom he well knows to be guilty, to write a brief judgment for him dismissing the charge, and then delivering it as if he'd written it, acquitting his colleague while falsely pretending to have given the matter his judicious consideration.

40. Concerning Vedalankar's illegal refusal of my PAIA request on utterly spurious grounds, ostensibly supported by a fraudulent misquotation from a court judgment, all pertinently brought to the respondent's attention in paragraphs 17–43 of my petition, the respondent couldn't possibly have found in good faith that all was well; that Vedalankar had acted lawfully in

refusing me access to LASA's records as requested; and that my complaint about her violation of my fundamental right to information was unfounded. That is, in turning a deliberate blind eye to this, the respondent dismissed my petition in bad faith, which is to say dishonestly.

41. In flagrant breach of section 7.2 of the Ethics Code declaiming that LASA 'will not condone any violation of the law or unethical business dealing', the respondent further contravened the requirement that he 'act honestly and in good faith at all times', by dissembling to me that he saw nothing wrong in Vedalankar's:

    41.1. manifestly illegal and unconstitutional refusal to comply with a PAIA request for access to records, in order to conceal from a recommended applicant for a top professional post in LASA, whose appointment has strangely silently stalled many months after his successful interview, that an unsuccessful applicant for the same post had been the respondent's long-time judicial colleague; and her,

    41.2. dishonestly false attribution of manufactured dicta to a judge, by putting words in her mouth that she never spoke, when ostensibly quoting her judgment in a PAIA case, so as to fabricate a fake legal cover for this, at the same time citing perfectly irrelevant provisions of the Act claimed to justify her refusal.

    And so 'condone[d]' Vedalankar's 'violation of the law' and 'unethical business dealing' with me.

42. The reason the respondent corruptly connived in Vedalankar's violation of my constitutional right to information, contravened LASA's Code of Ethics and Conduct, dishonoured his judge's oath to 'uphold and protect the Constitution and the human rights entrenched in it', and didn't act to end the apartheid-like 'secretive and unresponsive culture' (per Preamble to

PAIA) at LASA that I'd unexpectedly run into – quite the contrary, he was astute to maintain this 'secretive and unresponsive culture' – came to light only last year when in April 2016 I finally succeeded in clawing out of LASA the selection panel's full, uncensored recommendation report, and discovered that the true reason my recruitment to LASA's Senior Litigator post at Pietermaritzburg had been silently aborted off the record was that in 'an abuse of power' (per Preamble to PAIA) the respondent had illegally hijacked the recruitment to get his former brother on the Labour Court bench, my rival for the post, appointed to it instead of me – irrespective of the fact that he'd been eliminated by the selection panel for not meeting the qualifying criteria. (He was quickly appointed to other LASA posts, whereas after I was selected for another post a year later, I was told the now familiar lie that LASA had decided not to fill the post. In truth, I wasn't wanted: I fortuitously sourced the Regional Operations Executive's emailed instruction to the Justice Centre Executive to 'redo the interviews' so as to find someone else.)

43. The respondent's 'abuse of power', which he sought to conceal from me by maintaining LASA's 'secretive and unresponsive culture' like that of apartheid institutions, would have succeeded but for the fact that I didn't walk away as hoped, and pressed insistently for the outcome of the Senior Litigator interviews, and then for my appointment; and then, even after my wrongly-founded unfair discrimination claim had been dismissed (my real problem was cronyism), I pursued through court the full uncensored recommendation report, among other documents (proving other recruitment corruption), and thereby finally uncovered the truth.

44. The respondent's direct involvement ethical and procedural recruitment corruption at LASA, including fixing the illegal appointment of another

rejected candidate to a different Senior Litigator post in place of the duly recommended one, will be the subject of separate complaints.

45. This Second Complaint details how to cover up recruitment corruption, of which he was at the centre, the respondent colluded in a fundamental rights violation: Vedalankar's illegal suppression of records to which I was constitutionally entitled. My next complaint will detail how, in the classic snowballing dynamic of an escalating cover-up, the respondent lied about this to the Minister of Justice and Constitutional Development. And my complaint after that, bearing out the adage after Watergate, 'the cover-up is always worse than the crime', will detail how the respondent finally lied to Parliament about it, a crime.

Signed at Mtunzini on 23 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 23 June 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

Name:
Address:
Capacity:

25 Baker Road
Prestbury
Pietermaritzburg 3201
30 November 2010

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

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

And to:

The Board of Directors: Legal Aid South Africa

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

Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

And to:

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

Dear Judge Mlambo

Pietermaritzburg Senior Litigator post:

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

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

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

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

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

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

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

16. In my letters to Vedalankar and Makokoane mentioned above, I'd assumed political prejudice against me – something I'm accustomed to. (Bundle, page 11, paragraphs 5.1–14 and pages 93–99 (a letter to Adv Paul Hoffman SC, director of the Institute for Accountability in Southern Africa, including information intended for the unwritten 'Postscript' mentioned in paragraph 58 of my letter to Makokoane)). I've recently appreciated, however, though I doubt it, that the prejudice may simply be racial, albeit no less illegal, inasmuch as my selection and recommendation for the appointment in question might have been inconvenient for the targets set out in LASA's 'Employment Equity Plan for 2010-2015'.
17. Arising from the 'behaviour' in question, I filed an extensive request for records under the Promotion of Access to Information Act ('PAIA') with Vedalankar as LASA's information officer ex officio on 30 August. (Bundle, pages 49–69)
18. On 29 September, the day before the end of the month provided by the Act for compliance with my request, and not having received any response to it, not even an acknowledgement of receipt, I approached the South African Human Rights Commission ('SAHRC') with a plea for assistance.
19. Kindly taking the matter up for me, the director of the SAHRC's PAIA Unit Chantal Kisoon ably negotiated an undertaking from LDE Patrick Hundermark to deal with my records request. Although Vedalankar was out of time for compliance (there was a mix-up over the computation of the period prescribed), I didn't mind, I was just glad that my request would be given attention at last.
20. On 18 October I received a letter from Vedalankar rejecting my request. (Bundle, pages101–108)

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

> The test to be applied to a request for information in terms of the PAIA, as laid down by the court in the case of *National Teachers Union v Superintendent General: Department of Education & Culture, Kwazulu-Natal and Another (D38/08) [2008] ZALC 18, is as follows:*
>
> a) *In dealing with a request in terms of the Act, the question is not whether the requester is entitled to information but about whether the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure.*

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

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

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

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

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

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

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY ROBIN BRINK Applicant

and

LEGAL AID SOUTH AFRICA Respondent

APPLICANT'S PRE-TRIAL CONFERENCE AGENDA

The items for discussion at the pre-trial conference, enumerated in rule 6(4) of the Labour Court Rules, are raised by the applicant under their titles in the rule, quoted in boldface. The rule provides:

In a pre-trial conference, the parties must attempt to reach consensus on the following:

1.

(i) Any means by which the dispute may be settled;

1. Given that:

- even on the respondent's own version (unsupported by any record), the Pietermaritzburg Senior Litigator post was frozen with two others to mitigate the respondent's 'financial uncertainty' arising from the Department of Justice and Constitutional Development's delay in transferring its OSD funding allocation in 2010;

- the 'OSD funding' problem has now been 'resolved' (Response, paragraph 48.10);

78. On 30 November the applicant petitioned Board chairperson Mlambo and the rest of the Board to exercise their legal responsibility to intervene in (a) Vedalankar's unlawful refusal to comply with PAIA and her violation of the applicant's fundamental right to information under section 32 of the Constitution, 1996; and (b) her unlawful block on his appointment, having regard to the still limited indications then known to him that her budgetary justification for her admitted decision to abort his recruitment was untrue.

79. Mlambo did not consult the Board to discuss the applicant's extraordinarily serious complaints raised in his petition, but instead instructed Vedalankar to prepare a letter cursorily dismissing it. He was overseas at the time.

80. On 15 December 2010 Vedalankar obliged, pasting a scanned image of Mlambo's signature into the letter she'd drawn for him, and emailed him the PDF of the letter she'd created. On 30 December Mlambo emailed it in turn to the applicant.

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

82. Besides a couple of formal acknowledgements, no other Board member responded to the applicant's petition.

83. On 20 January 2011 Christopher Rawlins met Board member Ela Gandhi in Durban to discuss the applicant's complaints in his petition that Vedalankar had violated his fundamental rights to equality and equal employment opportunity and to information. During their meeting, Board member Yusuf Vawda telephoned her, following which Gandhi accused the applicant of blackmailing and defaming the respondent/the respondent's officers. (Bundle, pages 207–8)

84. Mlambo rejected the applicant's protest about this, repeated his claim to have found nothing untoward in Vedalankar's conduct as CEO and information officer, and accused the applicant of improper conduct in pursuing his complaints:. 'I have on a previous occasion informed you that I could find nothing untoward in your treatment by Legal Aid SA. … Your conduct is unbecoming to say the least and borders on harassment.'

85. Mlambo said he'd instructed the Board to ignore the applicant's further correspondence.

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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Case No: D529/11

In the matter between:-

ANTHONY ROBIN BRINK Applicant

and

LEGAL AID SOUTH AFRICA Respondent

RESPONDENT'S ANSWER TO APPLICANT'S PRE-TRIAL AGENDA

Introduction

1. The Respondent wishes to answer the Applicant's Pre-trial Agenda (the Agenda") in the manner provided hereinbelow.

65.2. There is nothing contradictory in the CEO's position and that which was presented to the board of the Respondent's directors.

66. Ad Paragraphs 76 – 77.

66.1 Agreed.

66.2 The funding was released to the Respondent after it had taken its decision to terminate the recruitment of Senior Litigator posts. This decision has never been revisited.

67. Ad Paragraph 78.

67.1. This is irrelevant to the present proceedings and is denied.

68. Ad Paragraph 79.

68.1. Agreed.

68.2. Mlambo JP found, upon a perusal of the Applicant's letter and the explanation received from the CEO, nothing untoward that was done by the CEO and was correct in dismissing the Applicant's complaint.

69. Ad Paragraph 80.

69.1. Disagreed.

69.2. The said letter was created as a direct result of Mlambo JP's interaction with the CEO and there is nothing untoward thereabout. The electronic signature by Mlambo JP could not have been used without his knowledge and consent.

Legal Aid South Africa

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Tel: 011 877 2000
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BY E-MAIL

Tuesday, November 09, 2010

Mr A Brink
25 Baker Road
Prestbury
PIETERMARITZBURG, 3201
E-mail: arbrink@iafrica.com

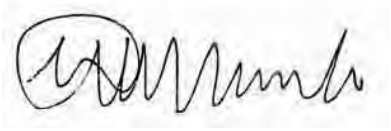
Dear Mr Brink

PIETERMARITZBURG SENIOR LITIGATOR POST

Your letter dated 30 November 2010 refers.

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

Regards



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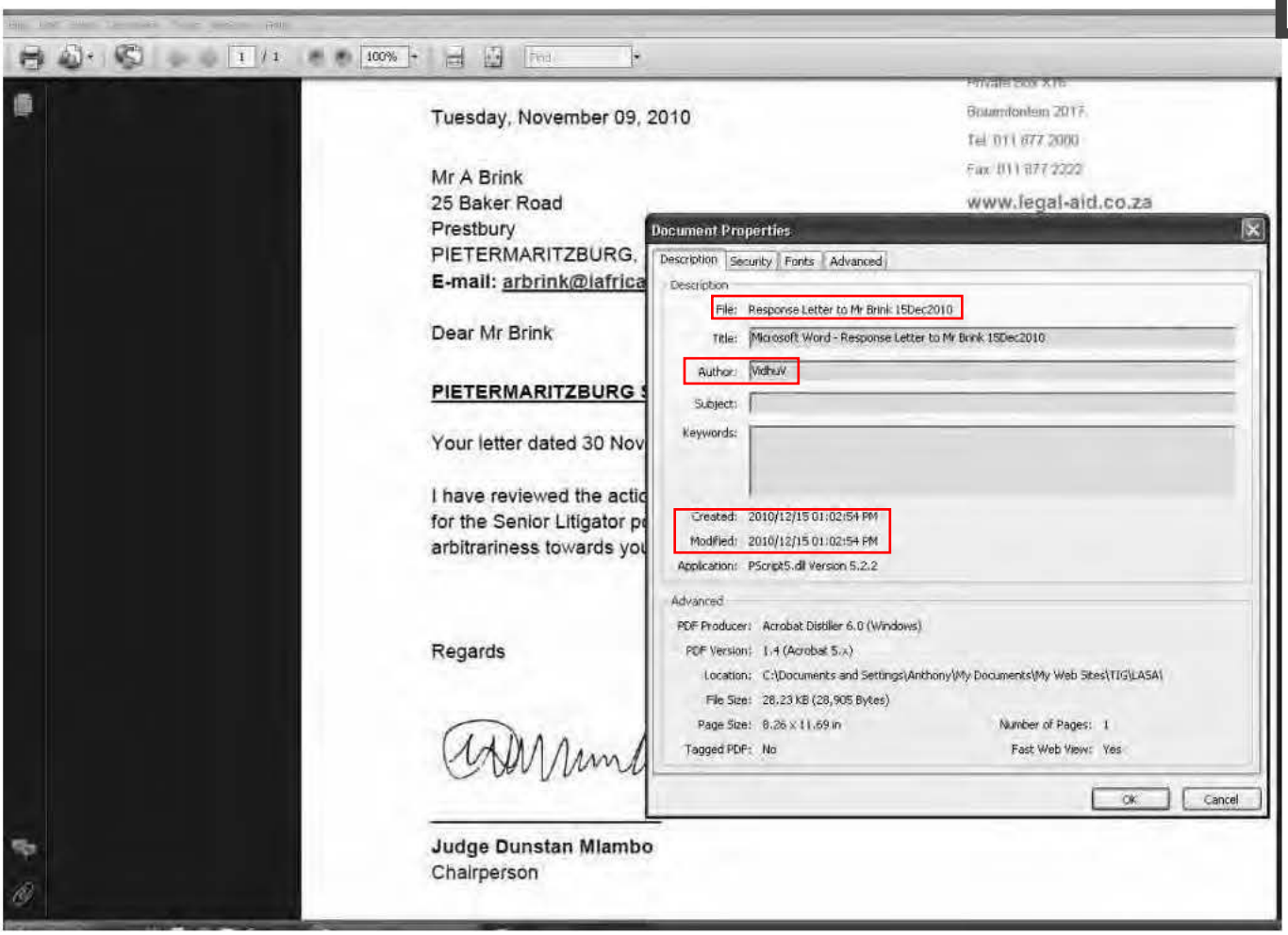
Judge Dunstan Mlambo
Chairperson



Tuesday, November 09, 2010

Mr A Brink
25 Baker Road
Prestbury
PIETERMARITZBURG,
E-mail: arbrink@lafrica

Dear Mr Brink

PIETERMARITZBURG

Your letter dated 30 Nov

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

Regards

Judge Dunstan Mlambo
Chairperson

Private Bag X16
Braamfontein 2017
Tel: 011 877 2000
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THIRD 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. Before I continue: The concluding paragraph of my Second Complaint anticipated that this, my Third Complaint, would detail the respondent's lies and false reporting to the Minister of Justice and Constitutional Development (as he was then called). On reconsideration, this will be the subject of my Sixth Complaint to follow; and the respondent's lies and false reporting to the Justice Portfolio Committee of the National Assembly – a crime – my Seventh. Before this, I've three more complaints to present against the respondent regarding his collusion with Vedalankar and his connivance at her violation of my fundamental right to information, the first of which is made here, the next two to follow.

4. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Judicial Service Commission Act (the Act'), in colluding, again, with LASA CEO and information officer Vidhu Vedalankar in her violation of my fundamental

right to public body information entrenched by section 32(1)(a) of the Constitution, given effect by the Promotion of Access to Information Act ('PAIA'), an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Act.

5. For concision, I'll refer to parts of my First and Second Complaint against the respondent, and I request that they be read as incorporated in this Third Complaint.

6. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Third Complaint.

7. On 24 January 2011, I petitioned the respondent for the second time, inter alia about Vedalankar's illegal 'denial of access to records' and 'defiance of the Promotion of Access to Information Act'. A copy of my second petition is annexed marked 'A'. Its paragraphs 27–31 and 47 are material to this complaint.

8. In my second petition to the respondent, I raised his failure in the letter he emailed me on 30 December 2010 to have dealt with 'my opening complaint' made in my first petition to him in November 2010 'that Vedalankar, as LASA information officer, has unlawfully refused my request for access to LASA's records under the Promotion of Access to Information Act' (delivered in August 2010).

9. The respondent's December letter is the subject of my Second Complaint, and is annexure 'D' to it. About which I asked him: 'Did you actually write the letter? According to its PDF properties file, Vedalankar did.'

10. I mentioned that 'I was hoping that as a senior judge you would appreciate the gravity of her refusal to comply with the Act and her disrespect for section 32(1)(a) of the Constitution behind it, and that you would instruct her to obey the law forthwith.'

11. And noted: 'Since she's already informed me that in her opinion I'm not entitled to access to any of LASA's records – grossly misquoting a reported case against her, which she claimed to support her position – I'm expecting her to refuse my second records request as well.'

12. I informed the respondent that 'In view of your and the Board's indifference to Vedalankar's defiance of the Promotion of Access to Information Act ... I've drawn draft application papers for an application to compel', and that I'd 'posted' them online 'for your perusal' at the internet address I stated.

13. And I issued him with a very proper ultimatum:

> If I haven't heard from you by the end of this week, I'll take it that your position against me remains unchanged, and I'll petition the Minister, the Deputy Minister, and all members of the Portfolio Committee as the next levels of authority and accountability – all four of my successive appeals to the Management Executive Committee and the Board of Directors having been spurned.

14. My second petition was delivered to the respondent by email attachment early in the afternoon. To record this, moments before sending it, I entered above 'Dear Judge Mlambo', 'Per email: 13h45'.

15. The respondent ruminated for several hours about what to say to me and how best to shore up the disintegrating cover-up of the true reason my appointment to the Pietermaritzburg Senior Litigator post had been aborted after I'd been selected and recommended for it.

16. Appreciating with alarm that my complaint to him was unanswerable (except that I was barking up the wrong tree in surmising unfair discrimination: it was his cronyism) and that the most serious trouble lay ahead, the respondent decided to try cowing me into abandoning my endeavour to vindicate my fundamental right to information that

Vedalankar had violated, in order to put me off discovering the true reason my recruitment had been aborted.

17. Late that night ('11:12 PM'), the respondent responded by writing me an email, in which he contemptuously rebuked my second petition with the false charge that in pleading for his and the Board's intervention in the gross unconstitutional illegality of which I was complaining at LASA, my:

> behaviour is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view.

18. The record of this email is annexure 'C' to my First Complaint.

19. As appears from its sender information, 'From: Mlambo Dunstan [DMlambo@justice.gov.za]', the respondent emailed me from his judge's email account, and not from his LASA account.

20. The Cc bar shows he copied it to Vedalankar, to let her know he'd told me to get lost.

21. Further shaking his stick at me to make me go away, the respondent made a point of adding his high judicial authority to his communication by signing it off:

> I trust you find this in order.
>
> D Mlambo
> Chairperson- Legal Aid SA and
> Judge President
> Labour Courts
> dmlambo@justice
> Tel +27113595735/6

Fax 0866447932

22. The respondent's rude and threatening dismissal of my second petition wasn't 'in order' at all; quite the contrary, and he well knew it.

23. It's impossible that as a senior judge the respondent could have failed to understand and appreciate the unconstitutional illegality of Vedalankar's total refusal of my August 2010 PAIA request, on the manifestly false and irrelevant grounds advanced in her October 2010 letter, claimed to be supported by what turned out to be a fake quotation from a judgment on PAIA, affirming the public's constitutional right of access to records held by organs of state. All of which I precisely detailed to him in paragraphs 17–43 of my first petition to him in November 2010 (annexure 'A' to my Second Complaint).

24. Instead of duly intervening as chairperson of the Board and also a top judge by directing Vedalankar to desist from violating my fundamental right to information, and to duly hand over the records I'd requested under PAIA, including those listed in my second PAIA request in December 2010 (the list of which, already drawn, I'd appended to my first petition to him in November 2010), the respondent forwarded my second petition to her without issuing any such instruction.[1]

    1. I know this because Vedalankar mentioned my second petition to the respondent in her letter to me four days later on the 28th, in which she refused my entire second December 2010 PAIA request, just as I anticipated she'd do in my second petition, and again refused my entire first August 2010 PAIA request. Her letter is the subject of, and is annexed to, my Fourth Complaint, next.

       I'm unable to provide the Judicial Service Commission with a copy of the respondent's email to Vedalankar covering my second petition that he forwarded to her, because LASA now absolutely refuses to answer any more of my duly made PAIA requests on the false and untruthful basis that they're all a frivolous and vexatious waste of its time.

To prevent me enforcing my core constitutional right to information by applying to court for mandatory relief under section 78 of PAIA (most recently in Pietermaritzburg High Court case 1118/16, which I launched in October 2016), LASA responded with an application later that month to have me banned as a vexatious litigant (Pmb HC case 12124/16).

Which corrupt suit to knock me down, in furtherance of the cover-up, I've answered comprehensively in an affidavit of nearly 300 pages and 1000 paragraphs supported by 80 annexures, setting out the rampant, pervasive, systemic top-level corruption at LASA that I've uncovered in my investigation of this to date. It's accessible online in my Dropbox at: https://goo.gl/ydG4Pi.

A comprehensive history of LASA's illegal and unconstitutional persistent refusal to comply with its constitutional information transparency obligations from 2010 to date is set out in a 'SPECIAL REPORT ON LEGAL SA: AN AGGRAVATED CASE OF REPEATED WILFUL NON COMPLIANCE WITH THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 TO ILLEGALLY OBSTRUCT ACCESS TO DULY REQUESTED RECORDS, AND REPEATED FALSE ANNUAL AND 'CONFIDENTIAL' REPORTING TO CONCEAL THIS FROM THE NATIONAL ASSEMBLY'. It's online at: https://goo.gl/OwcxJe.

25. The respondent intended that I should recoil fearfully on reading his aggressive charge, which he levelled against me as Judge President of the Labour Courts from his judge's email account in the middle of the night, and that I should abandon my pursuit of access to LASA's records to which I was constitutionally entitled, including the selection panel's recommendation of me for the Pietermaritzburg Senior Litigator post – the report of which recorded, I discovered only last year, that my rival for the post, Ngcamu AJ, as he used to be, had been the respondent's brother in the Labour Court for '±6 years'.

26. Annexed marked 'B' is a copy of the recommendation report[1] revealing this information, which I finally forced out of LASA in April 2016 by suing for it in the Eshowe Magistrate's Court.[2]

1. It's incorrectly dated; in fact the interviews were held on 12 November 2009. The report's erroneous understatement of my High Court experience is immaterial to set right here; likewise the unauthorised, gerrymandered, scaled up qualifying criteria not applied to other Senior Litigator posts; likewise its repeated mention of a legally incompetent 'next round of interviews' – to be dealt with in a separate complaint about the respondent's wholesale disregard for LASA's internal regulatory instruments; his corruption of Board approved and prescribed recruitment procedure; and his violation of the rule of law.

2. After opposing me all the way, at immense wasted cost in public revenue, probably in the millions, LASA ultimately capitulated in court on 14 February 2016, as I was on the point of moving for an order that the recommendation report and other requested documents be surrendered, and agreed to hand them over.

   I duly requested all LASA's counsel's fee-notes for this futile litigation, with the stated intention of passing them on to the Auditor General for the personal recovery of the irregular and fruitless and wasteful expenditure involved, but they were illegally refused; and, as mentioned above, my application duly brought to the High Court at Pietermaritzburg in October 2016 for an order compelling their production was shortly afterwards answered with an application to have me stripped of my ordinary constitutional right to information and my constitutional right to approach the courts for relief when it's violated. Like a listed 'communist' under apartheid.

27. By:

    27.1. dissembling that 'I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view';

    27.2. falsely charging me with 'unbecoming ... behaviour' which 'borders on harassment', i.e. just about illegal conduct;

    27.3. doing nothing to remedy Vedalankar's illegal and unconstitutional refusal in October 2010 of my request for access to LASA's records duly made under PAIA in August 2010; and,

    27.4. not instructing Vedalankar to respond lawfully to my second PAIA request made in December 2010,

the respondent connived again at Vedalankar's violation of my fundamental right to information.

28. And in behaving this way, the respondent again:

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

    28.2. 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) in contempt of his judicial oath to 'uphold and protect the Constitution and the human rights entrenched in it'.

Signed at Mtunzini on 27 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 27 June 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

Name:
Address:
Capacity:

25 Baker Road
Prestbury
Pietermaritzburg 3201
24 January 2011

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

Per email: 13h45

Dear Judge Mlambo

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

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

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

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

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

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

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

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

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

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

46. Unfortunately for those persons who've moved to oppose me politically, however, we have a progressive, enforceable Constitution these days; and as our own Navi Pillay, now United Nations High Commissioner for Human Rights has pointed out: 'More than pure aspirations, human rights are real rights that can be tested in courts of law.'

47. The draft papers in my preliminary PAIA application, testing my real right of access to LASA's records, are posted for your perusal at www.tig.org.za/LASA ; username: lasa ; password: LASA2010. The application is substantially ready for launching in February.

48. My main case to vindicate and enforce my other even more basic constitutionally guaranteed human rights, disrespected and trampled on by LASA, will follow once I have my records or Vedalankar's confirmation on oath that they don't exist.

49. Please let me have the Board's assurance that the Pietermaritzburg Senior post for which I was selected and recommended will not be readvertised until my pending claim for appointment to it has been resolved, either by settlement or by order of court. Without such assurance I'll be bound to act to protect my rights with an interim interdict application.

50. Would you ask Board Secretary Schoeman to forward this letter to all Board members so that they are all fully informed of the dangerously advanced state of play and the rapidly fading prospects of a sensible internal resolution? As mentioned above, she's ignored both of my requests to inform all members of the Board. I only have some Board members' email addresses, and the rest would presumably want to know about the rocks towards which LASA is currently headed, threatening to wreck its exemplary reputation as an impeccably well managed public body (Deputy Minister Andries Nel remarked in *Business*

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

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

Yours sincerely

ANTHONY BRINK
Advocate of the High Court of South Africa

033 344 2420
083 779 4174

Cc:

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

And to: Board Secretary Schoeman;

And to: Attorneys Kisoon and Bokaba:
PAIA Unit, South African Human Rights Commission

Record of Meeting

Ela Gandhi and Christopher Rawlins
20 January 2011
2 P.M.
Ms Gandhi's home

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

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

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

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

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

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

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

Christopher Rawlins

B

Legal Aid South Africa

TO	NOE
FROM	ROE (KZN)
DATE	06th NOVEMBER 2009

SENIOR LITIGATOR INTERVIEWS

RECOMMENDATION FOR NEXT ROUND INTERVIEWS

1. PURPOSE

To recommend the following candidates for the next round of interviews:-

- Mr Anthony Brink
- Mr Bongani Mngadi

2. BACKGROUND

The above-mentioned position was advertised internally and externally a few times to give employees within the organisation and external candidates an opportunity to apply. Candidates must possess the following:

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

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

From the applications received 4 candidates were short listed for interviews for this position. Candidates were invited to an interview held on the 05-11-2009.

The selection panel consisted of the following members:

Mr Vela Mdaka	-	ROE (KZN)
Mr Baboo Brijlal	-	Reg. HR Manager (KZN Region)
Mr Kishore Mehta	-	JCE (Durban JC)
Mr Bertus Appel	-	JCE (PmBurg JC)
Mr Julian Butler	-	HCU Manager (PmBurg JC)
Mr Vis Nair	-	JCE (Pinetown JC)

3. THE INTERVIEWS PROCEEDED AS FOLLOWS:

The selection panel conducted the interviews by using the standard interview assessment form and guidelines. The results of the interview are shown in the table below:-

NAME OF CANDIDATE	Vela Mdaka	Baboo Brijlal	Kishore Mehta	Bertus Appel	Julian Butler	Vis Nair	AVERAGE & PERCENTAGE
Mr Mzochithwayo Ngcamu	25	29	33	25	35	31	29.66 / 59.33%
Mr Anthony Brink	25	32	38	33	37	26	31.83 / 63.66%
Mr Johannes van Wyk	18	26	31	27	35	31	28.00 / 56.00%
Mr Bongani Mngadi	42	35	38	27	36	32	35.00 / 70.00%

Notes:-

All scoring out of a maximum score of 50 (5 questions X 10 points each).

4. SUMMARY OF CANDIDATES

Mr Mzochithwayo Ngcamu

Mr Ngcamu has a B. Proc degree and is an admitted Attorney (Feb 1983). He is currently practicing for his own account. Candidate has acted in the Labour Court on numerous occasions (±6 years). Candidate also worked as an Assessor and a Justice College mentor to magistrates. Despite having a good knowledge of the law, candidate does not have any High Court experience (does not have right of appearance in the HC). Therefore candidate

does not meet the minimum High Court requirement as per the advert. Therefore candidate is not recommended for next round of interviews.

Mr Anthony Brink

Mr Brink has a BA & LLB degrees. He is an admitted Advocate (April 1983). Candidate is currently employed at a public interest NGO (last 5 years) with limited litigation primarily involved in advocacy work. Previously candidate worked as Prosecutor (5 years), Civil Magistrate (4 years) & Private Practice (8 years). Candidate has ±8 years experience in the High Court (2 years short of the minimum requirements as per advert). Candidate has also trained pupil advocates. Candidate had 2 matters in the SCA (1 argued & 1 settled) and 1 matter (*pro amico*) for the Constitutional Court (drafted papers). Candidate demonstrated his capability to undertake high level research. He also sufficiently demonstrated his ability to conduct training. Candidate has a good grasp of law. Candidate is a prolific writer/author with many commendations cited on his CV. After having considered the candidate's overall presentation to the panel, candidate is recommended for next round of interviews.

Mr Johannes van Wyk

Mr Van Wyk has a LLB degree and was admitted as an Attorney in July 1986. Candidate is currently practicing for his own account (Jan 1997 to date). Prior to that candidate worked as Partner (Sept 1991 to Dec 1996), State Attorney (July 1986 to Feb 1991) & (Jan 1984 to July 1986) and as a Lecturer (Jan 1981 to Dec 1981). Candidate also served pupilage at the Pretoria Bar (Mar 1991 to July 1991). Candidate has limited HC experience having briefed Counsel in most matters. Candidate also does not have any experience in the SCA (briefed Counsel) or CONCOURT. Candidate has a fair grasp of the law. Candidate did not demonstrate his ability to undertake high level research and training. Candidate does not meet minimum HC experience in terms of the advert. Therefore candidate is not recommended for next round of interviews.

Mr Bongani Mngadi

Mr Mngadi has a B.Proc, LLB and MBA degrees. He was admitted as an Attorney in January 1990 and has been in private practice for 13 years (since Feb 1991 to Sept 2005). Prior to joining the Legal Aid South Africa, candidate also worked as a Magistrate (Nov 1981 to August 1985), Lecturer (UNIZUL) & Legal Assistant in Government. Candidate is currently employed as High Court Unit Manager (June 2009 to date). Candidate previously served Legal Aid South Africa as JCE at the Port Shepstone JC (Sept 2005 to May 2009). Candidate

has trained and supervised more than Candidate Attorneys directly articled to him - has a good understanding of training CAs. Candidate also has financial management, budgeting and management experience. Candidate demonstrated his understanding of strategic management reasonably well. He further displayed good problem solving and decision making skills. He possesses good communication skills and is an assertive individual. The Candidate has a good knowledge of criminal & civil work. Candidate also acted as a Small Claims Commissioner for a period of time. Overall presentation to interview panel was very good. Candidate has 9 years experience in the High Court. Candidate does not have any SCA and CONCOURT experience. After having considered the candidate's overall presentation to the panel, the candidate is recommended for the next round of interviews.

5. EMPLOYMENT EQUITY STATUS

The Durban JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	23	10	33
2. Whites	2	3	5
3. Indians	10	17	27
4. Coloureds	1	2	3
TOTAL	36	32	68

Equity Stats as at 06.11.2009.

The PmBurg JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	19	11	30
2. Whites	6	3	9
3. Indians	12	12	24
4. Coloureds	2	1	3
TOTAL	39	27	66

Equity Stats as at 06.11.2009.

6. RECOMMENDATION

The panel recommends the following candidates for the next round of interviews:-

- Mr Anthony Brink - External Candidate
- Mr Bongani Mngadi - Internal Candidate

Legal Aid South Africa

We certify that the Employment Equity targets for the JCs have been taken into account and that this recommendation meets the Employment Equity targets.

Baboo Brijlal
Reg. HR Manager (KZN Region)

Vis Nair
JCE (Pinetown)
23/11/2009

Kishore Mehta
JCE (Durban JC)
17/11/09

Julian Butler
HCU Manager (PmBurg JC)
23/11/2009

Vela Mdaka
ROE (KZN Region)

NEXT ROUND INTERVIEW APPROVAL

NAME	RECOMMENDATION: ACCEPTED	RECOMMENDATION: NOT ACCEPTED	DATE
BRIAN NAIR NOE			

FOURTH 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. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Judicial Service Commission Act, in conniving, again, at LASA CEO and information officer Vidhu Vedalankar's violation of my fundamental right to public body information entrenched by section 32(1)(a) of the Constitution, and given effect by the Promotion of Access to Information Act 2 of 2000 ('PAIA').

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

5. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Fourth Complaint.

6. On 28 January 2011 – four days after the respondent's appalling late-night email on the 24th (the subject of my Third Complaint), in which he abusively dismissed my second petition to him and the Board earlier that day, and lied to me in claiming that he'd found, and still could find, nothing untoward about Vedalankar's illegal 'denial of access to records' and 'disrespect for section 32(1)(a) of the Constitution', about which I'd complained to him in close detail in my first petition to him, and complained again in my second – Vedalankar:

   6.1. totally refused my second PAIA request made on 15 December 2010, on the false basis that it merely 'repeated'[1] my first;

      1. In truth and in fact, I'd sought quite different records, testing her budgetary insufficiency story for aborting my recruitment to the Pietermaritzburg Senior Litigator post, which she'd fed me in her October 2010 letter illegally refusing my first PAIA request in August 2010, by means of which I was probing the circumstances in which my appointment had been blocked.

         On the 3rd of that month, LASA National Operations Executive Brian Nair responded to my plea to CEO Vedalankar in July 2010 to see to the finalisation of my appointment, now eight silent months since my successful interview, by telling me that LASA had decided 'due to various reasons' that 'we will not be proceeding with the filling of any of these posts', LASA's remaining vacant three Senior Litigator posts for which suitable candidates had been selected and recommended. (In April 2011, I forced Nair's admission on oath under section 23 of PAIA that no record whatsoever of any such decision exists.)

   6.2. revisited her refusal of my first PAIA request, and refused it again, for a new set of equally spurious and unlawful reasons;[1]

      1. The South African Human Rights Commission ('SAHRC') confirmed this a few months later in June 2011; LASA's head office lawyers admitted it to the SAHRC in October 2011; and Vedalankar's spurious and unlawful reasons were implicitly abandoned by the delivery over the following years of the initially

refused records and other similar records, which I determinedly pursued by repeatedly applying to court (6X) to compel their delivery.

The few records Vedalankar annexed to her January letter were 'To demonstrate' her several contentions, and not to respond to my request for access to the records I'd specified. But a couple of her records coincidentally partially satisfied some of my requests, including my request for a copy of the selection panel's report recommending me. Unjustifiably under any provision of PAIA, however, the report was illegally redacted with a black Koki pen to conceal from me the crucial, all-important information recorded in it, to which public body information I was entitled as of constitutional right, that my rival applicant for the post, which had strangely silently been frozen completely off the record after I'd been recommended for it, and he was unexpectedly rejected, had long been the respondent's fellow judge of the Labour Court.

The mutilation of the report before furnishing it to me, to conceal this vital information and to deny me my right to it (ultimately conceded five years later), was a criminal contravention of section 90(1) of PAIA: 'A person who with intent to deny a right of access in terms of this Act – (a) destroys, damages or alters a record; (b) conceals a record ... commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding two years.'

6.3. rejected and returned my bank cheque for the compulsory request fee prescribed by section 22 of PAIA, just to underscore her total rejection of, and absolute refusal to comply with, my August and December PAIA requests for access to LASA's records in my investigation of the true circumstances in which my recruitment had been silently aborted.

7. A copy of Vedalankar's letter to me of 28 January 2011 is annexed marked 'A'. The only document she put up with her letter that's relevant to this Fourth Complaint is the redacted and censored recommendation report, which I've annexed, marked 'B'. (Other documents she put up are relevant to and will be annexed to a different, separate, future complaint.) A copy of my unpresented cheque for the compulsory request fee that

Vedalankar unlawfully rejected and returned by post, even the envelope I sent it in, is annexed marked 'C'.

8. The cc addressees of her email covering her January letter show that Vedalankar copied it to the respondent. A copy of this email is annexed marked 'D'.

9. As one of our country's top legal authorities, it would have been immediately apparent to the respondent that the new bunch of substitute reasons given me by Vedalankar for continuing to totally refuse my PAIA requests, even spitting back my mandatory request fee, were incompetent, unlawful and unconstitutional.

10. It follows that the respondent was full well aware that Vedalankar was continuing to illegally refuse me access to duly requested records and was thereby violating my fundamental right to information.

11. Vedalankar's said letter concluded:

> The Legal Aid SA's Board of Directors; its Executives and all its staff country-wide are committed to complying with the laws and statutes of the country and most importantly the Constitution of the country and its values of accountability and transparency. In that spirit, and despite your insulting and condescending tone of language to us, that I have responded fully to your requests for access to information regarding your non-appointment to the position of Senior Litigator, PMB. We have exhausted our explanations to you[1] and trust that this final letter shall put this matter to rest. Please be advised that no further correspondence on this matter will be responded to.

1. Several months later, in November 2011, NOE Nair would give the Board totally different 'explanations', and in July/August 2013 yet another radically different 'explanation' to the Labour Court trying my claim for my instatement to the post.

12. It would have been as obvious to the respondent as it was to me that by wishing me this final good-bye, after violating my constitutional right to information that she pretended to respect, Vedalankar was trying:

    12.1. to force my acceptance of her budgetary insufficiency excuse for not approving[1] my appointment;

    12.2. prevent me testing it by requesting supporting records to vouch it, or, where they didn't exist (as I suspected, later confirmed), by requiring her to certify this on oath under section 23 of PAIA; and,

        1. Under LASA's Approval Framework, an internal regulation approved and prescribed by the respondent and his Board, Vedalankar and Nair have co-authority for approving selection panel recommendations for Senior Litigator appointments. And no one else. As a non-executive member of the Board, the respondent's illegal intrusion into LASA management's Senior Litigator selection and approval operations, in violation of the rule of law, will be the subject of a separate, future complaint.

    12.3. to discourage me from making any more requests under PAIA to examine LASA's records, in the exercise of my fundamental right to information, by telling me they'd be ignored, in further violation of this constitutional right.

13. On being copied her letter, the respondent deliberately failed to honour his judicial oath and his fiduciary duty to LASA to see to it that Vedalankar quit violating the Constitution, stop breaking the law, and cease violating my basic civil rights; and did nothing to call her to order about this.

14. By his deliberate silence and inaction the respondent tacitly approved Vedalankar's:

    14.1. clear violation of my fundamental right to information; and,

14.2. announcement of her intention to continue violating it should I attempt to exercise it again.

15. In this manner, the respondent again:

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

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

Signed at Mtunzini on 27 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 27 June 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

Name:
Address:
Capacity:

Legal Aid South Africa A

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Johannesburg 2017
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Braamfontein 2017
Tel: 011 877 2000
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By Email

28 January 2011

Adv A Brink

25 Baker Road

Prestbury

Pietermaritzburg, 3201

Email: arbrink@iafrica.com

Dear Adv. Anthony Brink,

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

1. I acknowledge your letter of 15 December 2010 in which you request access to information in Legal Aid SA's possession in terms of the Promotion of Access to Information Act, Act 2 of 2000 ("PAIA"). I have also considered your recent letters dated 30 November 2010 sent to the Chairperson of the Board of Legal Aid SA, Judge President Dunstan Mlambo ("Mlambo JP") and to the Board of Directors ("Board") dated 24 January 2011.

2. Legal Aid SA promotes and complies with the constitutional precepts of accountability; openness; transparency and respect for human and related rights including your right to access information in its possession. This recognition should set the tone for the answer that follows herein below.

3. In your letter to Mlambo JP, you made serious and malicious accusations which can in effect be separated into two groups. Firstly, you accuse Mr Brian Nair ("Nair"), the Legal Aid SA's National Operations Executive ("NOE"), and me of unlawfully misrepresenting information (mainly financial management issues) to Parliament's Portfolio Committee on Justice and Constitutional Development and of concocting unlawful excuses and reasons, all with malicious intent to freezing a post of Senior Litigator, Pietermaritzburg ("PMB") for which you were singly selected and recommended for appointment subject to your final interview with Mlambo JP.

4. Secondly, you accuse Mr Nair and I or even the Legal Aid SA of singling you out for differential treatment which is, according to you, unlawful and unconstitutional, because of your race and of your conscience and belief. As a result of the aforegoing conclusions, you grounded your application for access to information on section 46 of PAIA in seeking access to information from the Legal Aid SA. It is common cause that section 46 provides that:

> *"Despite other provisions of this Chapter, the information officer of a public body must grant a request for access to record of the body contemplated in section 34 (1)... if –*
>
> > *The disclosure of the record would reveal evidence of –*
> > *a substantial contravention of, failure to comply with, the law; or*
> > *...*
> > *the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question."*

5. At the outset, I wish to record my strongest rejection of your accusations which you levelled against me as the Chief Executive Officer of Legal Aid SA; members of the Executives (both individually and collectively) including but not limited to Mr Nair; Ms Amanda Clark ("Ms Clark") and the Board members including its chairperson, Mlambo JP; and its secretary Ms B Schoeman. Your views are unfounded; wrong and outright defamatory. My and my organisations' rights are strictly reserved to deal therewith at a later stage and/or an appropriate forum.

6. As I will show herein below, the premise you have chosen in seeking access to information you seek herein is baseless. This wrong assumption, which I will disprove herein below, led you to reject my answers to your request for access to our records. You continued with these malicious accusations to the Parliamentary Portfolio Committee on Justice and Constitutional Development; to the Ministry of Justice and Constitutional Development; to the Board; and to other institutions of your choice.

7. As I will demonstrate to you herein below, your assumptions in taking this route are far from the truth and are misinformed. I must however advise you, that the explanation furnished by me to you on 18 October 2010 remains valid and will be added to and clarified where possible as indicated herein below.

8. Despite the above accusations and assumptions, which I completely reject, I provide you with further information and reasons that led to the freezing of the Senior Litigator posts in Durban, Pietermaritzburg and Mthatha, in addition to the reasons furnished to you on 18 October 2010.

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

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

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

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

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

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

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

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

11. As to your requests 1 and 2: I wish to refer you to the Legal Aid SA's Policy Document read with the Approval Framework.

12. As regard your request number 3 and 4: Mr Nair relied on the Approval Framework especially at 8.2.2(c) where, you will note, he has to approve the appointment of senior staff. However, he was not the person in charge of or managing the process of recruiting a Senior Litigator. This process is managed by the relevant Regional Human Resources Manager if it is a regional post; and a HRE if it is a senior national appointment. Mr Nair is the line executive/manager responsible for the appointment of Senior Litigators.

13. Seeing that the posts of Senior Litigator's post was a senior post, second round interviews were to proceed to the national level with national executives and was to be coordinated and managed by the HRE. The relevant regional HR officer was responsible, at all times, together with the KZN ROE Mr Mdaka who managed and compiled the recommendation of the panel after the first round of interviews as attached in the above table.

14. I reject your allegations in your request number 5 and 6: I dispute your argumentative conclusion premised, of course on misguided facts and

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

15. As to request 7: I refer you to the Approval Framework annexed hereto.

16. As to requests 8 and 9 : I refuse to grant you access to this information on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA's Policy on Recruitment Checks.

17. As to request 10: No time limit was set to finalise the recruitment process.

18. As to requests 3 and 4 (both in Part A and B of the request document): there are no such communications that I am aware of. I am willing to provide you with an email from Ms Clark dated 30 April 2010 which you already have in your possession and which you have referred to in your letter to Mlambo JP on or about 30 November 2010. This was blind copied to the ROE of KZN Mr Mdaka and Brijal.

19. For your requests 11; 12; 13 (PART A); 13 (PART B); 14 (PART A); 14 (PART B); 15 (PART B): please refer to the correspondence on costs-cutting measures, read with the Legal Aid SA's Approval Framework.

20. As for your request 15: The disparity on the advertised salary between Mthatha and Durban/Pietermaritzburg Senior Litigator position, is as a result of cost of living expense which was effected on 23 October 2009. You would have noted that the difference between the two advertisements is a period of over nine months.

21. As for your request 16: I am not aware of any of the Executives discussing you and/or your candidacy for the above-mentioned post save the edited and blacked out recommendation for the next round of interviews. This is attached hereto as part of the bundle in the table above.

22. As to the regional panel members' individual assessment notes; scores; deliberations; submissions and assessment reports on you, I, having considered your request, refuse to grant you access thereto as these documents and information relating thereto were compiled from the Legal Aid SA's panel's deliberative process of decision-making in the assessment and interview of candidates, including you, for vacant posts in the Legal Aid SA. I am entitled to refuse to grant you this information in terms of section 44(1) and (2) of PAIA.

23. I have decided, notwithstanding the above position, and after I have exercised my discretion, to grant you access to an edited/blacked out version of the final recommendation of the panel to show you what its decision was.

AS TO PART B "OTHER RECORDS"

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

25. As to requests 3; and 4: Please refer to above.

26. As for requests 5; 6; 7; 8; 9; and 10: I am able to inform you that there is no recorded explanation for what you refer to as 'the delay'. I reject that there were any delays in dealing with any post. As far as I can tell, there were no time frames within which these recruitment drives were to be conducted and completed. I however wish to state that the Legal Aid SA was, at the same time as it conducted the recruitment drives referred to herein above and as you would have noted from the above documents, in a parallel process of securing funding. It had in conducting these recruitment processes parallel with fund raising drive, acted under the impression that the DoJ &CD would honour its promise to extend OSD funding to it. Accordingly and naturally, the drive to secure funding took priority as you would have noted from the correspondence above that all those Executives that were engaged in the recruitment of the Senior Litigator posts were also engaged in costs-cutting discussions/processes including identifying the areas that could be sacrificed to keep Legal Aid SA in budget. Ms Clark's mail to you was to be and must be understood in this light.

27. Because Ms Clark would not have been involved in the Senior Litigator's recruitment process as the second round of interviews was not proceeded with (see her email of 14; 22 and 30 April 2010 which you already have in your possession), Baboo Brijal would have been provided with the same updates as included herein above regarding the costs-cutting mechanisms. Obviously by November 2010, after the Memorandum from the COO, it was evident that there would be no funding coming from the DoJ. In fact a shortfall was expected up to 2012. Brijal was to update you should anything change regarding the continuation or otherwise of the recruitment drive not anything more.

28. As for requests 11; and 12: Ms Clark, as a HRE, was involved with the cost-cutting processes and was not at liberty to inform you of the reasons why the posts were not being finalised. All she did and said to you is informed by the costs-cutting measures that appear in the above documents. She was privy thereto and she too, just like all of us, had to wait and see if the Department of Justice and Constitutional Development would allocate us budget to proceed with finalising the recruitment processes. It is on this basis that you should understand Ms Clark's communications to you regarding this process.

29. As to requests 13, 14 and 15: The decision to create or abolish a post is derived from the Approval Framework which is annexed herewith. All communication relating thereto is also attached. If for any reason, the e-mail or any form of communication is not attached, it would have been verbal, the authority of which derives from the aforementioned Approval Framework.

30. As to your requests 16; 19; 20; 21; 22; 23; 24; 26; and 27: I have exercised my discretion against granting you access to this information in terms of sections 43(1) as it relates to confidential correspondence with third parties.

31. I further refuse to grant you access on the same information and documents on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA's Policy on Recruitment Checks). I also refuse to provide access to this record as it relates to research or information gathering by third parties on behalf of Legal Aid SA as contemplated in section 43(1) and (2). It seems apparent to me that you already have document(s) that you seek in this regard.

32. As for your requests 17 and 18: There is no such discussion other than the documents provided to you.

33. As for your request 25: As this information would relate to the internal deliberations; opinions and views intended for Legal Aid SA to take certain decisions as contemplated in section 44(1) and (2), I have exercised my discretion against granting you access thereto. I therefore refuse to grant you access to this information or document.

34. As for your requests 33; and 34: Your attention is referred to the costs-cutting measures correspondence in which Nair was instrumental in identifying posts that should be cut; frozen etc. This was part of the Executive's mandate around that time. See especially the email and memo from COO to all Executives; ROEs; JCEs and 'All Staff' herein above wherein Cabinet also propagated the same mechanisms as Legal Aid SA.

35. As for request 35: To the best of knowledge there are no other electronic records relating to you.

IN CONCLUSION

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

37. In light of the above information given to you, it must further be apparent that your allegations of discrimination against you as an individual are baseless and misguided. Save for the documents and information delivered to you, I refuse to grant you access to the documents I have referred to.

38. Mlambo JP had an occasion to peruse and consider your long letter of 30 November 2010 wherein you seem relentless in your complaint and accusations against me; Nair and the Legal Aid SA and has essentially, after reviewing our processes regarding the cost-cutting measures including but not limited to the Senior Litigator posts, found no evidence to substantiate your claims. Of course you do not believe him and you ridicule his findings in your subsequent correspondence and your threatened court actions. I have, on my part, also tried, notwithstanding this answer from Mlambo JP, to answer your requests and avail certain documents to you, the contents of which, I wish to repeat, are private and confidential.

39. As indicated hereinabove, I have also had an occasion of reading your recent letter dated 24 January 2011 to Mlambo JP. I, and the Legal Aid SA under my watch, have never sought to make any decisions regarding the Senior Litigator posts on any ground other than the budget constraints which you have rejected.

40. You accuse us and persist with your baseless accusations of financial improprieties and misrepresentations to the Portfolio Committees etc. I challenge you to present your investigative results of Legal Aid SA's financial mismanagement; wasteful and fruitless expenditure to the Auditor General.

41. In conclusion, I note your threats of court actions cross examining me; officials of Legal Aid SA; now the Board members; and their secretary. Your threats of *mandamus* against the Legal Aid SA; of using independent judges; of probing our executives' affidavits; of your draft notice of motion and an accompanying founding affidavit, are unnecessary. Please refrain from your disparaging attacks on people's dignity on baseless assumptions.

42. Be advised that the Legal Aid SA will defend itself against any of the threats that you have made against its officials and Board members.

43. The Legal Aid SA's Board of Directors; its Executives and all of its staff country-wide are committed to complying with the laws and statutes of the country most importantly the Constitution of the country and its values of accountability and transparency. It is in that spirit, and despite your insulting and condescending tone of language to us, that I have responded fully to your requests for access to information regarding your non-appointment to the position of Senior Litigator, PMB.

44. We have exhausted our explanations to you and trust that this final letter to you shall put this matter to rest. Please be advised that no further correspondence on this matter will be responded to. Your cheque will be returned to you with the original of this letter.

Yours faithfully,

V. V. Vedalankar

Vidhu Vedalankar

CEO: Legal Aid South Africa

V7

R4

B

Legal Aid South Africa

TO	NDE
FROM	ROE (KZN)
DATE	06th NOVEMBER 2009

SENIOR LITIGATOR INTERVIEWS
RECOMMENDATION FOR NEXT ROUND INTERVIEWS

1. PURPOSE

To recommend the following candidates for the next round of interviews:-

- Mr Anthony Brink
- Mr Bongani Mngadi

2. BACKGROUND

The above-mentioned position was advertised internally and externally a few times to give employees within the organisation and external candidates an opportunity to apply. Candidates must possess the following:

- Admitted Attorney / Advocate.
- B Proc or LLB degree, with right of Appearance in the High Court.
- A LLM will be an advantage.
- At least 12 years post qualification legal experience of which 10 years must be high court experience. Must be performing at least 80% active court litigation.
- Valid code 08 drivers licence.
- Excellent leadership & people development skills with a track record in training.
- Experience in budget preparation & management thereof.
- Advanced computer skills (MS Word, Excel, Outlook, PowerPoint & Ad infinitum).
- Strong communication, problem solving & interpersonal skills.
- Innovative, creative & analytical thinking skills. Strong research skills.
- Ability to interpret & apply policies.

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

From the applications received 4 candidates were short listed for interviews for this position. Candidates were invited to an interview held on the 05-11-2009.

The selection panel consisted of the following members:

Mr Vela Mdaka	-	RDE (KZN)
Mr Baboo Brijlal	-	Reg. HR Manager (KZN Region)
Mr Kishore Mehta	-	JCE (Durban JC)
Mr Bertus Appel	-	JCE (PmBurg JC)
Mr Julian Butler	-	HCU Manager (PmBurg JC)
Mr Vis Nair	-	JCE (Pinetown JC)

3. THE INTERVIEWS PROCEEDED AS FOLLOWS:

The selection panel conducted the interviews by using the standard interview assessment form and guidelines. The results of the interview are shown in the table below:-

NAME OF CANDIDATE	[redacted]	AVERAGE & PERCENTAGE
Mr Mzochithwayo Ngcamu	[redacted]	[redacted]
Mr Anthony Brink	[redacted]	[redacted]
Mr Johannes van Wyk	[redacted]	[redacted]
Mr Bongani Mngadi	[redacted]	[redacted]

Notes:-

All scoring out of a maximum score of 50 (5 questions X 10 points each).

4. SUMMARY OF CANDIDATES

[redacted]

Legal Aid South Africa

Mr Anthony Brink

Mr Brink has a BA & LLB degrees. He is an admitted Advocate (April 1983). Candidate is currently employed at a public interest NGO (last 5 years) with limited litigation primarily involved in advocacy work. Previously candidate worked as Prosecutor (5 years), Civil Magistrate (4 years) & Private Practice (8 years). Candidate has ±8 years experience in the High Court (2 years short of the minimum requirements as per advert). Candidate has also trained pupil advocates. Candidate had 2 matters in the SCA (1 argued & 1 settled) and 1 matter (*pro amico*) for the Constitutional Court (drafted papers). Candidate demonstrated his capability to undertake high level research. He also sufficiently demonstrated his ability to conduct training. Candidate has a good grasp of law. Candidate is a prolific writer/author with many commendations cited on his CV. After having considered the candidate's overall presentation to the panel, candidate is recommended for next round of interviews.

[redacted]

[redacted]

5. EMPLOYMENT EQUITY STATUS

The Durban JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	23	10	33
2. Whites	2	3	5
3. Indians	10	17	27
4. Coloureds	1	2	3
TOTAL	36	32	68

Equity Stats as at 06.11.2009.

The PmBurg JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	19	11	30
2. Whites	6	3	9
3. Indians	12	12	24
4. Coloureds	2	1	3
TOTAL	39	27	66

Equity Stats as at 06.11.2009.

6. RECOMMENDATION

The panel recommends the following candidates for the next round of interviews:-

- Mr Anthony Brink - External Candidate
- Mr Bongani Mngadi - Internal Candidate

Legal Aid South Africa

We certify that the Employment Equity targets for the JCs have been taken into account and that this recommendation meets the Employment Equity targets.

Baboo Brijlal
Reg. HR Manager (KZN Region)

Vis Nair
JCE (Pinetown)
23/11/2009

Kishore Mehta
JCE (Durban JC) 17/11/09

Vela Mdaka
ROE (KZN Region)

Julian Botlor
HCU Manager (PmBurg JC)
23/11/2009

NEXT ROUND INTERVIEW APPROVAL

NAME	RECOMMENDATION: ACCEPTED	RECOMMENDATION: NOT ACCEPTED	DATE
BRIAN NAIR NOE			

PAIA request fee rejected

Cheque returned unpresented – together with the registered envelope enclosing it, and the labelled envelope inside it.

For Personal Attention

Ms Vidhu Vedalankar
CEO and Information Officer
Legal Aid South Africa
Private Bag X76
Braamfontein 2017

***

***

From: Vidhu Vedalankar [mailto:VidhuV@legal-aid.co.za]
Sent: 28 January 2011 02:25 PM
To: Anthony Brink
Cc: Justice Dunstan Mlambo; ckisoon@sahrc.org.za
Subject: PAIA: Brink - supplementary request for records

Dear Mr Brink

Please see attached a response to your letter.

Regards

Vidhu Vedalankar

CEO

www.legal-aid.co.za

FIFTH 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. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Judicial Service Commission Act, in conniving, again, at LASA CEO and information officer Vidhu Vedalankar's violation of my fundamental right to public body information entrenched by section 32(1)(a) of the Constitution, and given effect by the Promotion of Access to Information Act 2 of 2000 ('PAIA').

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

5. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Fifth Complaint.

6. Unintimidated and undeterred by the respondent's:

6.1.1. shockingly improper and dishonest rebuff of my second petition to him (the subject of my Third Complaint), corruptly contrived to chill my endeavour to vindicate my fundamental right to information that Vedalankar had violated – clearly and incontestably demonstrated in my first petition to him in November 2010 (annexure 'A' to my Second Complaint);

6.1.2. extraordinarily 'untoward' (his word) studied indifference to this serious unconstitutional illegality by an organ of state in the democratic era that I was repeatedly protesting to him; and,

6.1.3. conscious and deliberate inaction on seeing that Vedalankar had illegally totally refused my first August 2010 PAIA request again on 28 January 2011 on manifestly spurious new grounds, and had illegally totally refused my second December 2010 PAIA request on the obviously false basis that it merely 'repeated' my first,

I petitioned the respondent and the LASA Board a third time on 25 February 2011, again seeking his intervention and remediation of Vedalankar's illegal obstruction of my access to LASA's public records – now copying in:

- LASA's Executive Authority, the Minister of Justice and Constitutional Development (as he was then called);
- the Minister's Special Advisor;
- the Deputy Minister; and,
- the chairperson of the Portfolio Committee for Justice and Constitutional Development of the National Assembly ('Portfolio Committee'), with oversight responsibility over state organs like LASA, imposed by section 55(2) of the Constitution.

7. My approach to these several high authorities fulfilled my ultimatum that I duly gave the respondent in my second petition (annexure 'A' to my Third

Complaint), namely I would escalate my complaint about Vedalankar's illegal and unconstitutional refusal to comply with my PAIA requests to them should he fail to belatedly perform his fiduciary obligation to LASA to see to it that Vedalankar comply with the Constitution and the law by allowing me access to LASA's public records as I'd requested.

8. A copy of my third petition to the respondent and other Board members, which I copied to these high authorities, is annexed marked 'A'.

9. My third petition:

   9.1. mentioned my first petition to the respondent in November 2010 (which the respondent had batted away in collusion with Vedalankar in the manner described and vouched in my Second Complaint);

   9.2. reminded the respondent that:

> My [second] petition began by detailing Vedalankar's unlawful refusal as information officer to comply with the Promotion of Access to Information Act ('PAIA'), thus exposing LASA to the shame of being listed as a non-compliant PAIA delinquent in the South African Human Rights Commission's next annual report to Parliament;[1]

1. Just as I predicted, it was; and the Portfolio Committee taxed Vedalankar about it on 9 October 2012. She evaded its repeated concerned questions by telling lies and falsely repudiating the SAHRC's report: 'Ms Vedalankar said that she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgment about this.' (Per the Parliamentary Monitoring Group's minute.) The SAHRC's annual report on public body compliance with PAIA under section 84 wasn't 'untrue'. I wasn't 'in court' when I made my PAIA requests in August and December 2010 and March 2011, and only sued in July 2011. And there was no pending case 'about

this' in which 'there was going to be an official judgment'. My entitlement to the records wasn't in issue in any court.

9.3. informed the respondent that to falsely justify continuing to totally refuse my first PAIA request in August 2010, Vedalankar had replaced her unlawful reasons given me in October 2010 with another set of equally obviously unlawful ones in her January 2011 letter (which he already knew, because Vedalankar had copied her January 2011 letter to him); and,

9.4. repeated my intention, stated in my second petition, to apply to court for an order compelling Vedalankar's production of the records she was withholding from me, for which I'd prepared draft papers.[1]

1. In his 24 January 2011 email, the respondent had sarcastically responded, in tinny legal argot calculated to impress and put me off, dishonestly insinuating, contrary to his full appreciation otherwise, that my complaint about Vedalankar's repeated and persistent illegal and unconstitutional refusal to allow me access to LASA's records had no merit and would fail in court: 'you are free to institute whatever legal action you may deem appropriate to obtain whatever redress you fathom is due to you.'

   In the event, I opted to pursue the records under the Labour Court's discovery rules instead. Faced with LASA's determined obstruction and resistance, my struggle to access its records continued: I was constrained to apply to compel discovery, after my entire list of requested documents listed in my agenda for the first pre-trial conference was totally refused. On the very correct advice of LASA's senior counsel, now Constitutional Court judge, Mbuyiseli Madlanga, openly expressed at the conference, this absolute refusal was then reversed, and all the listed records I sought were promised me. Contemptuously disregarding its minuted undertaking given on its senior counsel's advice, and being all the time determined to withhold the requested records from me and conceal them from the trial court, LASA then failed to make full and proper discovery as agreed, requiring me to apply to compel, as said. And then, in my endless difficulty getting documents from LASA that I needed for trial, I had to request

> not one but two further pre-trial conferences under judicial supervision at court to extract most but still not all of the requested records.
>
> As then LASA Board member Ela Ghandi appositely remarked in a different context in The Mercury on 23 November 2011: 'It's only when people have something they are not proud of that they try to hide things.'

10. Predicted by the respondent's emailed announcement to me on 24 January 2011 that he'd be ignoring any further entreaties by me about, inter alia, his CEO and information officer's persistent, repeated violation of my fundamental right to public body information, and my pleas that he act to remedy it – 'I call on you to desist from communicating with Board Members in this regard. I have, in turn, requested Board Members to ignore all communications from you and/or on your behalf' – the respondent indeed ignored my third petition about this, as he said he would; did not respond to it; and thereby again:

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

    10.2. 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) in contempt of his judicial oath to 'uphold and protect the Constitution and the human rights entrenched in it'.

Signed at Mtunzini on 27 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 27 June 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

Name:

Address:

Capacity:

25 Baker Road
Prestbury
Pietermaritzburg
25 February 2011

Dear Board Directors

LASA BOARD MEETING, SATURDAY 26 FEBRUARY 2011

Your meeting on Saturday presents an opportunity to address, resolve, and defuse what threatens to be the most damaging crisis in LASA's history. And so easily.

In November last year, I addressed a 59-page petition to Judge Mlambo and the Board of Directors, appealing for the Board's intervention in CEO Vidhu Vedalankar's illegal abortion of my recruitment as Senior Litigator, Pietermaritzburg, for political reasons, following my selection and recommendation for appointment by a professional selection panel in November 2009.

My petition began by detailing Vedalankar's unlawful refusal as information officer to comply with the Promotion of Access to Information Act ('PAIA'), thus exposing LASA to the shame of being listed as a non-compliant PAIA delinquent in the South African Human Rights Commission's next annual report to Parliament.

I also raised LASA's contravention of the Public Finance Management Act – (a) in incurring fruitless and wasteful expenditure in Vedalankar's illegal abortion of my appointment and the wasted cost of readvertising the post, despite having already found a suitable candidate; and (b) in publishing false financial information in LASA's current annual report (Management Executive Committee members' personal incomes are massively understated in total).

My requests to Board Secretary Schoeman to forward my letter to all Board members and to put it on the agenda of the next Board meeting was not carried out; and indeed

appear to have been countermanded, thus concealing from the Auditor General, represented at all Board Audit Sub-Committee meetings, these serious financial irregularities threatening to blot the unqualified audits that LASA has enjoyed for many years.

In her letter to me of 28 January 2011, in which Vedalankar implicitly abandoned her earlier wholly spurious reasons for not complying with PAIA and affording me access to the records I requested, replacing her clueless reasons with other equally fatuous ones, Vedalankar repeated her allegation that for financial reasons she'd 'frozen' the post for which I was selected and recommended; and she put up some records claimed to support this.

In truth, as all (besides recent) Board members are well aware, the single cost-cutting measure agreed by the Management Executive Committee on 16 July 2010 in its Report to the Board, and approved by the Board on the 31st, was the reduction of some junior criminal defence practitioner posts serving the district and regional courts.

The couple of remaining vacant critical Senior Litigator posts were never identified, never proposed, never agreed, and never approved for abolition as a cost-saving measure. On the contrary, the Report to the Board specifically distinguished vacant critical posts from the rest and prioritized them for recruitment.

This is incontrovertibly shown by (a) the Board meeting minutes; (b) the Management Executive Committee's Report to the Board; (c) NOE Nair's recommendations for cost-saving; and (d) Vedalankar's letter to the Director General on 16 April contemplating the abolition of some junior criminal defence practitioner posts, which was ultimately proposed, agreed and approved. All on the record, obviously.

Vedalankar's claims to me to have 'frozen' my post in July, and to have 'frozen' it for budgetary reasons, are lies. And being lies, they are naturally not supported by any records. Contrariwise, her lies are directly contradicted by the very records that she provided me for her own purposes (and not to comply with my PAIA requests) last month in January.

In my petition to the Board in November, I reported how in covering up her gravely illegal abortion of my appointment in late 2009/early 2010 and in contriving a bogus financial justification for it, Vedalankar also unlawfully aborted the appointments of two African lawyers duly selected and recommended for appointment to the Durban and Mthatha Senior Litigator posts, in April/May and July respectively – contemptuous of their rights, their legitimate expectations of being appointed, as well.

And all this in a grossly unlawful, furtive abuse of power; all completely off the record; with no regard for the peremptory requirements of the Approval Framework governing such operational decisions; contravening the Board's strategic policy to equip all seats of the High Court with Senior Litigators; disrespecting the express wishes of Parliament expressed in May 2007 in this regard; disrespecting the Minister's express wishes communicated to Judge Mlambo sometime in the first half of 2010; without informing the Board in the 16 July Report; and without informing the Portfolio Committee on 12 October.

The rapidly developing crisis LASA currently faces on account of Vedalankar's grossly illegal conduct, and the blind eye Judge Mlambo has turned to it in his brief, dismissive responses to my detailed petitions, is as follows:

Unless the extraordinary serious matters raised in my correspondence to the Board in November and again in January are addressed and resolved at Saturday's meeting of the Board, LASA's public reputation for exemplary probity in corporate governance and

financial management stands to be wrecked in a gargantuan public scandal when my complaints reach open court.

Here I refer to my preliminary application to the South Gauteng High Court (Johannesburg) for which I've drawn draft papers for an order compelling Vedalankar to comply with PAIA by producing the records I've lawfully requested, or where they don't exist by confirming this on oath. Moreover I refer to my claim for appointment to the post for which I was selected and recommended, but which Vedalankar illegally aborted for political reasons, behind the scenes and completely off the record, and which she later tried covering up with a patently untruthful budgetary justification, contradicted by the very records she produced in January. Callously sacrificing two African lawyers on the way.

In his email to me on 24 January, Judge Mlambo told me he'd requested all Board members 'to ignore all communications from' me, notwithstanding the Board's statutory responsibilities to oversee and ensure the proper management of LASA by the Management Executive Committee and its compliance with the laws of the country that I'd highlighted.

Having regard to the extraordinarily serious nature of the matters I've raised – *so easily fixed* – I would suggest that you rather 'ignore' judge Mlambo's grossly improper request to 'ignore' my petitions pointing up the breakdown of proper corporate governance and Vedalankar's evident contempt for the Constitution and the law of our country and the fundamental constitutional rights of its people.

In the situation, I respectfully call on you as a Director to exercise your responsibility to LASA, to Parliament, and to the people of South Africa, and to move for the discussion by the Board of the grave matters I've brought to your attention so that they can be openly ventilated, debated, and resolved. Before this shambles spills into the open to the

considerable embarrassment of the Minister and Deputy Minister of Justice and Constitutional Development.

All relevant documents in this matter are accessible online at a private secure archive: www.tig.org.za/LASA; username: lasa; password: LASA2010.

Thank you for your attention.

Yours sincerely

ADV ANTHONY BRINK

CC:

The Minister of Justice and Constitutional Development, the Honourable Mr Jeffrey Radebe MP

The Deputy Minister of Justice and Constitutional Development, the Honourable Mr Andries Nel MP

Special Advisor to the Minister of Justice and Constitutional Development, Dr Jabulani Mzaliya

The Chairperson, Parliamentary Portfolio Committee on Justice and Constitutional Development, the Honourable Mr Lewellyn Landers MP

SIXTH 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. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act, in lying to the Minister of Justice and Constitutional Development (as he was then named; hereafter 'the Minister') in a 'confidential' report, submitted under a covering letter quoting a dishonest and disparaging email he'd sent me, to pervert the Minister's enquiry into my complaint repeated in my third petition to the respondent and his Board, which I'd copied to the Minister, that LASA CEO and information officer Vidhu Vedalankar had persistently and repeatedly illegally refused to comply with my requests made in August and December 2010 under the Promotion of Access to Information Act 2 of 2000 ('PAIA') for access to specified LASA records, and that she'd thereby violated my fundamental right to public body information entrenched by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution.

4. For concision, I'll refer to parts of my previous Complaints against the respondent, and I request that they be read as incorporated in this Sixth Complaint. So as to avoid interrupting the central narrative, I'll provide explanatory notes and traverse some collateral matters in an Endnote.

5. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Sixth Complaint.

6. As said in my Fifth Complaint, I petitioned the respondent and the Board for the third time on 25 February 2011 about information officer Vedalankar's repeated, persistent illegal total refusal to comply with my PAIA requests of August and December 2010. And, as anticipated by my ultimatum to the respondent in my second petition that should he fail to act on this grave unconstitutional illegality I'd petition the Minister and Parliament next, I copied my third petition to LASA's Executive Authority, the Minister; to his Special Advisor; to the Deputy Minister; and to the chairperson of the Justice Portfolio Committee of the National Assembly, charged with oversight over LASA by section 55(2) of the Constitution.

7. In contradistinction to the respondent, who ignored it as he said he would, the Minister and the chairperson of the Portfolio Committee immediately recognised the enormity and the gravity of my fundamental rights violation complaints repeated in my third petition, and initiated separate, independent enquiries into them.

8. Certainly, the chairperson of the Portfolio Committee did so, because I have a copy of his demand that the respondent report to him; but in the case of the Minister, I'm surmising he also demanded a report from the fact that the respondent made a report to him. Other possible reasons the respondent reported to the Minister are canvassed in my Endnote, Part One.

9. I'm unable to furnish the Judicial Service Commission with a copy of the Minister's demand, presuming he made it, for the reason stated in my Endnote, Part Five.

10. At all events, the respondent reported to the Minister on 9 March 2011. A copy of his 'Report to the Honourable Minister of Justice and Constitutional Development Re: Adv Anthony Brink' ('the report'), which he signed on that date, is annexed marked 'A'.

11. The report was ghost-written by LASA National Operations Executive Brian Nair. I treat this further in my Endnote, Part Two.

12. I'm similarly unable to furnish the Judicial Service Commission with a copy of the letter the respondent wrote the Minister covering his report, for the reason stated in my Endnote, Parts Three and Five.

13. Whereas the report contains no 'Confidential' information of any description, let alone as any law defines it, the header of every page strangely urged on the Minister this furtive classification for the concealment of the information it contained from anyone else. Like from me.

14. The respondent didn't copy his report to me, and it was only by chance that I learned of its existence from the chairperson of the Portfolio Committee some months later, in June 2011. How LASA then unlawfully withheld and concealed the report from me for years, despite my repeatedly made requests for it during pre-trial document discovery process in the Labour Court, and how I eventually fortuitously found it and obtained a copy, is recounted in my Endnote, Part Four.

15. Concerning my complaint in my third petition made yet again about Vedalankar's outrageous repeated illegal total refusals of my PAIA requests, and her persistent violation of my fundamental civil right to information held

by the state in the democratic era, the report stated unctuously and dishonestly:

> He is currently pursuing his requests for further information with the Human Rights Commission and has threatened litigation. We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA. … Notwithstanding the insulting and malicious tone of most of Adv Brink's correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. … As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

16. The respondent's report to the Minister was self-evidently calculated to pervert his enquiry by misleading him and inducing him to believe incorrectly that:

    16.1. my three complaints to the respondent in November 2010 and January and February 2011 about Vedalankar's illegal refusals of my PAIA requests were baseless;

16.2. she'd duly complied with my PAIA requests and had refused me nothing;

16.3. a few outstanding records that she'd agreed to provide me were still being gathered for delivery;

16.4. she'd duly furnished me with all the documents I needed to see for myself that the financial explanation she'd given for the abortion of my appointment was true;

16.5. I was mentally perturbed for not accepting her budgetary insufficiency explanation for the abortion of my appointment, and for complaining that the documents that she'd put up, and others I'd sourced, did not support and actually contradicted her claim that LASA's three remaining vacant critical Senior Litigator posts had been frozen indefinitely for want of sufficient budget from the Department to fill them;

16.6. I'd asked for and was wasting her time in seeking access to irrelevant documents that had no bearing on the abortion of my appointment;

16.7. my 'requests for further information' (in fact the same illegally refused information) that I was 'currently pursuing ... with the Human Rights Commission' were an equal waste of time;

16.8. my 'threatened litigation' to compel her compliance with my PAIA requests was meritless and bound to fail;

16.9. my correspondence with LASA's executive management and Board was 'insulting and malicious' and my 'conduct ... invasive' – which is to say, in repeatedly entreating the respondent and the Board to see to Vedalankar's compliance with my PAIA requests, and thereby respect my fundamental right to information held by the state guaranteed by

section 32(1)(a) in the Bill of Rights of the Constitution, I'd grievously misconducted myself and was continuing to do so; and,

16.10. in my communications with LASA's officers, as I was pursuing entirely misconceived claims and complaints, I was raving like a demented person.

17. All the respondent's claims and clear implications to the Minister in his report about my complaint, repeated again in my third petition, that Vedalankar had illegally and unconstitutionally refused to comply with my PAIA requests, were lies.

18. The respondent knew full well they were lies, because he'd received, had read, had well understood, and had very deliberately spurned my three petitions to him inter alia about Vedalankar's persistent, repeated illegal refusals of my PAIA requests and her ongoing violation of my fundamental right to information.

19. My first petition (annexure 'A' to my Second Complaint) had closely and precisely detailed the unlawfulness and dishonesty of her first refusal in October 2010. My second petition repeated my complaint about this. And my third petition (a) reiterated my complaint; (b) added another about Vedalankar's rejection of my second PAIA request in December 2010 on the false basis that it was a mere repetition of my first request in August; and (c) complained of her ongoing repeated illegal and unconstitutional refusal of my August request for a fresh bunch of plainly spurious, unlawful reasons.

20. That is, the respondent signed and submitted the report to the Minister well knowing – because I'd spelt it out to him in fine detail, which as a top, former appellate judge he well understood – that Vedalankar's repeated absolute refusal to open LASA's books to me was incontestably illegal and unconstitutional.

21. Besides the respondent's lies and false implications to dishonestly discredit and put down my complaint about Vedalankar's persistent illegal total refusal of my PAIA requests made in August and December 2010, the respondent's report contained a multitude of other lies, chiefly concerning (a) the strange, silent, long, unexplained delay in my appointment to the Pietermaritzburg Senior Litigator post for which I'd been selected and recommended, and then (b) when I pressed Vedalankar to finalise it eight months after my successful interview, the wholly off-the-record, unauthorised, illegal abortion of my recruitment to the post (still vacant, still funded to this day). My Eighth Complaint to follow will again expose and refute the respondent's lies in this regard. (After exposing and refuting these lies in my unusually detailed original statement of claim in the Labour Court in July 2011, the respondent's first lie to the Minister was recanted and retracted as a mere mistake in an affidavit made on his behalf, and his second lie was dropped and replaced with other totally different lies told in a 'Report to Board'.)

22. With the corrupt intention of prejudicing the Minister against me and my complaint, the better to pervert his enquiry into Vedalankar's persistent illegal and unconstitutional total refusals of my requests for access to LASA's public records, about which I'd repeatedly complained to him in my three petitions, the respondent defamed me in a letter covering his report by putting up or quoting his false and insulting late-night email sent me on 24 January 2010 (annexure 'C' to my First Complaint).

23. The 'attached email' mentioned in the last sentence of the penultimate paragraph of the report is undoubtedly this outrageous email, because the same sentence appears in the subsequent report to the Justice Portfolio Committee (to be annexed to and the subject of my Seventh Complaint to follow); and in his covering letter to the Committee (which I have) it pleased

the respondent to quote his dishonest and insulting email to me to the same corrupt end. (As said, I can't provide a copy for the reason stated in my Endnote, Part Five.)

24. Since the lies told in the respondent's report and covering letter were subscribed by a senior judge, the Minister naturally believed them to be true; concluded that my PAIA complaints were devoid of merit and that I was a personal and professional reprobate as the respondent alleged, even a bit of a nutcase not worth responding to; and closed the matter – as is evident from the fact that I got no reply from him.

25. The respondent thus succeeded in corruptly misleading the Minister, and thereby perverting his enquiry inter alia into my complaint – reiterated in my third petition to the respondent on 25 February 2011, copied to the Minister – that LASA CEO and information officer Vidhu Vedalankar had repeatedly and persistently illegally refused my duly made requests for access to LASA records and was thereby violating my fundamental right to public body information entrenched by section 32(1)(a) of the Bill of Rights in the Constitution.

26. By deceiving LASA's Executive Authority in this manner, the respondent again:

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

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

ENDNOTE

Part One

1. It may be that on seeing from the cc list at the foot of my third petition that I'd copied it to the Minister, the respondent decided to report to him defensively and pre-emptively, before being required to do so.

2. It's also possible that my third petition emailed on 25 February 2011 was discussed by the Board at its meeting held the following day, Saturday the 26th, and that it was resolved to report to the Minister about it.

3. (LASA's annual report for 2010/11 shows that a Board meeting was held in February 2011; and since such meetings are invariably held on the last Saturday of the month, it was almost certainly on the 26th.)

4. I don't know and therefore can't inform the Commission whether my third petition to the Board was discussed at its February 2011 meeting, because LASA is determinedly withholding the minute of it. After it was initially refused and then repeatedly promised over the years, then repeatedly not delivered, and despite my having twice sued for it, I've been unable to extract it from LASA. Part Five below explains why.

Part Two

1. Proving this, a screenshot of the PDF 'Author' properties of the report, recording 'Briann', is annexed marked 'B'.

2. At the trial of my labour claim, Nair initially falsely disputed that he wrote it, and I was persistently but unsuccessfully cross-examined on the issue. Finally appreciating that he was cornered by his electronic fingerprints left behind on the document – like a robber leaving his ID on the floor on his way out the bank – he admitted it in his evidence.

3. My stunning and frankly quite disorientating discovery of Nair's authorship of the report just days before the trial – as well as my approximately simultaneous discovery, from his distinctive, idiosyncratic broken syntactical tics (which at trial he admitted), that he'd ghost-written Vedalankar's October 2010 letter (which at trial he denied) refusing my August records request and feeding me the phony budgetary insufficiency excuse – led me to change my mind and conclude, wrongly it turned out, that Nair was principally responsible for the illegal abortion of my appointment; and I therefore decided to exclude the respondent from involvement in it at the presentation of my case.

4. I told the trial judge so at the outset before evidence, and he was evidently relieved by this major shift in the direction of my litigation, away from the respondent – cautioning me in his chambers to stick to it, shortly after I'd begun testifying, when I said I still had a lot more evidence to lead than just the essential facts noted in my Timeline: 'Don't make the mistake of throwing your net so far out that you catch more than you can bring in.' His meaning in the context was unmistakable: *Keep the respondent out of it, or your case before me is doomed*.

5. In his evidence, however, Nair claimed to have had very little to do with the abortion of my recruitment. Considered against his pathetically weak showing in the witness stand as I cross-examined him – after which the judge found he'd been 'not generous with the truth' on 'a number' of occasions – this particular exculpatory claim of his rang true to me, because it had become clear to me that he didn't have the clout on his own, as I'd wrongly believed, to interfere in the implementation of LASA's Strategic Plan 2009–12, inter alia to employ Senior Litigators; and in my petition for leave to appeal I again indicted the respondent's central involvement in the illegal abortion of my recruitment and the cover-up that followed, criminally escalated all the way to the National Assembly.

6. My reassessment was confirmed correct in April 2016 when I discovered the respondent's long professional relationship with my rival applicant for the post as a brother Labour Court judge. It's certain now that Nair was a patsy in the matter and a tool used by the respondent in the cover-up, both of the illegal abortion of my appointment and of the illegal refusal of my PAIA requests probing it.

<u>Part Three</u>

1. The respondent's covering letter to the Minister was among the requested records that LASA finally agreed at court in February 2016 to give me, but it reneged on its undertaking to do so, and answered my application to compel its compliance with its total surrender treaty in the manner described in Part Five below.

<u>Part Four</u>

1. In my agenda for the pre-trial conference held in October 2011 after the close of pleadings in my labour case, I requested a copy of the report, obviously needing it to present in evidence at the trial, and thereafter persistently sought it three more times: in my application to compel discovery (converted at my request into a pre-trial conference at court under judicial supervision); in my agenda for this pre-trial conference at court; and in my agenda for the second pre-trial conference at court (which I had to request when LASA reneged on its discovery undertakings minuted at the first one).

2. That is, LASA determinedly withheld the report from me for about two years for different, shifting reasons – until June 2013 when, at the second conference at court just weeks from trial, at which I was desperately trying to crow-bar records out of LASA that I needed for trial, I chanced to discover it among some other Microsoft Word documents in a folder on LASA's lead in-house attorney Thembile Mtati's laptop computer as we were searching together for a different document that I needed. No longer able to lie that he didn't have it, now that I'd seen it, Mtati agreed to email it to me, which he did, in PDF, a couple of days later.

Part Five

1. In the Eshowe Magistrates Court on 14 February 2016, LASA totally capitulated to my several applications to court, set down together, for orders compelling its compliance with my PAIA requests made in the period 2013–15, including for documents I'd tried but failed to disgorge via round after round of document discovery process in the Labour Court, and agreed at last to hand over all requested records that it had until then persistently illegally refused me just as I was on the point of moving for an order that they be surrendered.

2. Among these documents were the Minister's demand for a report and the respondent's covering letter for his report: items B38 and B39 on my Consolidated List of Requested Records.

3. Under section 23 of PAIA, Mtati alleged on oath concerning the Minister's demand: 'No such record exists. ... it cannot be located.' The statements on oath contradict each other, because the second implies the record does indeed exist but has been lost.

4. Concerning the respondent's covering letter to the Minister, Mtati swore: 'No such record exists. The officials specified were consulted and they have no recollection of the existence of the record.' The lie to this is given by the penultimate sentence in the report about 'the attached email'.

5. Concerning 'The minutes of all Board meetings held in the period October 2009 to February 2011', my item H15 Mtati swore: 'No such record could be found', i.e. the records exist but are lost.

6. Mtati's perjury is exposed by the facts that (a) despite this claim, he gave me other Board minutes, besides the February 2011 one which he continued illegally withholding; and
(b) LASA cannot possibly just lose the minutes of its Board meetings: Its annual report for 2010/11 states that they're filed with the secretariat in hard copy and stored electronically on the U drive.

7. When in May 2016 Mtati disregarded my plea that he deliver the documents he'd undertaken at court to deliver but had failed to, and to furnish a fully and properly compliant section 23 affidavit in regard to documents not furnished, and I applied:

   (a) to the same Magistrate's Court in July 2016 under the default clause of the settlement agreement to compel LASA's full and proper compliance with it; and,

   (b) to the High Court at Pietermaritzburg in October 2016 to compel LASA's compliance with two other PAIA requests duly made in 2016, both illegally totally refused, the one explicitly contemplated in the settlement agreement, the other for all legal cost vouchers reflecting the colossal waste of public money spent on illegally refusing my PAIA requests in 2013–15 and then unjustifiably opposing my applications to compel them all the way to argument,

   LASA responded, in a display of supreme contempt for its constitutional information transparency obligations, by applying to the High Court at Pietermaritzburg to have me stripped of my basic civil rights (i) to information and (ii) to enforce this right in a court of law, by having me banned as a vexatious litigant. The matter has been set down for 27 October 2017.

Signed at Mtunzini on 2 July 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 2 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

Name:

Address:

Capacity:

Confidential

REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Re: Adv Anthony Brink

1. Background

On 12 July 2010 Advocate Anthony Brink wrote to the CEO expressing his concern with regards the delays in the finalisation of the recruitment process for the senior litigator position at our Pietermaritzburg Justice Centre. Adv Brink was an applicant for this position and he was interviewed by our regional selection panel. He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted interview panel.

This nationally constituted panel did not however sit to consider applicants recommended for the second stage of interviews. Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts. Adv Brink was subsequently informed of this decision.

This resulted in him generating numerous requests for information in terms of PAIA, arising from his discontent with not being appointed to this post. He also wrote several lengthy letters to various individual and organisations, including to the Chairperson and Board of Directors of Legal Aid SA. In his letter to the Board, Adv Brink also made allegations relating to multiple contraventions of the PFMA, including the presentation of false financial information in our 2009/10 Annual Report.

2. Adv Brink's discontent with non-appointment to Senior Litigator Position

From the many letters received from Adv Brink, it is clear that he believes that he was not appointed because of a racial and political bias against him resulting in a conspiracy to exclude him from Legal Aid SA. The conspiracy he alleges relates to his political views against the use of anti-retro viral drugs for HIV AIDS and also discrimination against him as a white male. He incorrectly believes that the second round of interviews was simply a confirmation process where he appears before the Chairperson of our Board who must ratify his appointment. This however is incorrect. All executives involved in this matter have confirmed that this individual was not known to them, nor his political views or publications, and that the first time they came across his name was when his letter of complaint about his non-appointment was received.

The reason for freezing of senior litigator posts was that Legal Aid SA was going through a very uncertain period with regards the provision of funding by the DoJ to finance our OSD phase 1 implementation, which was resulting in an unbalanced budget for 2010/11. As a result various options to make up for the shortfall in our funding, including the freezing of posts, were considered. Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time, as well as contingency measures that we were contemplating to cater for this, including the freezing of many positions, were shared with Adv Brink in response to his request for information in terms of PAIA.

Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he remains convinced that there is a conspiracy against him. Legal Aid SA, has under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views. He is currently pursuing his requests for further information with the Human Rights Commission and has threatened litigation. We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA.

3. Allegations of multiple contraventions of the PFMA

In Adv Brink's November correspondence to the Board Chairperson and members of the Board, he draws attention to the fact that Table 3 in Section 4.1 at page 106 of Legal Aid SA's Annual Report for 2009/10,relating to executives remuneration, contains incorrect column totals for basic salaries, total bonuses and incentives, expenses/allowances and other unspecified payments.

An examination of this table has revealed that these four column totals are indeed incorrect, although the last column relating to total expenditure is correct. It must also be noted that the row totals which show individual executives remuneration is correct. We have since been able to determine that the source of this problem was caused by human error at the time when the annual report was being prepared for printing.

This table is however not a part of the Annual Financial Statements (AFS) nor is it material to the AFS presented later in that section. They therefore do not alter any of the AFS, which do not have any errors. These are the AFS that were audited by the Auditor-General and found to 'present fairly, in all material respects, the financial position of Legal Aid SA as at 31 March 2010…".

The executive's remuneration is also referred to in Note 18.2 of the AFS (page 145 of the Annual Report) in which the total per executive as well as the overall total is indicated. The total per executive as well as the overall total in Note 18.2 of the AFS is the same as the row totals and overall total in Table 3. This confirms that the material amount included in the AFS was not incorrect and therefore our AFS 2009/10 remain correct.

Given that the AFS remain correct and that the error in Table 3 is not material to the AFS, the allegations by Brink of 'false and misleading figures' being a serious criminal offence and that our Annual Financial Statements in our Annual Report are not a 'true and fair representation' are unfounded.

4. Conclusion

Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems in this matter that Adv Brink would be well advised to approach the courts on

this matter of his alleged non appointment. We are however comfortable that we would be able to show to a court of law that our decisions taken on this matter made good business sense and was in the best interests of our organisation at the time. As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

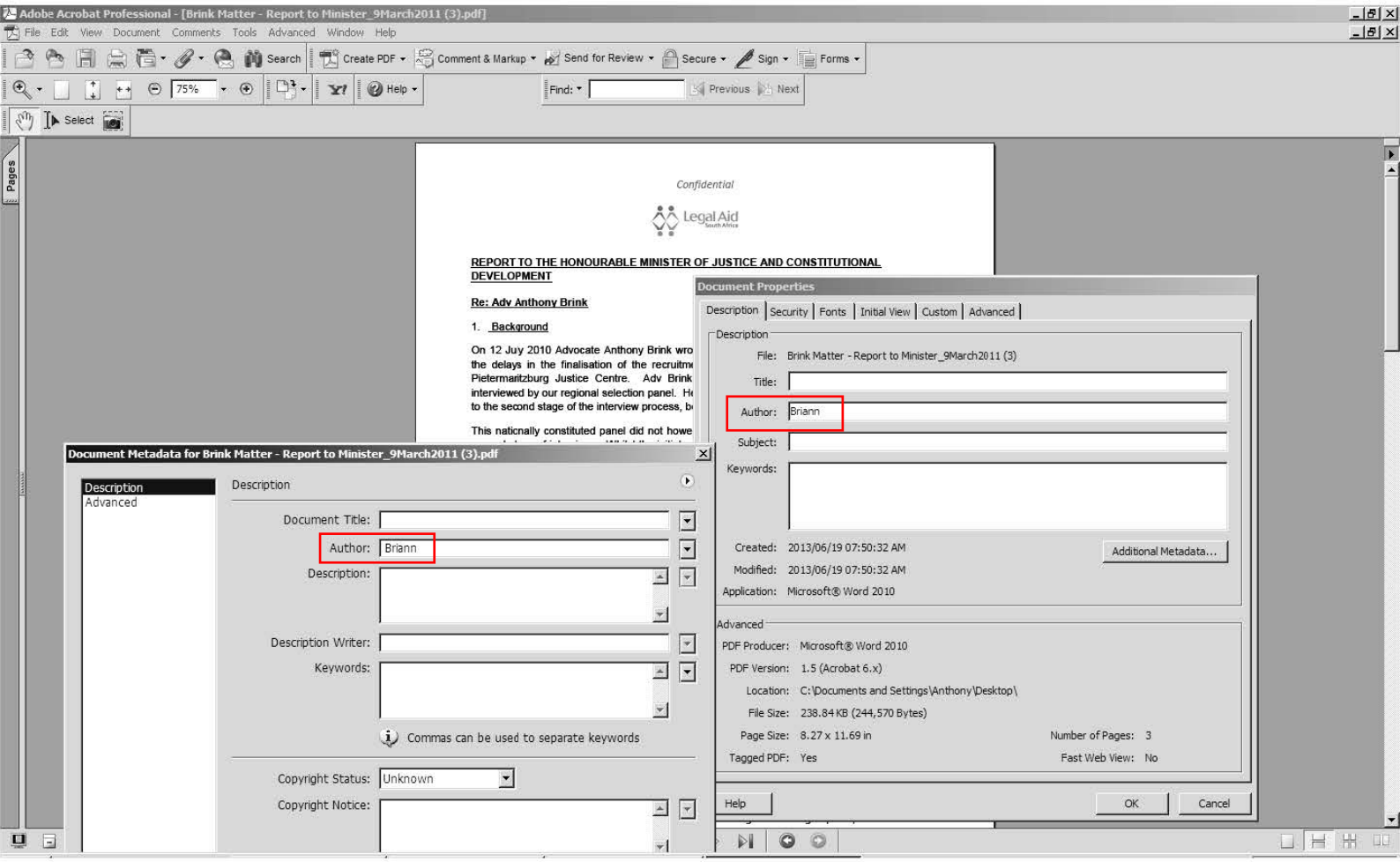
This report is sent to the Ministry to provide the necessary background to this matter as well as to contextualise and clarify the allegations by Brink re contravention of the PFMA and provides the necessary reassurance that in fact the PFMA has not been contravened.

Judge D Mlambo

Chairperson

Legal Aid SA

9 March 2011


Adobe Acrobat Professional - [Brink Matter - Report to Minister_9March2011 (3).pdf]
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Pages
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Legal Aid South Africa
REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
Re: Adv Anthony Brink
1. Background
Document Properties
Description Security Fonts Initial View Custom Advanced
File: Brink Matter - Report to Minister_9March2011 (3)
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Author: Briann
Subject:
Keywords:
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Help
OK
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Copyright Notice:

SEVENTH 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. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act, in lying to the Portfolio Committee of the National Assembly on Justice and Constitutional Development (as it was then called; hereinafter 'the Committee') in a 'confidential' report, under a covering letter quoting a dishonest and disparaging email he'd sent me, to pervert the Committee's enquiry into my complaint repeated in my third petition to the respondent, which I'd copied to the Committee, that LASA CEO and information officer Vidhu Vedalankar had persistently and repeatedly illegally refused to comply with my requests in August and December 2010 under the Promotion of Access to Information Act 2 of 2000 ('PAIA') for access to specified LASA records, and that she'd thereby violated my fundamental right to public body information entrenched by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution.

4. By perverting the Committee's enquiry with his lies, the respondent:

   4.1. obstructed and successfully defeated the National Assembly's policing duty imposed by section 55(2)(b)(ii) of the Constitution 'to maintain oversight of ... organ[s] of state', and thereby prevented it from holding LASA's most senior public officers to account for their repeated and persistent fundamental right violations – an extraordinarily serious matter after apartheid; and,

   4.2. 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.

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

6. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to deal with this Seventh Complaint.

7. Section 56(d) of the Constitution provides that 'The National Assembly or any of its committees may ... receive, petitions, representations or

submissions from any interested persons' – such as my third petition to the respondent and the Board on 25 February 2011, copied to the Committee, protesting Vedalankar's repeated illegal total refusals of my PAIA requests and pleading for their intervention and remediation. (I detail this in paragraphs 6–9 of my Fifth Complaint, to which my third petition is annexure 'A'.)

8. Section 56(b) of the Constitution provides that 'The National Assembly or any of its committees may ... require any person to report to it' – and duly acting under this constitutional power, after reading my third petition to the respondent, which I copied to the chairperson of the Committee, the latter wrote to the respondent on 23 March 2011 to 'ask you, your Board and the [Legal Aid] Board's[1] CEO for a formal response to these allegations please' concerning the latter's 'refusal to comply with the Promotion of Access to Information Act amongst other things.' A copy of the Committee chairperson's demand for a report about this from the respondent is annexed marked 'A'.

    1. The 'Legal Aid Board' to which the Committee chairperson referred, and explicitly named as such in the inside address of his letter, was LASA's previous name.

9. As just mentioned, the Committee specifically required 'a formal response to these allegations' from the respondent, from the Board, and from Vedalankar. Disobeying his clear instruction to obtain it, however, the respondent didn't seek the Board's response to my fundamental rights violation complaints protested in my three petitions; and the likely reason he didn't do so is that he didn't want the Board discussing the grave illegality and constitutional rights violations in which he was personally and directly complicit.

10. The respondent responded the Committee chairperson by letter on 22 June 2011:

> Attached please find a report on this matter which was submitted to the Minister of Justice and Constitutional Development in March 2011 and which has since been updated. In summary I wish to reiterate what I said to Mr Brink when he wrote and complained to me: [The respondent here quoted his untruthful and abusive email to me of 24 January 2011, annexure 'C' to my First Complaint.] I trust that the attached report and this letter clarify the matter concerning Mr Brink.

11. A copy of the respondent's covering letter is annexed marked 'B'; and a copy of his 'updated' report is annexed marked 'C'.

12. By quoting to the Committee his lie told me in his January 2011 email that he still saw nothing remiss in Vedalankar's illegal and unconstitutional refusals of my PAIA requests made in August and December 2010, notwithstanding my detailed complaints about this in my repeated petitions to him, the respondent thereby repeated this lie to the Committee, and thus lied to it with the dishonest object of discrediting my entirely proper, duly made complaint to him in my third petition about Vedalankar's ongoing violation of my fundamental right to information.

13. And by quoting to the Committee his false charges against me of personal and professional misconduct, the respondent defamed me with the dishonest object of misleading the Committee by discrediting me personally.

14. The respondent's corrupt intention in repeating his said lie and in defaming me to the Committee was to prejudice it against me and my complaint, the better to pervert its enquiry inter alia into Vedalankar's repeated illegal and unconstitutional refusals of my duly made requests for sight of LASA's public records, about which I'd repeatedly protested to the respondent and sought his intervention to remedy it.

15. By the time the respondent wrote and reported to the Committee in June 2011, three months after his report to the Minister in March 2011:

    15.1. I'd made a third PAIA request on 9 March 2011, testing Vedalankar's stories told me in her 28 January 2011 letter, in which she'd again refused my first PAIA request made in August 2010; and,

    15.2. a month later on 8 April 2011, deputy information officer Brian Nair had responded to my third PAIA request, and at the same time had revisited my August and December 2010 PAIA requests, which on 3 March 2011 I'd narrowed and reduced to focus on testing the specific budgetary excuse for cancelling my appointment that Vedalankar had cooked up and fed me in her October 2010 letter and reheated in her January 2011 one.

        1. Nair persisted in unlawfully refusing most of my record requests on factually and legally spurious grounds (the South African Human Rights Commission ('SAHRC') later agreed, and LASA itself conceded; see below), but at last he furnished an affidavit under section 23 of PAIA, certifying that certain requested records didn't exist – records that would have existed had I been told the truth. Crucially, he confirmed that no record whatsoever existed to support Vedalankar's brazen, ridiculous lie to me in October 2010, repeated in January 2011 and contradicted by the very records she put up 'to demonstrate' this, that 'in July 2010' she and Nair had 'immediately' frozen LASA's remaining three vacant critical Senior Litigator posts, after suitable candidates had been selected and recommended for them, for lack, 'due to the recession', of sufficient budget provided by the Department to fill them. Refuting Vedalankar's blatant lie to me, LASA's Senior Litigator salary budget applications for five years from 2010/11 to 2015/16, which I requested from the Department in 2015 (after LASA had, as usual, illegally refused me access to such information requested for one financial year) prove the posts have always been and remain fully budgeted. Also, by 2010 the global 'recession' of 2008 was long over.

16. The respondent's 'updated' report to the Committee repeated the lies he told the Minister about the handling of my PAIA requests, and told him two more new lies about this.

17. The original lies told to the Minister to put down my complaints about Vedalankar's persistent illegal refusals of my PAIA requests, which the respondent repeated to the Committee, are quoted in paragraph 14 of my Sixth Complaint, and are glossed in its paragraph 15.

18. Concerning PAIA, the report to the Committee contained the fresh allegation (among other lies unrelated to PAIA): 'We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act.'

19. In truth and in fact, and contrary to this glib, smooth-sounding criminal lie told to misinform and mislead the Committee, and to conceal from it the fact that Vedalankar and Nair had persistently and repeatedly illegally refused to comply with my duly made PAIA requests in violation of my fundamental right to information:

    19.1. my main PAIA request, my first one in August 2010, had been ignored in the 30 calendar days allowed by section 25 of the Act to respond to it – a deemed refusal under section 27; then expressly refused in October 2010 for unlawful reasons, three weeks outside 'the timeframe stipulated in the Act'; then refused again three months later in January 2011 for different unlawful reasons; and then refused again in April 2011 three months after that for more unlawful reasons;

    19.2. my second PAIA request in December 2010 had been timeously responded to in January 2011, but also unlawfully refused in toto, on the false basis that it was a mere repetition of my first August request; and,

19.3. my third PAIA request in March 2011 was similarly responded to in April 2011 within the prescribed timeframe, but was unlawfully substantially refused (as the SAHRC confirmed and LASA conceded, both quoted below doing so).

20. Again, like his false report to the Minister, the respondent's 'updated' report to the Committee contained no indication that LASA was persistently and repeatedly illegally denying me access to LASA's business records that I'd duly requested.

21. Quite the opposite, to falsely and deceptively imply to the Committee that my PAIA requests had been duly complied with, the respondent's report to it made the meretricious new statement, true on its face but false in substance: 'We copied these responses to the SA Human Rights Commission to confirm our compliance with PAIA.'

22. To the contrary, four days later on 26 June 2011, the SAHRC disconfirmed LASA's 'compliance with PAIA', as the respondent had falsely alleged to the Committee. Responding to my 'Second Memorandum' that I'd submitted, showing the factual and legal vacancy of Nair's reasons for withholding records I'd duly requested, the SAHRC concurred: 'A cogent opinion demonstrating the unlawfulness of the action of the deputy information officer is made in your memorandum.'

23. The SAHRC, together with ODAC (the Open Democracy Advice Centre, a PAIA watchdog NGO), then stepped in to try remedying the crisis (the persistent, repeated violation of the Constitution by LASA's top two management executives Vedalankar and Nair) and on 6 October 2011 held a special remedial class for the clueless 'key personnel' in LASA's national office, during which extra lesson they admitted that 'they had previously been misapplying the provisions of PAIA in certain instances' – i.e. to my requests, the only ones refused – and had 'identified [this] misinterpretation

and misapplication … as of high risk to LASA ... [They] reacted to the reporting of LASA as non-compliant to Parliament with concern'. A copy of the SAHRC's workshop report recording this is annexed marked 'D'.

24. Whereas at the trial of my labour claim in mid-2013 Nair finally admitted he'd ghost-written the report to the Minister, as proved by the 'Author' properties of the document given me in PDF (discussed and shown in paragraphs 1 and 2 of Part Two of the Endnote to my Sixth Complaint), he denied having 'updated' it for the Committee by adding any further information to it, and said could 'only assume the Judge personally wrote that' – although later he wasn't sure: he couldn't say 'If the Judge wrote it himself', implying it could have been Vedalankar to whom he'd passed the original report he'd drawn for the respondent to sign and give the Minister. Material excerpts from the trial record in this regard are annexed marked 'E'.

25. As with his report to the Minister, the respondent's 'updated' report to the Committee was clearly calculated to pervert its enquiry, by misleading it and inducing it to believe incorrectly that:

    25.1. my three complaints to the respondent in November and December 2010 and in February 2011 about Vedalankar's illegal refusals of my PAIA requests were baseless;

    25.2. Vedalankar and Nair had duly complied with my PAIA requests and had refused me nothing;

    25.3. a few outstanding records that they'd agreed to provide me were still being gathered for delivery;

    25.4. they'd duly responded to all my PAIA requests timeously under the Act;

25.5. they'd duly furnished me with all the documents I needed to see for myself that the financial insufficiency explanation Vedalankar had given me for the abortion of my appointment was true;

25.6. I was mentally perturbed (a) for not accepting Vedalankar's budgetary explanation for the abortion of my appointment (which in an affidavit confirming Nair's section 23 affidavit in April 2011 she falsely confirmed as true under penalty of perjury, as did Nair, who later went on to tell several other completely different stories, also under oath), and (b) for complaining that the documents that she'd put up, and others I'd sourced, did not support and quite obviously contradicted her claim that LASA's three remaining vacant critical Senior Litigator posts had been frozen indefinitely for want of sufficient budget to fill them;

25.7. I'd asked for and was wasting Vedalankar's and Nair's time in seeking access to irrelevant documents that had no bearing on the abortion of my appointment;

25.8. my 'requests for further information' (in fact the same illegally denied information) that I was 'currently pursuing ... with the Human Rights Commission' were an equal waste of time;

25.9. my 'threatened litigation' to compel the production of the records I'd requested was meritless and bound to fail;

25.10. my correspondence with LASA's executive management and Board was 'insulting and malicious' and my 'conduct ... invasive' – which is to say, in repeatedly entreating the respondent and the Board to see to Vedalankar's compliance with my PAIA requests, and thereby respect my fundamental right to information held by the state guaranteed by

section 32(1)(a) in the Bill of Rights of the Constitution, I'd grievously misconducted myself and was continuing to do so; and,

25.11. in my communications with LASA's officers, as I was pursuing entirely misconceived claims and complaints, I was raving like a demented person.

26. All the respondent's claims and clear implications to the Committee in his report about my complaint, repeated again in my third petition, that Vedalankar had illegally and unconstitutionally refused to comply with my PAIA requests, were lies.

27. The respondent well knew it, because, as said in paragraphs 17–19 of my Sixth Complaint, he'd received, had read, had well understood, and had very deliberately spurned my three petitions to him about Vedalankar's obviously illegal and unconstitutional refusals of my PAIA requests and her ongoing violation of my fundamental right to information.

28. And as said in my Second Complaint, the respondent cannot reasonably and credibly answer as a senior judge that he was so ignorant of a pivotal, core fundamental civil right entrenched in our democracy by the Constitution – essential, the courts have repeatedly emphasized, for the enforcement and protection of other rights – that my repeated petitions to him, especially my first one, finely detailing Vedalankar's illegal refusal to allow me access to LASA records that I wanted to examine, went right over his head, because he couldn't and didn't understand what I was complaining about.

29. The fact is, the respondent understood perfectly that I was being illegally denied duly requested records in violation of my fundamental constitutional right to information. And he was quite happy about this, because what he wanted was that I should just push off, and stop:

29.1. requesting documentary information about why my appointment to LASA's top legal professional post in Kwazulu-Natal had been cancelled off the record;

29.2. testing with PAIA the already obviously false say-so information Vedalankar had given me about it in her letters refusing me access to the records I'd requested; and,

29.3. investigating with PAIA the true reason my recruitment had been aborted.

30. Nor can the respondent reasonably and credibly contend that in repeating to the Committee the several lies he told the Minister, plus two more new ones told the Committee, all to the effect that my PAIA requests had been lawfully handled and acceded to, he was deferring to and relying on the professional legal advice of a junior advocate; which is to say, in the language of the Nkandla judgment, 'He might have been following wrong legal advice and therefore acting in good faith'.

31. Paragraph 75.2 of the respondent's answering affidavit in my application for leave to subpoena him for cross-examination at the trial of my labour claim on the reason he dismissed my petitions and lied to the Minister and Portfolio Committee, made on his behalf by LASA's lead in-house attorney Corporate Services Executive Thembile Mtati, following 'consultations' with him, records that counsel in private practice was briefed to opine on how my PAIA requests should be answered, 'to be safe', and that 'Counsel advised that limited access to information be given to the Applicant.' A material excerpt of this affidavit is annexed marked 'F'. (Its title and signature pages are part of annexure 'A' to my First Complaint.)

32. Nair's responses to my PAIA requests in April 2011 show that this young good-news lawyer's advice to LASA was that besides providing me with a

long overdue section 23 affidavit certifying non-existent records, I should be given nothing else; because for various plainly spurious reasons Nair persisted in illegally refusing my requests.

33. As said, the SAHRC confirmed this illegality soon afterwards in June 2011; and in October 2011, LASA admitted it: The SAHRC's report of the PAIA workshop (annexure 'D') records that LASA's abysmally ignorant head office 'personnel from the Legal Department' repeatedly conceded their 'lack of application based knowledge' and 'challenges complying with PAIA ... Most participants had no prior knowledge of PAIA' and 'were a little overwhelmed by the requirements of the legislation', which 'led to inconsistent application in the organisation'. So they 'were able to gain value from the training. They have as a result undertaken to review decisions which may not have had justification in terms of PAIA' – namely Vedalankar's and Nair's illegal refusals of my PAIA requests, since only mine were refused. (How the special remedial lesson was completely lost on LASA's top attorneys; how they reneged on their undertaking to review the illegal refusals of my PAIA requests; and how my subsequent PAIA requests continued being illegally refused is described in my Endnote.)

34. It bears mentioning that unlike the respondent, Satchwell J in the Gauteng Division of the High Court, under his leadership as head of that court, but following a very different, correctly dissenting line on PAIA, has sharply deplored the deliberate employment of inexperienced and incompetent junior lawyers by public bodies to obstruct access to their public records duly requested for the purpose of exposing evidence of their corruption. A news report of this is annexed marked 'G'.

35. The respondent thus 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) yet again.

36. Since the lies told in the report and covering letter were subscribed by a senior judge, the chairperson of the Committee naturally believed them to be true; concluded that my PAIA complaints were devoid of merit and that I was a personal and professional reprobate as the respondent alleged; and fairly wrote back to me on 29 June 2011: 'In light of the facts set out in Justice Mlambo's response, I now regard this matter as closed.' A copy of his letter is annexed marked 'H'.

37. The respondent thus succeeded in corruptly misleading the Committee, and thereby perverting its enquiry inter alia into my complaint – reiterated in my third petition to him on 25 February 2011, copied to the Committee – that LASA CEO and information officer Vidhu Vedalankar had repeatedly and persistently illegally refused to comply with my duly made requests for access to LASA's records, and was thereby violating my fundamental right to public body information entrenched by section 32(1)(a) of the Bill of Rights in the Constitution.

38. Plainly the reason the chairperson of the Committee decided to close his enquiry is that it was unimaginable to him that 'the facts set out in Justice Mlambo's response' – namely his covering letter and report – were actually lies told to mislead him, so as to pervert the Committee's enquiry and defeat its oversight function over LASA under section 55(2) of the Constitution, in:

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

    38.2. manifold criminal contraventions of section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, cited in paragraph 4.2 above; and,

38.3. violation of the respondent's judicial oath to 'uphold and protect the Constitution and the human rights entrenched in it' in that he deliberately 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) in twice colluding in, twice conniving at, and then twice covering up Vedalankar's illegal and unconstitutional refusals of my PAIA requests with the object of: (a) obstructing my access to records testing the lying budgetary insufficiency story she'd eventually told me, under rising pressure to account, eleven months after my successful interview for the Pietermaritzburg Senior Litigator post, as the reason my recruitment had been aborted; and,
(b) concealing the true reason for it, the respondent's wish that his former long-time judicial colleague in the Labour Court be appointed to the post for which I'd been recommended instead of me.

ENDNOTE

The SAHRC's tutorial for LASA's head office lawyers on how PAIA works entirely failed, and their undertaking to the SAHRC was promptly dishonoured: Not only were the illegal refusals of my requests not reviewed as promised, LASA continued illegally refusing virtually all my further PAIA requests made after the trial of my labour claim in mid-2013, inter alia testing the veracity of some surprising, unexpected, brand-new stories Nair told in his evidence, one of them radically contradicting and changing the previous story Vedalankar had told me twice in her letters of October 2010 and January 2011, and then confirmed on affidavit in April 2011, just as he did, namely that she and he had frozen LASA's three remaining vacant Senior Litigator posts at Pietermaritzburg, Durban and Mthatha 'immediately ... in July 2010' for want of sufficient budget from the Department to fill them 'due to the recession'.

Flatly contradicting the story he'd sworn to in April 2011, Nair testified at trial in mid-2013 that the Mthatha post was not frozen for financial reasons or at all. His new story in court was that despite his repeated appeals to Vedalankar, she'd refused to approve the abolition of the redundant Kimberley post and the creation of the sorely needed Mthatha post – *after* the new Mthatha post had been created, advertised, interviewed for, and a suitable candidate selected and recommended for it. An obvious new lie, told on oath.

One of junior counsel's fee-notes, his fourth in the matter of my PAIA requests, reflects a charge of R159 600 for spending, he claimed, eight days in the period 11–31 March 2011 'researching the law' and writing his advice, based on his new learning about PAIA, of which he'd previously had zero, into a 'memo'.

After Corporate Legal Manager Solly Sekgota 'Recommended for payment' this magnificent charge for advising LASA to continue illegally refusing me access to the records I'd duly requested, rather than just handing them over as the Constitution and PAIA required, and junior counsel was paid his fabulous fee, LASA strangely presented me with this bill for reimbursement. A copy is annexed marked 'J'.

Under PAIA I duly requested copies of all this junior counsel's other fee-notes reflecting his charges – likely millions of rands – for his services to LASA, from early 2011 on, in recommending that my PAIA requests be illegally refused and that my several applications to court to compel LASA's delivery of duly requested records be opposed with many lever-arch files full of worthless papers he drew and ultimately abandoned at the point of argument in court after reading my pre-trial conference agenda taking them to pieces.

When I stated my intention to pass these invoices on to the Auditor General for the personal recovery of this massive public revenue squandered on violating my constitutional rights – 'irregular and fruitless and wasteful expenditure' prohibited by section 38(1)(1)(c)(ii) of the Public Finance Management Act 1 of 1999 – LASA's head office executives anxiously changed their mind about showing me any more of them; refused to hand them over; is now hiding them from me and the Auditor General:

Vedalankar authorised Mtati to answer my application brought in the Pietermaritzburg High Court in October 2016 to compel their production (case 1118/16) – and to answer my application brought in the Magistrate's Court in July 2016 to compel LASA's full and proper compliance with its obligations under its settlement agreement in February 2016 to hand over all requested records or duly certify any that don't exist – with an application of its own three weeks later (case 12124/16), at further enormous wasted cost (at least 'R350 000', it was said in the Magistrate's Court) to have me banned as a vexatious litigant.

Such is the fantastic corruption of this organisation, descending to the standard last resort the world over in a major cover-up: seeking a court order to neutralise its investigator or whistleblower.

The respondent is well aware of this latest corrupt gambit to block my access to the records I've duly requested, including records LASA formally agreed in writing to give me, because all major litigation by and against LASA is reported to the Board.

Not having queried it, and not having called it out for the outrageous abuse of court process that it is, the respondent is evidently happy with executive management's move to block me in this way.

Investigative journalist Andrew Jennings, who exposed the massive corruption at the top of FIFA, explains why: 'I'm a document hound. If I've got your documents, I know all about you. ... You just find some disgraceful, disgustingly corrupt people and you work on it! ... Our job is to investigate, acquire evidence.' A material excerpt of a Washington Post article quoting him is annexed marked 'K'.

Signed at Mtunzini on 2 July 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 2 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

Name:

Address:

Capacity:

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Ref.: Brink(1)

Judge D. Mlambo
Chairperson: Legal Aid Board of S.A.
P/Bag X76
BRAAMFONTEIN 2017

23 March 2011

Dear Judge Mlambo

ADVOCATE ANTHONY BRINK

Attached for your attention please find copies of correspondence relating to a complaint comprising allegations made against the Legal Aid Board and it's CEO, Ms. Vidhu Vedalanker, with specific reference to his recruitment as Senior Litigator in Pietermaritzburg and refusal to comply with the provisions of the Promotion of Access to Information Act, amongst other things.

Having received Advocate Brink's letter you will understand that I must ask you, your Board and the Board's CEO for a formal response to these allegations, please.

Thank you.

Yours faithfully

_____

LUWELLYN LANDERS MP
Chairperson:
Justice Portfolio Committee,
National Assembly

Legal Aid South Africa

National Office
29 De Beer Street
Braamfontein
2017
Tel: 011-877-2055
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22 June 2011

Mr L Landers MP
Chairperson Justice Portfolio Committee
National Assembly
P O Box 15
Cape Town
8000

Dear Mr Landers

Adv A Brink

Your letter dated 23 March 2011 on the above matter refers. Please accept my sincere apology for the delay in responding to your letter. Attached please find a report on this matter which was submitted to the Minister of Justice and Constitutional Development in March 2011 and which has since been updated. In summary I wish to reiterate what I said to Mr Brink when he wrote and complained to me :

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

I trust that the attached report and this letter clarify the matter concerning Mr Brink.

Yours faithfully

Judge Dumisa Ntsebeza
Chairperson
Legal Aid South Africa

Confidential

Legal Aid South Africa

REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Re: Adv Anthony Brink

1. Background

On 12 July 2010 Advocate Anthony Brink wrote to the CEO expressing his concern with regards the delays in the finalisation of the recruitment process for the senior litigator position at our Pietermaritzburg Justice Centre. Adv Brink was an applicant for this position and he was interviewed by our regional selection panel. He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted interview panel.

This nationally constituted panel did not however sit to consider applicants recommended for the second stage of interviews. Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts. Adv Brink was subsequently informed of this decision.

This resulted in him generating numerous requests for information in terms of PAIA, arising from his discontent with not being appointed to this post. He also wrote several lengthy letters to various individuals and organisations, including to the Chairperson and other Directors of the Board of Legal Aid SA. In his letter to the Board, Adv Brink also made allegations relating to multiple contraventions of the PFMA, including the presentation of false financial information in our 2009/10 Annual Report.

2. Adv Brink's discontent with non-appointment to Senior Litigator Position

From the many letters received from Adv Brink, it is clear that he believes that he was not appointed because of a racial and political bias against him resulting in a conspiracy to exclude him from Legal Aid SA. The conspiracy he alleges relates to his political views against the use of anti-retro viral drugs for HIV AIDS and also discrimination against him as a white male. He incorrectly believes that the second round of interviews was simply a confirmation process where he appears before the Chairperson of our Board who must ratify his appointment. This however is incorrect. All executives involved in this matter have confirmed that this individual was not known to them, nor his political views or publications, and that the first time they came across his name was when his letter of complaint about his non-appointment was received.

The reason for freezing of senior litigator posts was that Legal Aid SA was going through a very uncertain period with regards the provision of funding by the DoJ to finance our OSD phase 1 implementation, which was resulting in an unbalanced budget for 2010/11. As a result various options to make up for the shortfall in our funding, including the freezing of posts, were considered. Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time, as well as contingency measures that we were contemplating to cater for this, including

the freezing of many positions, were shared with Adv Brink in response to his request for information in terms of PAIA.

Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he remains convinced that there is a conspiracy against him. Legal Aid SA, has under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views. He is currently pursuing his requests for further information with the Human Rights Commission and has threatened litigation. We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA. We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act. We copied these responses to the SA Human Rights Commission to confirm our compliance with PAIA.

Adv A Brink subsequently referred a dispute against Legal Aid SA in the CCMA on 20 April 2011. He alleged unfair discrimination on the basis of political conscience, belief and activism on the issue of HIV Aids and to a lesser extent race. He further contended that he held the belief that this alleged unfair discrimination resulted in him not being appointed to the position of Senior Litigator at Legal Aid SA – a position for which he applied and was interviewed. The relief he sought was monetary in the amount of R55 000 per month from January 2011 (he avers to have become aware of the alleged discrimination at this point) to the date of the conciliation which totalled R220 000. The dispute could not be resolved as Legal Aid SA submitted that it believed that it had not directly or indirectly discriminated unfairly against Mr Brink on the basis averred by him or on any other basis. A certificate of non-resolution was thus issued by the CCMA on 20 April 2011 which paved the way for Mr Brink to refer the dispute for adjudication to the Labour Court, a route he has to date not pursued.

3. <u>Allegations of multiple contraventions of the PFMA</u>

In Adv Brink's November correspondence to the Board Chairperson and members of the Board, he draws attention to the fact that Table 3 in Section 4.1 at page 106 of Legal Aid SA's Annual Report for 2009/10,relating to executives remuneration, contains incorrect column totals for basic salaries, bonuses, incentives, expenses/allowances and other unspecified payments.

An examination of this table has revealed that these four column totals are indeed incorrect, although the last column relating to total expenditure is correct. It must also be noted that the row totals which show individual executives remuneration is correct. We have since been able to determine that the source of this problem was caused by human error at the time when the annual report was being prepared for printing.

This table is however not a part of the Annual Financial Statements (AFS) nor is it material to the AFS presented later in that section. They therefore do not alter any of the AFS, which do not have any errors. These are the AFS that were audited by the Auditor-General and found to 'present fairly, in all material respects, the financial position of Legal Aid SA as at 31 March 2010…".

The executives' remuneration is also referred to in Note 18.2 of the AFS (page 145 of the Annual Report) in which the total per executive as well as the overall total is indicated. The total per

executive as well as the overall total in Note 18.2 of the AFS is the same as the row totals and overall total in Table 3. This confirms that the material amount included in the AFS was not incorrect and therefore our AFS 2009/10 remain correct.

Given that the AFS remain correct and that the error in Table 3 is not material to the AFS, the allegations by Brink of 'false and misleading figures' being a serious criminal offence and that our Annual Financial Statements in our Annual Report are not a 'true and fair representation' are unfounded.

4. Conclusion

Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems in this matter that Adv Brink would be well advised to approach the courts to ventilate his issues. We are however comfortable that we would be able to show to a court of law that the decisions we took on this matter made good business sense and were in the best interests of our organisation at the time. As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

This report is sent to the Ministry to provide the necessary background to this matter as well as to contextualise and clarify the allegations by Mr Brink re contravention of the PFMA and provides the necessary reassurance that no contravention occurred in this regard.

Judge D Mlambo

Chairperson

Legal Aid SA

9 March 2011

Updated with sections in blue font

22 June 2011

Workshop Report: PAIA

Date of Event: 06.10.2011

Venue: Braampark, Forum III, Braamfontien

Body Trained: Legal Aid South Africa

Contact Person: Ricardo

Number of Participants: 20

Materials Distributed: Handbooks, PAIA legislation and Frontline Training Manual and ODAC information packs

INTRODUCTION

The Commission and the Open Democracy Advice Centre (ODAC) co-hosted training for personnel of Legal Aid South Africa (LASA). The Rationale for the training rested on the critical services provided by the board to vulnerable groups in society and to ensure that personnel of the board had an awareness of the legislation to increase their resource base, the quality of service and advise provided to their stakeholders. It is has also been deemed important on the basis of the Commission's monitoring of LASA institutional compliance with PAIA and the need to ensure that clients who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants with recognised rights.

A number of personnel were identified for training, including personnel ranging from the head of the legal department, internal audit, national operations, call centre as well as corporate services.

LASA has experienced an increased number of requests over the past financial year. The status and contestation with some of these requests prompted the need for training to its key personnel.

LASA falls under the type "B" category of public bodies in terms of PAIA. LASA has this year complied with mandatory compliance obligations satisfactorily and has compiled its section 14 manual. It has also submitted its section 32 report in terms of PAIA for the first time this year.

In delivering the presentation the Commission made use of a power point presentation as well as case studies and interactive engagement with participants. These presentations were supported with the distribution of frontline training manuals, PAIA legislation and PAIA handbooks as a resource to the delegates for onward use.

Most participants had no prior knowledge of PAIA, although these personnel had been with their respective organization for a period in excess of three years. In this regard it should also be noted that LASA has ad hoc PAIA functionaries in their legal department. Participants agreed during discussions that this was not ideal since PAIA application was time consuming and compliance required dedicated personnel. The lack of application based knowledge; general awareness and organisational design were identified as key reasons why LASA would have challenges complying with PAIA. Other formal compliance obligations were noted in terms of DIO delegations, Section 15 automatic records lists and the provision of DIO information to the DG of GCIS in terms of section 16.

The frontline training manual was welcomed as a tool for ongoing awareness raising of frontline officials. Similarly the recommendations for induction processes of new on-boarding personnel were welcomed as a means of ensuring continued awareness of PAIA for all personnel.

Interpretation and application of definition sections of PAIA were discussed with participants through actual case examples.

All participants were appreciative of this discussion due to their own experiences in particular instances and due to the fact that they had previously been misapplying the provisions of PAIA. In certain instances, this has led to inconsistent application in the organisation. The misinterpretation and misapplication was identified as being high risk to LASA on the basis of the sensitive information and reports it generates for its clients.

The presentation provided a detailed contextual background of the legislation, emphasizing the need to break the culture of secrecy which shrouds the public service in general. Commencing

with the status of PAIA as a fundamental right, its status was reiterated and emphasized at different points of the training.

Once the primacy of the legislation was addressed, key provisions and definitions were provided and these were contextualized in hypothetical cases for application. These included defining what constituted a record, type of public body, personal requests and types of fees. Key rules of PAIA application were also shared in the course of the presentation to ensure that the PAIA principles were easily identifiable and made easy to apply.

The result of the training session apart from increased awareness of personnel included an increased appreciation by participants that a review of the organizational response to PAIA was necessary to improve compliance and efficacy.

PRESENTATION AND DISCUSSION

The Commission's needs assessment revealed a number of areas of critical need for training. Key amongst these was the following:

- PAIA objectives and its connection to records management and delivery
- Overall mechanics of the request procedure
- Responses to requests and technical application of process
- Centralizing of certain obligations e.g. the collection and auditing of request fees
- Scope of the legislation
- Exemption provisions particularly with regard to investigative reports
- Status of preliminary findings
- Transfer provisions and
- Confidentiality of reports

The session provided an in depth view of the global move toward the adoption of access to information laws in the context of accountability, the responsibility of public bodies as repositories of information, transparency and public participation to align to this move. The latter was stressed as a fundamental cornerstone of sound democracies. Through discussion of

hypothetical examples participants were able to contextualize the objectives of the legislation in their professional and personal lives. These applications were brought to bear largely on examples involving the sharing of information with employees of LASA.

Further contextualisation occurred through the location of PAIA within the bill of rights and the need for organisations to be constitutionally compliant. The primacy of the legislation and constitutional status was also discussed with participants, together with a basic information cycle to reinforce the obligation to comply with the legislation and incorporate it in the range of rights for which legal aid is offered. In this regard participants expressed difficulties in having to provide information within the stipulated timelines since most requests required information which included third party information and requests for reports of other public bodies. Similarly the addition of PAIA functions to the legal department was also identified as a challenge.

The discussion also provided the opportunity to consider the risks in litigation for unjustified refusals of information, negative imaging and drop in confidence associated with law suits of this nature.

The presentation was phased into three brief interactive sessions, each ending with a discussion session, where implementers raised issues for further clarity within the context of particular cases they had been engaging with. Most were of the view that the need for consistent records management policies and PAIA protocols were necessary, together with the need to have dedicated DIOs.

A number of other interesting challenges were noted with regard to timeframes and duties of DIO's. Key amongst these challenges was the ability to interpret and apply PAIA with confidence based on thorough knowledge. Organisational design to facilitate PAIA delivery was also raised and discussed. Participants indicated that personnel through-out the department could not identify with confidence the identity of their DIO's, nor could they agree on the identity of the IO.

The need to change levels of awareness internally was accepted and these issues were flagged on an agenda for the core PAIA personnel to respond to. Emphasis was also placed on the role of staff to be trained and briefed on PAIA more intensively since these personnel will be the

interface between high volumes of requesters and LASA. The frontline training manual was provided to the participants to assist further in this regard.

The training session was concluded with a review of current legislation before Parliament and its impact on records being held and processed by the institutions.

The following two key forms of compliance were stressed:

i. S32 PAIA Report

The mandatory obligation for all government organizations to compile a report in terms of section 32 of PAIA was discussed. LASA compliance history was flagged with participants and most responded to the reporting of LASA as non compliant to Parliament with concern.

ii. S14 PAIA Manual

The objectives and purpose of the section 14 manual was discussed. It was explained that it was mandatory for LASA to create a S14 PAIA manual. LASA had complied with this requirement but it was stressed that it should be maintained in at least three of the official languages and that it should be constantly updated to increase its relevance and accessibility. It was stressed that the development of a S14 manual is easy but was dependant on proper records management and therefore LASA had to ensure that their records management system was fully functional.

OTHER TRAINING MECHANISMS

The PAIA DVD was used as a tool to place PAIA in context for delegates. Most participants were a little overwhelmed by the requirements of the legislation and welcomed the contextualization and illustration of the purposes and objectives of PAIA through the two case examples in the DVD. They were able to identify the provisions in the formal context to identify and relate to access decisions impacting on practical delivery.

Hypothetical Case Study

2 case studies were presented to participants for group work after the presentations. These case studies extended the process of information assimilation and application. Most participants demonstrated through guidance and facilitation a grasp of the key concepts and basic response needs to the issues raised in the hypotheticals.

RECOMMENDATIONS

A critical feature of the training was that the participants comprised various departments of LASA. Although no dedicated DIO exists within the Department with an exclusive focus on PAIA, personnel from the Legal Department were able to gain value from the training. They have as a result undertaken to review decisions which may not have had justification in terms of PAIA and to create guidelines within the organization to ensure misapplication does not recur. The initial training intervention by the Commission and ODAC has yielded some gains as non traditional PAIA personnel were included to increase organisation wide awareness. The diversity of participants was therefore an excellent point of commencement and will contribute to internal promotion of PAIA across departments within LASA. It was strongly recommended by consensus of the participants that a PAIA protocol be developed and implemented.

The session has also created a heightened awareness by personnel of the need for ongoing training and engagement with the Commission to reach optimal implementation if it is to be a point of reference to other public bodies. Similarly, LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation which will allow internal interventions like training and the provision of increased accessibility of information to be addressed.

Emerging from the session is the urgent and critical need for the sector to create a structure to facilitate integrated responses to PAIA. Such a structure could at minimum consist of representatives from the legal and records management structures in each department to ensure that the processes within each department are PAIA aligned and to further enhance the process of implementation and compliance. Widespread training at regional offices was also

flagged as a need by participants. This recommendation is one which both ODAC and the Commission regard as critical for organisational wide awareness of PAIA at LASA and for fulfilment of the PAIA mandate.

that paragraph? --- My Lord, when I did the draft I would have sent it to the CEO for her to discuss further with our Chairperson. So I cannot say for sure who actually (indistinct) it, but it was certainly not me. There are also other changes.

Are there? --- Yes, if you look at background under paragraph, under background, the second paragraph, second sentence. In my initial draft I had:

"Whilst the initial reason of this panel (indistinct) sitting was caused by delays..." (intervenes)

COURT: You said the second, under paragraph 1, the second paragraph? --- Second paragraph, second sentence.

Oh, second paragraph, second sentence, the reason for freezing? --- No, we are dealing with background. Second paragraph, second sentence starts with:

"Whilst."

Yes. Yes. ---

"Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting in time suitable for all members of the panel, other pressing financial..."

If you look at that part that I read, in the version that was signed by Judge:

"Whilst the initial reason for the panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel [and then this is in addition] of which the Chairperson of the Board of Directors is one."

I can only assume the Judge personally wrote that. And... (intervenes)

Just a minute. Yes.

MR DU TOIT: Right, whatever the position (indistinct) wrote it, it was, this document was amended after you did it, right? --- Yes.

Now, we know that you had been accused of lying more than one, on more than one occasion, but in this document a number of alleged lies were identified by the applicant. And I would like just to direct your attention to them. The first is the one which is in that very paragraph that you have just dealt with. And it says:

"Other pressing financial constraints facing Legal Aid resulted in (indistinct)."

And you have testified both about the financial constraints and also about the delay between the end of November and February? --- Correct.

Yes. So what is your answer if it is suggested that this is a lie? --- It is preposterous.

Thank you. Now, the second one is at the bottom of the page:

"As I recall, as a result of the various options to make up the shortfall I find (indistinct) freezing of posts were considered various documents which clearly demonstrate the financial uncertainty that we have experienced at times, as well as, the contingency measures that we were (indistinct) to cater for this including the freezing of many positions were shared with Advocate Brink in response to his request for information in

Okay. I had by this stage commenced proceedings in the CCMA, right, in March/April, Mr Nahir? --- [No audible reply].

Because you talk about:

"He subsequently referred a dispute to the CCMA on 20 April."

--- May I bring it to your attention that in my evidence yesterday... (intervenes)

Ja. --- This paragraph was specifically not in my original letter, so I am not the one who (indistinct).

That is very interesting. Now let me ask you, are you suggesting that Judge Mlambo is the author of this information in this particular paragraph? --- I have not read the paragraph in... (intervenes)

Have a look, have a look. --- Okay, I have read it.

Okay. Let me reframe it, My Lord. As I understand it from what you said previously, this must have been inserted by either Judge Mlambo or Vedalankar? --- It is not either or, it could be anyone else the Judge wanted the information from. I am not in the position... (intervenes)

Okay. --- To indicate who wrote it.

Okay. --- If the Judge wrote it himself.

Okay. --- Or the CEO or anyone else.

Fair enough. But the allegation to Parliament is that mine is a money claim, mine is a money claim:

"The relief is sought is monetary..."

And there is a figure here:

I admit the contents of this paragraph.

73. **AD PARAGRAPH 25.**

73.1 I deny the correctness of the contents of this paragraph.

73.2 I have set out the background facts leading to the abortion of the recruitment of the Applicant's application. I will not answer to the Applicant's speculation regarding the reasons why his application was aborted.

74. **AD PARAGRAPH 26.**

74.1 I have stated that none of these institutions that the Applicant has referred this matter to have seen it necessary to contact the Respondent or LASA for any response.

74.2 Accordingly, I have no knowledge of the facts set out herein.

75. **AD PARAGRAPHS 27 – 29.**

75.1 I deny the correctness of the contents of these paragraphs.

75.2 I submit that the CEO considered the Applicant's requests for access to information in terms of PAIA and felt justified to refuse him access thereto. Thereafter and to be safe, the same request was given to counsel for his opinion. Counsel advised that limited access to information be granted to the Applicant.

Judge tells City Power: You f****d up!

May 23 2015 at 09:15am
By Thabiso Thakali

Comment on this story

Joburg High Court Judge Kathy Satchwell. Photo: Sharon Seretlo

Johannesburg - A Joburg High Court judge has launched a scathing attack on the City of Joburg and its power utility City Power, calling them “idiots” and accusing them of “f***ing up” over their reluctance to reveal information about a R800-million solar geyser deal.

In a Promotion of Access to Information case brought by Numsa, the metal workers union, against City Power, Judge Kathy Satchwell accused the utility’s officials of “covering up fraud and corruption” over its refusal to hand over documents relating to the contract on solar geyser heaters.

Judge Satchwell was unimpressed with City Power’s failure to respond to Numsa’s requests for information since 2013. She said that City Power had replaced the Road Accident Fund “in so far as incompetence and fraud is concerned”.

Lawyers representing City Power argued that the judge was “biased” after she had ordered that legal costs be paid by the utility’s officials responsible for the litigation out of their own pockets, and not the ratepayers’. The lawyers argued that Satchwell had used “profanities” in her chambers against the utility’s attorneys by calling them “idiots” and remarking that someone had “f***ed up”.

“Some person” within City Power, she remarked, was “lazy, covering up, hiding things, and idiots and the like” and the “knowledge of such things comes to one like a dagger in the night”.

“The learned judge stated that the City… only uses young incompetent black attorneys or little grey old white men sucking up to the black people in the city,” read the application by City Power’s lawyers.

City Power said that the judge had suggested that these attorneys were used in order to cover up fraud and corruption. “The learned judge stated that the city believes that it is a tail wagging the dog and that ‘I should decide whether or not I am going to allow this’.”

The utility’s lawyers said this was an indication of bias because the judge had not heard the merits of the case.

The utterances were apparently made in April in Judge Satchwell’s chambers when she granted an order of costs to Numsa.

At the heart of the matter is Numsa’s request for information on an R800-million contract for the supply and installation of solar geysers in 2012.

Numsa had sought the court’s intervention after its requests for information in August 2014 had been ignored.

The union previously alleged that the contract was awarded to companies that imported the geysers from

China while the same were made in the East Rand. According to the recusal application by City Power, Judge Satchwell also stated that, by not disclosing the documents sought by Numsa, “You are being tarred by the tar of President (Jacob) Zuma. Go think about this”.

But on Friday Satchwell was unapologetic as she refused the application to recuse herself. She told the defence lawyers she was only prepared to amend patent errors in her judgement. The City Power attorney, she remarked, had tried to set her up but “I don’t care”.

City Power has people “who don’t know how to do their job. That sounds like incompetence – so my ‘bias’ remains”.

Satchwell added that profanities she was accused of using “would worry my mother but not my father”.

She said that her order for costs to be paid by officials of City Power was meant to “look to see if anybody has placed City Power in the dwang”.

“City Power might have been badly done by its staff,” she said. “Look to see if there should be any employees held responsible.” She dismissed the application for her recusal but the order for City Power to pay the legal costs remained.

Judge Satchwell instructed the attorneys to write to Sicelo Xulu, City Power’s managing director, to put his house in order. She said that City Power’s refusal to disclose information was made without reading the relevant provisions of the Promotion of Access to Information Act.

Judge Satchwell said City Power's information officer had refused Numsa’s request in 2013 and 2014 unprocedurally and without full information before him. The utility had been “contemptuous” to the court, she said. Judge Satchwell said Numsa may appeal the refusal through internal processes before turning to the court for assistance.

In 2001, Satchwell, a lesbian, won the right for her partner to enjoy the same benefits as those previously reserved for spouses of married heterosexual judges, a right confirmed by the Constitutional Court the following year.

Saturday Star

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LUWELLYN LANDERS MP
National Assembly
e-mail:
llanders@parliament.gov.za
29 June 2011

Ref.: Brink (29-06-11)

Adv. Anthony Brink
25 Baker Road
Prestbury
PIETERMARITZBURG

Dear Advocate Brink

Your e-mail dated Tuesday, 28 June 2011 refers.

On receipt of your original letter I submitted a letter to the Chairperson: Legal Aid South Africa (LASA), Judge D. Mlambo dated 23 March 2011 (please see Annexure **A**).

On 22 June 2011 I received a written response from Judge Mlambo, Chairperson: LASA, a copy of which I have attached (please see Annexure **B**) which serves as a formal response to your complaint.

It is important to note that whilst I have sought to comply with your request for intervention in this matter, normally neither I nor the Justice Portfolio Committee becomes involved in the day-to-day operational matters of LASA, or any other entity of the Justice family.

If I have been tardy in not responding to you sooner, do forgive me. In light of the facts set out in Justice Mlambo's response, I now regard this matter as closed. Thank you.

Yours faithfully

_____
LUWELLYN LANDERS MP
Chairperson: Justice & Constitutional Development
Portfolio Committee

10 years in the business of satisfying legal practice

ADV. THABISO MACHABA BA LLB LLM LLM (TAX LAW) WITS†

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TAX INVOICE NO: 13/11

To: THE LEGAL AID BOARD

Attention: Mr Solly Sekgota

Your Fax: (011) 887 2000

Your Tel: (011) 887 2011

Date: 31 Mar. 2011

Your Ref: Mr Sekgota

My Ref: 4TH Acc/LAB/A.BRINK PAIA/INV. 13/11

Re: **ACCOUNT IN THE SETTLING OF DRAFT MEMORANDUM IN VIEW OF THIRD REQUEST BY A BRINK AND CONSEQUENT CONSULTATION WITH MR T. MTATI IN A BRINK'S APPLICATION FOR ACCESSTO INFORMATION I.T.O. PAIA 2000**

HEREWITH IS MY FOURTH ACCOUNT FOR YOUR SETTLEMENT

Activity	Dates	Fees
On consultation with Mr Mtati and on considering the papers afresh and preparing to settle a memo to the LASA in view of Mr Brink's 3rd request for access for information	**11 Mar. 2011**	**@ R10000.00**
On researching the law after consideration of Mr Brink's third request and on settling the required memorandum in answer to various questions posed by Mr Mthati o.b.o LASA and on emailing same to Mr Mthati and Mr Sekgota for 3.5 days	**16 – 19 Mar. 2011**	**@ R60000.00**

† *"Forgiveness is the key to action and freedom."* – Hannah Arendt

On perusal of Mr Brink's referral of a complaint to the Human Rights Commission and considering same; and incorporating its contents to the final memo and on settling memo on whether the LAB completely responded to Mr Brink's 15 December 20101 request for access to information.	**26 – 28 Mar. 2011**	**@ R30000.00**
On perusal of Mr Brian Nair's affidavits and considering the laws that arise therefrom and researching the law to see if same complies with PAIA and administrative law principles for 2.5 days.	**29 – 31 Mar. 2011**	**@ R40000.00**

TOTAL BALANCE DUE TO ADV. T MACHABA: R140000.00

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TOTAL PAYABLE: R159600.40

Herewith are Adv. Machaba's banking details for effecting payment.

Bank and branch: Standard Bank (Small Street City Branch)
Account type: Cheque Account
Account No: 001087673

Thank you for the above brief and do enjoy words of wisdom below.

Please provide proof of payment to Adv. Machaba for filing and records.

THABISO MACHABA
PITJE CHAMBERS
JOHANNESBURG

The Washington Post

Morning Mix

How a curmudgeonly old reporter exposed the FIFA scandal that toppled Sepp Blatter

By Michael E. Miller June 3 at 5:03 AM

The biggest news story of the year was breaking, but the journalist responsible was fast asleep.

It was just after dawn on May 27 when Andrew Jennings's phone began ringing. Swiss police had just launched a startling raid on a luxury hotel in Zurich, arresting seven top FIFA officials and charging them and others with running a $150 million racket. The world was stunned.

The waking world, that is. If Jennings had bothered to climb out of bed, he wouldn't have been surprised at the news. After all, he was the man who set the investigation in motion, with a book in 2006, "FOUL! The Secret World of FIFA: Bribes, Vote Rigging and Ticket Scandals," followed by an exposé aired on the BBC's "Panorama" program that same year, and then another book in 2014, called "Omerta: Sepp Blatter's FIFA Organised Crime Family."

"My phone started ringing at six in the morning," Jennings said Tuesday from his farm in the hilly north of England. "I turned it off actually to get some more sleep, because whatever is happening at six in the morning is still going to be there at lunch time, isn't it?"

If you can't tell already, Jennings is an advocate of slow, methodical journalism. For half a century, the 71-year-old investigative reporter has been digging into complex, time-consuming stories about organized crime. In the 1980s, it was bad cops, the Thai heroin trade and the Italian mob. In the '90s, he turned to sports, exposing corruption with the International Olympic Committee.

For the past 15 years, Jennings has focused on the Federation Internationale de Football Association (FIFA), international soccer's governing body. As other journalists were ball watching — reporting scorelines or writing player profiles — Jennings was digging into the dirty deals underpinning the world's most popular game.

"Credit in this saga should go to the dogged obsession of a single reporter, Andrew Jennings," the Guardian's Simon Jenkins wrote last week, citing in particular Jennings's BBC "Panorama" film called "The Beautiful Bung: Corruption and the World Cup."

Now, after decades of threats, suspicions about tapped phones and intermittent paychecks, Jennings is being vindicated with every twist and turn in the FIFA scandal.

[Interpol issues 'red notices' for 6 people tied to the scandal: Who they are and what that means]

During a phone interview Tuesday morning with The Washington Post, he called FIFA President Sepp Blatter "a dead man walking." Two hours later, Blatter announced he was stepping down, just days after being reelected.

"I know that they are criminal scum, and I've known it for years," he said. "And that is a thoughtful summation. That is not an insult. That is not throwing about wild words."

"These scum have stolen the people's sport. They've stolen it, the cynical thieving bastards," he said. "So, yes, it's nice to see the fear on their faces."

A 'document hound'

The best way for Americans to imagine Andrew Jennings is to roll Bob Woodward and Carl Bernstein together, then add a touch of a Scottish burr and plenty of flannel. Jennings was born in Scotland but moved to London as a child. His grandfather played for a prominent London soccer team, Clapton Orient (now called Leyton Orient), but Jennings had little interest in the sport. He did, however, have a nose for journalism.

After finishing school, Jennings joined the Sunday Times in London, where he got a taste of investigative journalism. He went to work for the BBC, but when the network wouldn't air his documentary on corruption within Scotland Yard, he quit and joined a rival program called "World in Action." He turned his police investigation into his first book, "Scotland Yard's Cocaine Connection," and a documentary.

"I'm a document hound. If I've got your documents, I know all about you," he said. "This journalism business is easy, you know. You just find some disgraceful, disgustingly corrupt people and you work on it! You have to. That's what we do. The rest of the media gets far too cozy with them. It's wrong. Your mother told you what was wrong. You know what's wrong. Our job is to investigate, acquire evidence."

That is, essentially, Jennings's mantra: Take time, dig up dirt and don't trust those in power. He applied the same logic to international drug smuggling rings and Italian mafiosi.

Then sports. After the Scotland Yard exposé, a colleague at "World In Action" named Paul Greengrass — who later became a Hollywood filmmaker, directing several Jason Bourne films as well as the recent blockbuster "Captain Phillips" — suggested investigating the IOC.

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

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].

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.

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

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

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,

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.

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

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.

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,

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.**

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

> **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

> 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,

> 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

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].

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.

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:

> 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

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].

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].

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

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:

> 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

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.

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

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

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.

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

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].'

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.

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.

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

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

(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.

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.'

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].)

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.

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

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

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

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

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.

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

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:

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

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,

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

Name:

Address:

Capacity:

Complaints 1-8 against Mlambo JP

Proof of post to the Judicial Service Commission on 23 June (complaints 1–5), 3 July (complaints 6 & 7) and 14 July 2017 (complaint 8)

(Complaint 1 was emailed in PDF on 4 June, and acknowledged on 6 June, and the original followed by post along with complaints 2–5)

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA
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JUDICIAL CONDUCT COMMITTEE

Enq: Lynette Bios
Tel: (010) 493 2500(switchboard)
Fax: 086 640 9601

Mr. A Brink
25 Balcomb Avenue
Zini River Estate
Mtunzini

Per email: anthonybrink.sa@gmail.com

Our Ref: JSC/533/17

Dear Mr. Brink

RE: COMPLAINT AGAINST JUDGE PRESIDENT MLAMBO OF THE GAUTENG DIVISION OF THE HIGH COURT

The Judicial Service Commission (JSC) hereby acknowledges receipt of your complaint.

Your complaint will be forwarded to the Judicial Conduct Committee for consideration.

The Secretariat will notify you of the outcome of your complaint in due course.

Yours sincerely,

L BIOS
Secretariat for the Judicial Service Commission
Date: 06/06/17

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

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Fax: 086 640 9601

Mr. A Brink

25 Balcomb Avenue

Zini River Estate

Mtunzini

Per email: anthonybrink.sa@gmail.com

Our Ref: JSC/533/17

Dear Mr. Brink

RE: FURTHER COMPLAINTS AGAINST JUDGE PRESIDENT MLAMBO OF THE GAUTENG DIVISION OF THE HIGH COURT AND JUDGE PRESIDENT WAGLAY

The Judicial Service Commission (JSC) hereby acknowledges receipt of your complaints.

Your complaints will be forwarded to the Judicial Conduct Committee for consideration.

The Secretariat will notify you of the outcome of your complaint in due course.

Yours sincerely,

L BIOS

Secretariat for the Judicial Service Commission

Date: 29/08/2017

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case No: 1118/16

In the matter between:

ANTHONY BRINK Applicant

and

THEMBILE MTATI N.O.
DEPUTY INFORMATION OFFICER
LEGAL AID SOUTH AFRICA Respondent

AND

Case no: 12124/16

In the matter between:

LEGAL AID SOUTH AFRICA Applicant

and

ANTHONY ROBIN BRINK Respondent

UNCONDITIONAL OFFER TO SETTLE
UNDER RULE 34(14)

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1. This is an unconditional offer by the applicant in case 1118/16, also the respondent in case 12124/16, ('Brink') to settle both cases, with the object of achieving a global final total settlement and bringing an absolute end to all his disputes with and his claims and complaints against Legal Aid South Africa ('LASA') and its top officers – principally Board chairperson Dunstan Mlambo JP; Chief Executive Officer Vidhu Vedalankar; National Operations Executive Brian Nair; Human Resources Executive Amanda Clark; and Legal Executive Thembile Mtati.

2. Whereas:

   2.1. In November 2009, following its interviews of four short-listed candidates, a duly constituted selection panel comprised of LASA's most senior lawyers in KwaZulu-Natal unanimously selected and recommended Brink for its long-vacant, repeatedly advertised Senior Litigator post at Pietermaritzburg ('the post'), and duly certified that his appointment to it would conform to LASA's employment equity targets.

   2.2. The specialist post at the apex of LASA's legal professional staff establishment, and one of just nine in the country, was created by resolution of LASA's Board of Directors on 24 November 2006 with the object of 'Increasing Senior Litigation capacity' 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' – so executive management duly motivated the creation of the posts.

   2.3. In her CEO report for 2012/13, CEO Vedalankar repeatedly emphasized that employing Senior Litigators was a key component of LASA's Strategic Plan 2009–12 – duly submitted to the Department of Justice

and Correctional Services ('the Department') under section 52 of the Public Finance Management Act 1 of 1999 ('PFMA'), and thereafter presented to the Justice Portfolio Committee in the National Assembly.

2.4. LASA's High Court Unit Manager at its Durban Justice Centre, Bongani Mngadi, was recommended for promotion to the simultaneously advertised equivalent post at Durban.

2.5. One of the other two unsuccessful applicants, also short-listed and interviewed for the posts, was former acting judge Mzochithwayo Ngcamu, Board chairperson Mlambo JP's long-time judicial colleague in the Labour Court, which he headed at the time, and with whom he'd worked as a fellow judge for about six years. (The former acting judge, for whom the qualifying criteria for the posts appear to have been gerrymandered in his favour by making them uniquely high relative to all other such posts in the country, was then unexpectedly eliminated by the selection panel for lack of right of appearance in the High Court as an attorney, meaning he'd never litigated a case on his feet there.)

2.6. This potently relevant information about the Board chairperson's long professional relationship with Brink's rival for the post, recorded by the selection panel in its recommendation report, was illegally concealed from Brink, in criminal contravention of section 90(1) of the Promotion of Access to Information Act 2 of 2000 ('PAIA'), by blacking it out with a Koki pen before the thus censored report was finally surrendered to him under renewed SAHRC pressure in January 2011 – after his request for sight of it in August 2010 under PAIA was initially illegally refused, first mutely and then expressly; and it was disclosed to Brink only in April 2016 (years after trial and judgment in his correctly dismissed (see below) unfair discrimination claim in the Durban Labour Court) following LASA's capitulation just before argument to Brink's

application to the Eshowe Magistrate's Court to compel its compliance with another PAIA request for a copy of the full uncensored report.

2.7. At all material times:

2.7.1. LASA has budgeted for salary for the post;

2.7.2. LASA has applied to the Department for such salary funding;

2.7.3. The Department has approved such salary funding for the post under section 53(1) of the PFMA;

2.7.4. the National Assembly has voted such salary funding for the post; and,

2.7.5. the Department has paid LASA such salary funding for the post,

– and all this, year after year, to date.

2.8. For over ten years now, the duly budgeted and fully funded critical specialist legal professional post has remained unfilled – with the result that KwaZulu-Natal still has no 'professional staff that are senior enough to take on … cases of a highly complex nature' and 'able to undertake more complex work as well as support and mentor our other High Court staff', as LASA's management executives and Board both considered necessary when motivating and approving the creation of the post in 2006.

2.9. No record exists of any decision not to fill the post taken by any competent authority at LASA or by anyone at all.

2.10. Section 53(4) of the PFMA holds LASA's 'accounting officer [CEO Vedalankar] ... responsible for ensuring that expenditure of that public entity is in accordance with the approved budget', i.e. budgeted funding be applied to the purpose for which it's been approved and paid by the Department.

2.11. In dereliction of this financial responsibility, and in breach of the PFMA, CEO Vedalankar has failed since 2010 to ensure that the salary budget for the post, for which LASA annually applies and which the Department annually provides – many millions of rands to date – is applied to the employment of a duly selected, recommended and approved candidate to fill it.

2.12. The rule of law requires that in recruiting staff LASA's management executives comply with and act in accordance with two internal regulations promulgated by LASA's Board of Directors, namely:

2.12.1. the 'Policies and Procedures on Recruitment, Induction, Probation and Relocation' – governing the short-listing and interviewing of applicants for vacant posts, and the selection and recommendation of 'the most suitable candidate for appointment in a post' by a duly constituted selection panel, following which its recommendation must be forwarded to the executive authority/ies delegated for approval; and,

2.12.2. the 'Approval Framework' – delegating to various specified national management executives the power to approve or reject a selection panel's recommendation, according to the seniority of the post in question; and in the case of Senior Litigator posts at the top of LASA's legal professional ranks, delegating it jointly to LASA's most senior executives, CEO Vedalankar and NOE Nair.

2.13. Under these regulations:

2.13.1. besides CEO Vedalankar and NOE Nair, no other national executive – such as Legal Executive Patrick Hundermark and/or Human Resources Executive Amanda Clark – has any legal authority to approve or reject a candidate duly recommended by

a selection panel for a Senior Litigator post, even less to hold another interview of him/her to decide whether or not to appoint him/her; and,

2.13.2. no *non-executive* member of LASA's Board of Directors – such as its chairperson Mlambo JP – has any legal authority to intrude himself into executive management's recruitment operations, and to re-interview and approve or reject a candidate duly recommended by a selection panel for a Senior Litigator post. (The Approval Framework limits the power of non-executive Board directors in staff recruitment to approving the appointment of the CEO and NOE.)

2.13.3. It's manifestly illegal for *non-executive* Board chairperson Mlambo JP, sitting in committee with the above-mentioned and other LASA executives, to re-interview a candidate duly selected and recommended after a duly conducted interview by a duly constituted selection panel for a Senior Litigator post, and then to reject him/her, and appoint a candidate not recommended by the selection panel, even disqualified by it;

2.13.4. Brink is not legally subject to any further interview for the post by any of these persons, or at all.

2.14. Nothing in fact or in law prevents CEO Vedalankar and NOE Nair from carrying out their joint approval function delegated to them by the Approval Framework, and approving the selection panel's unanimous selection and recommendation of Brink for the still vacant, budgeted and funded, critical, top echelon specialist legal professional post, so that the indigent in KwaZulu-Natal might have the benefit of 'professional staff that are senior enough to take on … cases of a highly complex nature' and who are 'able to undertake more complex work as

well as support and mentor our other High Court staff', thus 'Increasing Senior Litigation capacity' in the province.

3. Against this background, Brink proposes that LASA:

   3.1. appoints him to the post; and,

   3.2. compensates him for lost income and other benefits arising from its failure to appoint him on 1 January 2010 (being the earliest date he indicated to the selection panel that he'd be able to commence in the post, if recommended) in a sum and on terms to be negotiated, compromised and agreed. If no accord can be reached, an arbitrator will determine these questions and his award, including as to costs, will be final.

4. In which event:

   4.1. Brink will abandon all his claims to sight of LASA's public records which he's duly requested under PAIA in the exercise of his fundamental right to information in our open democracy entrenched by section 32(1)(a) of the Constitution – which records LASA has either illegally refused him outright or has failed to deliver in breach of its undertaking to do so recorded in the settlement agreement it signed in the Eshowe Magistrate's Court on 11 February 2016. Brink will likewise abandon his claim to the delivery of a compliant PAIA section 23 affidavit regarding requested documents that don't exist or can't be found.

   4.2. Brink and LASA will withdraw their respective applications to this court under case numbers 1118/16 and 12124/16; and the parties will bear their own costs to date.

   4.3. Brink will withdraw his pending application to the Eshowe Magistrate's Court to compel LASA's full and proper compliance with the said settlement agreement; and the parties will bear their own costs to date.

4.4. Brink will abandon his further intended complaints to the several authorities mentioned in his affidavits in the two applications between himself and LASA in this court and in the Eshowe Magistrate's Court.

4.5. Brink will abandon his similarly stated intention to apply to the Durban Labour Court for an order rescinding its judgment in his labour case under case number 529/11, on the grounds that LASA's defence was a fraud on the court – proved inter alia by documents disgorged from LASA after trial via PAIA and via an application to court to compel compliance with it, showing categorically that the evidence of its single witness at the trial, NOE Brian Nair, was materially perjured in multiple respects.

4.6. LASA will consent to rescission of judgment in Brink's said labour case, and to the substitution of the court's order dismissing his claim* with costs, with an order of absolution from the instance, no order as to costs. (*Brink concedes he incorrectly founded his claim on unfair discrimination, ignorant when he sued of his true cause of action: jobs for pals corruption (the intent foiled by his determined pursuit of the post) which LASA succeeded in illegally concealing from him until long after the trial and judgment, in the manner described in paragaph 2.6 above.)

4.7. LASA will abandon its costs order awarded by this court in case 12977/15 (dismissed only for want of urgency in the court's view and not on the merits).

4.8. Brink and LASA's officers will withdraw all pending complaints made against each another, on the basis that they've reached a complete settlement of their nearly eight year dispute arising from the irregular off-the-record silent abortion of Brink's appointment to the post following the selection panel's unanimous recommendation of him for it, and that they are content to proceed from a clean slate.

Signed at Mtunzini on 26 September 2017.

ANTHONY BRINK
APPLICANT in case 1118/16
RESPONDENT in case 12124/16

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TO:
Legal Aid South Africa
c/o Pietermaritzburg Justice Centre
183 Church St
Pietermaritzburg
(Mr Kaloo)

AND TO:
The Registrar, High Court of South Africa
KwaZulu-Natal Division, Pietermaritzburg
301 Church Street
Pietermaritzburg

PO Box 565
Empangeni 3800
2 November 2017

Vidhu Vedalankar,
CEO and Information Officer
Legal Aid South Africa
29 De Beer Street
Braamfontein

By email: vidhuv@legal-aid.co.za

And cc to the authorities and interested parties mentioned herein.

Dear Ms Vedalankar

MY SEVERAL PAIA REQUESTS FOR ACCESS TO LASA'S RECORDS, CURRENTLY PENDING YOUR DECISION, AND PREVIOUSLY ILLEGALLY REFUSED AND BEFORE THE COURTS: PROPOSALS FOR EXPEDITIOUS, LAWFUL DISPOSAL

A. LASA'S ABORTIVE APPLICATION TO HAVE ME DECLARED A VEXATIOUS LITIGANT

1. You'll have heard from your Chief Legal Executive Patrick Hundermark that his scheme to derail my investigation, using PAIA, of serious financial irregularity involving many millions of rands, and recruitment and other corruption at LASA, including criminal corruption (perjury, lying and false reporting to Parliament), by blocking my access to incriminating records – duly requested, illegally refused, and therefore sued for – with an application to have me declared a vexatious litigant failed dismally on Friday.

2. Did he also tell you that the judge thought the application so obviously meritless that he dismissed it without even calling on me to argue?

B. MY JUST-SUBMITTED PAIA REQUEST

3. On Monday I delivered a PAIA request to you, inter alia for records of the colossal wasted cost of the application (it's online at https://goo.gl/ExRZrA).

4. Under section 11(3) of PAIA, the stated purpose of my request, or whatever you might think it is, is irrelevant to your decision of it. Likewise what my request 'relates to', LASA's favourite phrase, ignorantly repeated over the years to illegally refuse my duly made PAIA requests, despite the SAHRC's unsuccessful attempts on 6 October 2011 and 22 August 2012 to teach it that what a PAIA request 'relates to' – including to past, pending, or future litigation – is immaterial, unless it's hit by a ground for refusal allowed by sections 34 to 45 in Chapter 4 of Part 2 of the Act. And section 7, which ordinarily bars the use of a document in legal proceedings obtained via PAIA after they've commenced, unless the court permits it, isn't in that chapter. (Sadly the point is beyond your head office lawyers' grasp, and their ongoing misconception about this showed up in the vexatious application yet again.)

5. Nonetheless, to pre-empt the usual dishonestly false blanket justification I've come to expect from LASA for refusing my PAIA requests, duly made in the exercise of my constitutional right to information, namely that they're all 'manifestly frivolous and vexatious' (per section 45 of PAIA), despite my expressly stated serious purposes – a justification ultimately abandoned in the Magistrate's Court in February 2016, then obtusely revived in September that year – I'm spelling out for you the serious purposes of my latest PAIA request.

6. Before doing so, let me recapitulate:

   6.1. To compel your and your deputy information officers' compliance with several illegally and unconstitutionally refused PAIA requests duly made in 2013–15, I brought five applications in Eshowe Magistrate's Court under section 78 of the Act. All were opposed with several lever-arch files of answering affidavits full of fatuous defences, drawn

by junior counsel in private practice, who obviously had no idea what he was doing and was subsequently fired. After milking LASA of a fortune.

6.2. At the point of argument in court on 11 February 2016, Hundermark instructed Legal Executive Thembile Mtati – present at court and doing what he was being told to do over the telephone – to drop LASA's opposition to my five applications, which I'd set down together, reverse the refusals of my requests, and agree to hand over all requested documents, or duly certify under section 23 those that don't exist. After years of illegal obstruction and delay.

6.3. Mtati then failed to do honour the agreement. Numerous promised documents weren't delivered, and his two section 23 affidavits were both non-compliant and defective. As the magistrate later pointed out in court.

6.4. I detailed all these problems in three notices of breach, requesting full and proper compliance with the settlement agreement.

6.5. When these were spurned and then ignored, I returned to court under the default clause of the settlement agreement to apply for orders compelling full and proper compliance with it.

6.6. Mtati responded by supplying me with some of the outstanding documents, and then annexed more of them to his answering affidavit.

6.7. But many important, certainly extant documents remained outstanding, and likewise a compliant section 23 affidavit.

6.8. On 8 September 2016, I was on the point of moving for orders compelling full and proper compliance with the settlement agreement, when Mtati, present in court, informed the magistrate via counsel that in view of its expected high cost you and Hundermark had specially authorised an application to the High Court to have me declared a vexatious litigant; and for this purpose sought an adjournment of my application to compel.

6.9. Opposing the adjournment, I protested to the magistrate in vain that no basis whatsoever had been shown for the application. And when the case came up in the High Court a year later the judge entirely agreed.

7. Besides being corruptly motivated to block my access to incriminating records proving further perjury and recruitment corruption at LASA, over and above the perjury and recruitment corruption that I've already uncovered with PAIA, your vexatious application against me was an enormous waste of public money.

8. In my letter to you of 15 September 2016, I cautioned you that the PFMA requires you as accounting officer to 'take effective and appropriate steps' to 'prevent … irregular and fruitless and wasteful expenditure' at LASA, like bringing baseless vexatious litigation proceedings to block access to its public records.

9. Yet you carried on with your vexatious application, disregarding section 83(1)(b) of the PFMA, which provides that an accounting officer who 'wilfully or negligently makes or permits an irregular expenditure' commits an act of 'financial misconduct' – a 'ground for dismissal or suspension' under section 83(4).

10. In sum, instead of respecting my fundamental right to information entrenched by the Constitution, and fully and properly honouring the settlement agreement that Mtati concluded on your and Hundermark's behalf, like honest people who mean what they say and say what they mean, you and Hundermark tried having me stripped of my ordinary constitutional right to seek relief from the courts, banned as a vexatious litigant, and listed in the Government Gazette like a 'Communist' during apartheid.

11. I intend reporting and ventilating the massive unlawful fruitless and wasteful expenditure squandered on the malicious application that you and Hundermark authorised to obstruct my exercise of my fundamental right to information with the object of smothering or at least seriously hindering my investigation and reporting of (a) gross maladministration at LASA involving

millions of rands and directly affecting critical service delivery; (b) the wholesale breakdown of the rule of law and due process at LASA, involving, inter alia, the routine illegal flouting of LASA's internal regulations by Board chairperson Mlambo JP and national management executives; (c) pervasive systemic corruption in the conduct of LASA's recruitment operations; and (d) a criminal cover-up of the same, involving perjury, conflicting sworn statements, and lying and false reporting to the Minister and to the Portfolio Committee on multiple scores.

12. The authorities and interested parties to whom I intend reporting your and Hundermark's corruptly motivated abuse of the courts to block my access to public records for which I'd had to sue are: the Auditor General; the Public Protector; the SAHRC; the Information Regulator; the Minister; the Portfolio Committee; the International Legal Aid Group; the media, including two of our country's leading investigative journalists watching the case; and several nationally prominent corruption fighting and information transparency NGOs who've expressed their support for my struggle against the corruption at LASA and its contempt for constitutional information transparency that I've encountered.

13. One of which NGOs wrote to me on 23 October, a few days before the judge threw your vexatious application into the dustbin:

> In addition to the steps already taken by you, you should also consider laying criminal charges against the relevant individuals implicated.

14. Another wrote on the 26th, the day before the case, to 'wish [me] well with tomorrow's hearing', and observed about my own simultaneously set down application to compel LASA's compliance with my PAIA requests in August 2016:

> [Y]our application is very important and highlights the impunity with which government agencies who are supposed to be accountable to the public disregard lawful requests for information and withhold information when it is not legally justified to do so.

15. This then is my serious reason for Part A of my PAIA request on Monday, namely the records of how much public money you and Hundermark wasted on your vexatious application against me. I intend seeing to it that all the above authorities and interested parties are told.

16. Part B of the request is for, inter alia, LASA's response to my answer to its complaint to the Society of Advocates of KwaZulu-Natal that I'd disgracefully impugned the integrity of its chairperson Mlambo JP. (My answer took the form of eight capital gross misconduct complaints against him to the Judicial Service Commission, copied to the Society.)

17. Like his affidavits in my labour and PAIA litigation, Mtati's sworn complaint to the Society was perjured, and I intend seeing him prosecuted for it. My serious purpose in requesting his response to my answer to the complaint is, inter alia, to ascertain whether it contains any more perjury, if it's sworn, or just plain lies. And if so, the police and/or the Law Society for the Northern Provinces will be interested.

18. On 31 October, the secretary of the Judicial Service Commission conveyed the Judicial Conduct Committee's request that I resubmit my misconduct complaints against Mlambo JP in the form of a single indexed and paginated bundle 'to avoid a piecemeal consideration and determination of these matters'. Easily done, because I long ago made an indexed and paginated bundle for most of the authorities and interested parties mentioned above, to whom I sent it (goo.gl/5KQ7RV).

19. Isn't this a better time than ever to reconsider my very amicable and conciliatory total settlement offer on 26 September 2017 (goo.gl/HrFnUH), especially its last paragraph 4.8:

> Brink and LASA's officers will withdraw all pending complaints made against each another, on the basis that they've reached a complete settlement of their nearly eight year dispute arising from the irregular off-the-record silent abortion of Brink's appointment to the [Pietermaritzburg Senior Litigator] post following the selection panel's

unanimous recommendation of him for it, and that they are content to proceed from a clean slate.

20. Having spent an entire week reading the papers, the judge told us, especially my answering affidavit in which I detailed and objectively proved your National Operations Executive Brian Nair's many successful perjuries committed at the trial of my labour claim in mid-2013, the judge understood very well that 'he told a pack of lies' (the judge's words) – a sound basis, he confirmed, for my intended rescission application on the grounds of fraud successfully practised on the court.

21. Which rescission application will also be based on potently cogent information long concealed from me since 2010 by carefully blacking it out with a Koki pen – illegally under section 90 of PAIA – but finally flushed out in April 2016, long after the trial and judgment in my labour case, namely that my rival applicant for the post had been an acting judge of the Labour Court for about six years and a long-time judicial colleague of Board chairperson Mlambo JP, who headed it at the time.

22. That is, as the judge correctly appreciated and observed in court on Friday, the real reason I wasn't appointed to the post wasn't unfair discrimination against me, as I'd wrongly apprehended and pleaded, but simple recruitment corruption in the form of cronyism, in that Mlambo JP's former brother in the Labour Court was preferred for the post instead of me, only to be unexpectedly bounced by the selection panel for not having right of appearance in the High Court.

23. If you consult your Senior Litigators (rather than Hundermark and Mtati), all will confirm to you that none of the records I requested on Monday are hit by any of the grounds for refusal allowed by PAIA, and that all of them must be handed over accordingly.

24. In the situation, section 25 requires you to notify your decision to grant my request for access to these records 'as soon as reasonably possible'.

25. Please note that if you again contemptuously traduce my constitutional right to public body information by refusing my latest PAIA requests, as you've been doing since 2010 (goo.gl/21GgSf), I'll immediately sue out of the High Court to compel your compliance with them, just as I did in October 2016, three weeks after Mtati's illegal refusal of my August PAIA requests in September; and I'll set the new case down for hearing together with my pending case 11187/16. You can bet the combined judgment will be reported.

C. MY APPLICATION PENDING IN THE MAGISTRATES COURT TO COMPEL LASA'S FULL AND PROPER COMPLIANCE WITH IT'S SETTLEMENT AGREEMENT ON 11 FEBRUARY 2016, FOLLOWING ITS TOTAL CAPITULATION TO MY FIVE APPLICATIONS TO COMPEL COMPLIANCE WITH MY SEVERAL PAIA REQUESTS IN 2013–15, ILLEGALLY REFUSED

26. I'm aware from LASA's failed attempt to have my subpoenas set aside in the Labour Court that you and your fellow head office executives are terrified of being cross-examined on oath under penalty of imprisonment for perjury. (Relevant to the credibility of your claims about documents not supplied me, prior perjuries will be canvassed.) Fortunately there's a simple way for you to avoid this dangerous prospect. To escape the waiting noose, all you have to do is instruct Mtati to give me all the records he undertook on your behalf in the February 2016 settlement agreement to give me, or to certify those that don't exist, in an affidavit complying with section 23 of PAIA, and stating simply and unambiguously: '**No such record exists**.' And nothing more: no further waffle to fudge the blunt fact that the requested record doesn't exist.

27. If a requested record exists but can't be found (and we both know this isn't the case, because record-keeping at LASA is digitised), section 23 prescribes very precisely all the detailed information that it's necessary to include in the affidavit, and no more or less.

28. If Mtati and his Corporate Services attorneys would just apply their minds to my Second Amended Draft Order (goo.gl/tzZ98F) and its Schedule

(goo.gl/ij3Loj) and turn over the remaining promised but outstanding records and give me a duly compliant section 23 affidavit, there'll be no need for me to again set my application down to compel full and proper compliance with the settlement agreement (goo.gl/DDua4x), now that your vexatious application has been dismissed. Further substantial wasted costs can be avoided.

29. If, on the other hand, Mtati can't be bothered with honouring the recorded undertakings that he made on your, Hundermark's, and other deputy information officers' behalf, and couldn't care less about respecting section 32 of the Constitution, I'll see you all in court soon for cross-examination under oath on the missing and improperly certified documents.

D. MY APPLICATION PENDING IN THE PIETERMARITZBURG HIGH COURT TO COMPEL COMPLIANCE WITH MY PAIA REQUESTS IN AUGUST 2016, ILLEGALLY REFUSED

30. Now that the High Court has considered and rejected Hundermark's and your false charge that I'm a vexatious litigant, do you really think it's going to find I'm a vexatious requester – as falsely and dishonestly charged by Mtati in his September 2016 refusal of my PAIA requests the month before – one of which was a final request in my investigation of general corruption in Senior Litigator recruitment that was specifically contemplated in the February 2016 settlement agreement; and the other was for all the wasted costs LASA incurred in indefensibly and insupportably opposing my five applications in the Magistrate's Court all the way to argument, only to totally surrender on the big day.

31. Please teach your Legal Executives Hundermark and Mtati that contrary to their misconception about this asserted by Mtati in his illegal refusal of my August 2016 requests, and again in the vexatious application, the number of records I've requested since 2010, including many I'm confident don't exist (which would exist if the truth had been told), is not a lawful ground under PAIA for refusing access to public records, and doesn't itself show that my

requests are 'frivolous and vexatious' or unreasonably time-consuming to deal with, as contemplated by section 45.

32. So it's hardly necessary to mention that actually the number of my PAIA requests and the total number of records I've requested over the past seven years is tiny considered against other PAIA requests and the huge numbers of individual records requested:

    32.1. In its investigation of the Inkandla scandal, the Mail & Guardian successfully applied to court to compel the delivery of further documents over and above 'the tendered documents in excess of 12000, copies of which were provided to the applicants', as the judge in that case put it, rejecting the argument that this 'crossed "the line between a legitimate request in terms of PAIA and abuse of the Act"' – per paragraph 18 of the judgment in Mandag Centre for Investigative Journalism and another v Minister of Public Works and another (67574/12) [2014] ZAGPPHC 226 (29 April 2014);

    32.2. Since its formation in 2011, the Freedom of Information Programme of the South African History Archive ('SAHA') has made 'over 1800 requests for information from predominantly government departments' and 'numerous applications in the High Court' – per paragraph 19 of the just cited judgment;

    32.3. The 'hundreds of thousands of documents' obtained by Open Secrets 'form much of the evidence presented in Apartheid Guns and Money: A tale of profit' by Hennie van Vuuren on the arms trade during apartheid. 'We relied on the heavy lifting by SAHA and Lawyers for Human Rights to open the door to many apartheid archives ... [T]hey were met with stiff resistance' – per page 25 of the Access to Information Network's Shadow Report 2017 (goo.gl/hRHJvR).

    32.4. 'In mid-2013, 48 requests were lodged with state agencies under PAIA' – per page 19 of Apartheid Guns and Money.

33. Following the dismissal of your vexatious application, I agreed in court to give LASA thirty days to file its answering affidavit in my opposed but unanswered application to compel its compliance with my August 2016 PAIA requests (goo.gl/j53UTb).

34. Since there's no intelligent defence to raise against my application (and I suggest you confirm this with your Senior Litigators rather than with Hundermark and Mtati), you can end the litigation by notifying me of your reversal of Mtati's obviously illegal total refusal of my requests and by simply providing me with the records I've asked for or a section 23 affidavit where any don't exist. This will avoid further unnecessary fruitless and wasteful expenditure on hopeless litigation prohibited by the PFMA.

35. Failing which, I call your attention to the punitive costs order made against the Department of Defence (discussed at page 26 of the above-mentioned Shadow Report 2017 by Corruption Watch, SAHA, et al.) for pulling the state's characteristic trick of opposing a PAIA application all the way to argument and then capitulating just before it. Like LASA did in all five of my cases in the Magistrate's Court.

Yours sincerely

ANTHONY BRINK
anthonybrink.sa@gmail.com

LASAGATE

> '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.'
> – Oscar Wilde

> 'Oh! what a tangled web we weave
> When first we practice to deceive!'
> – Sir Walter Scott

> 'It's the perjury that gets them in the end. It's not so much the deed itself, but the lying about it afterwards.'
> – The district attorney in *The Walker*, feature film written and directed by Paul Schrader

> 'I had grasped the significance of the silence of the dog, for one true inference invariably suggests others ... Obviously the midnight visitor was someone whom the dog knew well. It was Straker who removed Silver Blaze from his stall and led him out on to the moor.'
> – Sherlock Holmes in Silver Blaze by Sir Arthur Conan Doyle

'The Watergate scandal was a major political scandal that occurred in the United States during the early 1970s, following a break-in ... at the Democratic National Committee (DNC) headquarters at the Watergate office complex in Washington, D.C. on June 17, 1972, and President Richard Nixon's administration's subsequent attempt to cover up its involvement. After the 5 burglars were caught and the conspiracy was discovered, Watergate was investigated by the U.S. Congress; meanwhile Nixon's administration resisted its probes, which led to a constitutional crisis. ... The scandal led to the discovery of multiple abuses of power by members of the Nixon administration, an impeachment process against the president that led to articles of impeachment, and the resignation of Nixon. The scandal also resulted in the indictment of 69 people, with trials or pleas resulting in 48 being found guilty, many of whom were Nixon's top administration officials.' **Wikipedia: 'Watergate scandal'**

On 7 November 1972, President Richard Nixon was re-elected to a second term in a landslide election victory.

'I don't give a shit. I want you all to stonewall it, let them plead the Fifth Amendment, cover up, or anything else, if it'll save it, save this plan. That's the

whole point. We're going to protect our people if we can.' **President Richard Nixon to aide Bob Haldeman (Oval Office tape recording), 22 March 1973**

'I condemn any attempts to cover up in this case, no matter who is involved.' **President Richard Nixon, news conference, 17 April 1973**

'And I pledge to you tonight, from this office, that I will do everything in my power to ensure that the guilty are brought to justice and that such abuses are purged from our political processes in the years to come, long after I have left this office.' **President Richard Nixon, televised speech, 30 April 1973**

'I had no prior knowledge of the Watergate operation. I took no part in, nor was I aware of, any subsequent efforts that may have been made to cover up Watergate.' **President Richard Nixon, public statement, 17 May 1973.**

In July 1973, Nixon refused to comply with a subpoena to hand over his Oval Office tapes – ultimately compelled to do so by order of the US Supreme Court. Eighteen and half minutes of the tapes were then found to have been erased – recording Nixon's discussion with Haldeman of the arrest of the Watergate burglars, according to Haldeman's notes.

Cf. LASA's (a) failed application to set aside Brink's subpoenas of its top officers in the Labour Court to explain why he was not appointed to LASA's Senior Litigator post at Pietermaritzburg for which he'd been unanimously selected and recommended; (b) failure to have him declared a vexatious litigant on the ground inter alia that he'd applied to subpoena its top officers to explain why duly requested records had not been surrendered after access was finally granted to them following Brink's application to court for them; (c) ongoing refusal to comply with Brink's requests under PAIA for access to its public records; and (d) delivery of a pivotal record, initially illegally refused, then surrendered under SAHRC pressure, but illegally redacted with a Koki pen to conceal the potently cogent evidence of Mlambo JP's long professional relationship with Brink's rival applicant for the post: a former fellow judge. (The full uncensored document was finally disgorged after Brink sued for it, and was about to argue for it, after it was illegally refused again.)

'What really hurts in matters of this sort is not the fact that they occur, because overzealous people in campaigns do things that are wrong. What really hurts is if you try to cover it up. … it is my constitutional responsibility to defend the integrity of this great office against false charges. … I have today issued another

written statement, which addresses the charges that have been made since then as they relate to my own conduct, and which describes the efforts that I made to discover the facts about the matter. On May 22, I stated in very specific terms – and I state again to every one of you listening tonight these facts – I had no prior knowledge of the Watergate break-in; I neither took part in nor knew about any of the subsequent cover-up activities; I neither authorized nor encouraged subordinates to engage in illegal or improper campaign tactics. That was and that is the simple truth. … From the time when the break-in occurred, I pressed repeatedly to know the facts, and particularly whether there was any involvement of anyone in the White House. I considered two things essential: First, that the investigation should be thorough and aboveboard; and second, that if there were any higher involvement, we should get the facts out first. As I said at my August 29 press conference last year, "What really hurts in matters of this sort is not the fact that they occur, because overzealous people in campaigns do things that are wrong. What really hurts is if you try to cover it up." I believed that then, and certainly the experience of this last year has proved that to be true. … I did not believe the newspaper accounts that suggested a cover-up. I was convinced there was no cover-up, because I was convinced that no one had anything to cover up. … Those acts cannot be defended. Those who were guilty of abuses must be punished. But ultimately, the answer does not lie merely in the jailing of a few overzealous persons who mistakenly thought their cause justified their violations of the law.' **President Richard Nixon, address to the nation, 15 August 1973**

'Counsel to the President, Mr. Dean, has conducted a complete investigation of all leads which might involve any present members of the White House Staff or anybody in the Government. [*Dean hadn't conducted any investigation.*] I can say categorically that his investigation indicates that no one in the White House Staff, no one in this Administration, presently employed, was involved in this very bizarre incident [the Watergate break-in]. **President Richard Nixon, news conference, 29 August 1972**

'I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as alleged by you or at all.' **LASA chairperson Dunstan Mlambo JP, dismissing Brink's 59-page petition, (a) complaining of CEO Vidhu Vedalankar's illegal and unconstitutional blanket refusal of his request under the Promotion of Access to Information Act for**

records, on the basis of false, irrelevant grounds ostensibly supported by a faked excerpt from a reported judgment, in which words were put in the judge's mouth that she never spoke, and which judgment squarely supported Brink's entitlement to the records he'd requested; and,
(b) presenting all the early already clear indications that Vedalankar's budgetary insufficiency justification advanced for the abortion of his appointment to the Pietermaritzburg Senior Litigator post for which he'd been duly selected and recommended by a professional selection panel ten months earlier was a false cover-story to camouflage the true reason (according to the PDF 'Author' properties of Mlambo's letter, Vedalankar herself wrote it on her computer; Mlambo was overseas at the time), 15 December 2010 (sent by Mlambo JP on the 30th)

'Your conduct is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view.' **LASA chairperson Dunstan Mlambo JP, rejecting Brink's second petition concerning Vedalankar's illegal and unconstitutional refusal to comply with his request for access to records under PAIA and the early already clear indications that his appointment had been blocked under cover of a bogus financial reason, and pointing out the evidence that Vedalankar had ghost-written his letter rejecting Brink's complaint to him about her refusal of his PAIA request and the irregular abortion of his appointment, 24 January 2011**

- 'Whilst the initial reason for this ['nationally constituted' second interview] panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts' (*after being exposed as a lie, this story that Mlambo JP told the Minister and the Portfolio Committee was retracted by his attorney on affidavit as 'an error', 'palpably an error'*);
- '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' (*no record of any such decision exists*);

- 'Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he remains convinced there is a conspiracy against him' (*no record exists vouching that the post was frozen*);
- 'We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint' (*records Brink requested under PAIA were illegally refused in toto; lying information was given him instead*);
- 'we remain confident that we have acted properly in this matter' (*multiple illegalities, including of the Public Finance Management Act*);
- 'we have complied with the provisions of PAIA' (*PAIA requests refused*);
- 'We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act' (*false*);
- 'many of his requests do not relate to his complaint regarding non appointment' (*false, but in any event irrelevant under section 11(3) of PAIA*);
- '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' (*false, it was for appointment to the post; and LASA's exposure in damages for lost income was massively understated*);
- 'most of Adv Brink's correspondence with us [has had an] insulting and malicious tone' (*false*);
- 'we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded' (*the records that LASA provided refuted the budgetary insufficiency justification for the false claim that the post had been duly frozen*);
- '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 organization at the time' (*no record exists of a decision to freeze the still vacant, still budgeted, still funded critical specialist legal professional post – irregularly frozen off the record in contravention of several provisions of the PFMA*).

LASA chairperson Dunstan Mlambo JP, 'Confidential … Report … Re: Adv Anthony Brink' to the Minister of Justice and Constitutional Development, 9 March 2011 (submitted behind Brink's back), and 'updated' for the chairperson of the Justice Portfolio Committee on 22 June 2011

'He's our Corporate [Services] Executive. He's the man who looks at our legal health in terms of those who want to sue us. He protects us.' **LASA chairperson Dunstan Mlambo JP introducing CSE Thembile Mtati to the Portfolio Committee on Justice and Constitutional Development, 8 May 2012**

'The Respondent rejects the Applicant's fabricated conspiracy theory with a wave of a hand. ... The Respondent rejects the Applicant's malicious and untruthful allegation that the Respondent's Chairperson could hatch; be part of; and sustain such an unlawful and unethical conduct of unfairly and maliciously plotting with any person to unfairly discriminate against the Applicant in respect of a position to which he had applied. ... Mlambo JP has never been involved in the decision to abort any recruitment process ... The persistent malicious insinuations against the person of the Chairperson are regretted and uncalled for. … The Applicant is incorrect in suggesting that the Chairperson of the Board did not apply his mind independently in dealing with his complaint. ... The Chairperson investigated the matter by discussing same with the CEO in order to gather information and upon forming a view that there was nothing untoward that the Respondent's executive officials did to the Applicant, requested the CEO to draft a letter in the terms required by the Chairperson. ... The Respondent avers that the Chairperson did not lie to the Minister or the Portfolio Committee regarding the reasons why there was a delay in dealing with the Applicant's application. ... Accordingly, the Respondent denies the malicious accusations of dishonesty and wantonly trampling of the Applicant's constitutional rights levelled against Mlambo JP and the Respondent's executive members. ... The Respondent further rejects, as contemptuous, any suggestion that the Applicant will not have a fair hearing in this Court solely because the Respondent's Chairperson is also the head of this honourable Court. ... The Respondent opposes the relief sought herein and seeks an order: ... That the Court impose punitive costs at the highest scale permissible regard being had to the Applicant's reprehensible conduct of insulting the Chairperson of the Respondent's Board and certain members of the Executive and persistently imputing impropriety, fraud and dishonesty on them throughout the entire content of his Statement of Claim ... Referring the record of this action to the relevant Bar Council for its investigation and recommendation or action, if needs be.' **Corporate Services Executive Thembile Mtati, response to Brink's statement of claim in the Labour Court, 9 September 2011**

'The Saturday Night Massacre refers to U.S. President Richard Nixon's orders to fire independent special prosecutor Archibald Cox, which led to the resignations of Attorney General Elliot Richardson and Deputy Attorney General William Ruckelshaus on October 20, 1973, during the Watergate scandal. ... U.S. Attorney General Elliot Richardson had appointed Cox in May, after promising the House Judiciary Committee that he would appoint a special prosecutor to investigate the events surrounding the break-in of the Democratic National Committee's offices at the Watergate Hotel in Washington, D.C., on June 17, 1972. ... When Cox issued a subpoena to Nixon, asking for copies of taped conversations recorded in the Oval Office, the president refused to comply. ... Nixon ordered Attorney General Richardson to fire Cox. Richardson refused and resigned in protest. Nixon then ordered Deputy Attorney General William Ruckelshaus to fire Cox. Ruckelshaus also refused and resigned. Nixon then ordered the Solicitor General of the United States, Robert Bork, as acting head of the Justice Department, to fire Cox. ... Bork wrote the letter firing Cox – and the Saturday Night Massacre was complete. ... On November 14, 1973, federal district judge Gerhard Gesell ruled firing Cox was illegal absent a finding of extraordinary impropriety as specified in the regulation establishing the special prosecutor's office. ... The Ethics in Government Act of 1978 was a direct result of the Saturday Night Massacre.' **Wikipedia: 'Saturday Night Massacre'**

Cf. LASA's attempt to rub Brink out with:

- *a complaint of unprofessional conduct to the Society of Advocates of KwaZulu-Natal, arising from Brink's criticism of Mlambo JP's gross misconduct as chairperson of LASA, initially upheld by the Society (without hearing Brink) with a recommendation that Brink be struck off the roll of advocates, then reversed;*
- *to the Magistrate's Commission (which got Brink fired from his post as a magistrate on contract, without a hearing); and,*
- *an application to the High Court at Pietermaritzburg (i) to declare Brink a vexatious litigant, so as to prevent his access to records duly requested under PAIA for which he'd had to sue, and (ii) to 'excuse' LASA from complying with other pending PAIA requests (the spurious application was quickly dismissed by the judge without calling on Brink to argue against it).*

'... in all of my years of public life, I have never obstructed justice. ... I'm not a crook.' **President Richard Nixon, 17 November 1973**

‘RESOLVED, That Richard M. Nixon, President of the United States, is impeached for high crimes and misdemeanours, and that the following articles of impeachment to be exhibited to the Senate:

ARTICLES OF IMPEACHMENT EXHIBITED BY THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN THE NAME OF ITSELF AND OF ALL OF THE PEOPLE OF THE UNITED STATES OF AMERICA, AGAINST RICHARD M. NIXON, PRESIDENT OF THE UNITED STATES OF AMERICA, IN MAINTENANCE AND SUPPORT OF ITS IMPEACHMENT AGAINST HIM FOR HIGH CRIMES AND MISDEMEANOURS.

ARTICLE ONE

In his conduct of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States, and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed and impeded the administration of justice, in that: On June 17, 1972, and prior thereto, agents of the Committee for the Re-election of the President committed unlawful entry of the headquarters of the Democratic National Committee in Washington, District of Columbia, for the purpose of securing political intelligence. Subsequent thereto, Richard M. Nixon using the powers of his high office, engaged personally and through his subordinates and agents in a course of conduct or plan designed to delay, impede, and obstruct the investigation of [the Watergate burglary]; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.’

The means used to implement this course of conduct or plan included one or more of the following:

1. making false or misleading statements to lawfully authorized investigative officers and employees of the United States;

2. withholding relevant and material evidence or information from lawfully authorized investigative officers and employees of the United States;

3. approving, condoning, acquiescing in, and counselling witnesses with respect to the giving of false or misleading statements to lawfully authorized

investigative officers and employees of the United States and false or misleading testimony in duly instituted judicial and congressional proceedings;

4. interfering or endeavouring to interfere with the conduct of investigations by the Department of Justice of the United States, the Federal Bureau of Investigation, the office of Watergate Special Prosecution Force, and Congressional Committees;

5. approving, condoning, and acquiescing in, the surreptitious payment of substantial sums of money for the purpose of obtaining the silence or influencing the testimony of witnesses, potential witnesses or individuals who participated in such unlawful entry and other illegal activities;

6. endeavouring to misuse the Central Intelligence Agency, an agency of the United States;

7. disseminating information received from officers of the Department of Justice of the United States to subjects of investigations conducted by lawfully authorized investigative officers and employees of the United States, for the purpose of aiding and assisting such subjects in their attempts to avoid criminal liability;

8. making or causing to be made false or misleading public statements for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation had been conducted with respect to allegations of misconduct on the part of personnel of the executive branch of the United States and personnel of the Committee for the Re-election of the President, and that there was no involvement of such personnel in such misconduct: or

9. endeavouring to cause prospective defendants, and individuals duly tried and convicted, to expect favoured treatment and consideration in return for their silence or false testimony, or rewarding individuals for their silence or false testimony.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

ARTICLE 2

Using the powers of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in disregard of his constitutional duty to take care that the laws be faithfully executed, has repeatedly engaged in conduct violating the constitutional rights of citizens, impairing the due and proper administration of justice and the conduct of lawful inquiries, or contravening the laws governing agencies of the executive branch and the purposed of these agencies.

This conduct has included one or more of the following:

He has, acting personally and through his subordinates and agents, endeavoured to obtain from the Internal Revenue Service, in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposed not authorized by law, and to cause, in violation of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner.

He misused the Federal Bureau of Investigation, the Secret Service, and other executive personnel, in violation or disregard of the constitutional rights of citizens, by directing or authorizing such agencies or personnel to conduct or continue electronic surveillance or other investigations for purposes unrelated to national security, the enforcement of laws, or any other lawful function of his office; he did direct, authorize, or permit the use of information obtained thereby for purposes unrelated to national security, the enforcement of laws, or any other lawful function of his office; and he did direct the concealment of certain records made by the Federal Bureau of Investigation of electronic surveillance.

He has, acting personally and through his subordinates and agents, in violation or disregard of the constitutional rights of citizens, authorized and permitted to be maintained a secret investigative unit within the office of the President, financed in part with money derived from campaign contributions, which unlawfully utilized the resources of the Central Intelligence Agency, engaged in

covert and unlawful activities, and attempted to prejudice the constitutional right of an accused to a fair trial.

He has failed to take care that the laws were faithfully executed by failing to act when he knew or had reason to know that his close subordinates endeavoured to impede and frustrate lawful inquiries by duly constituted executive, judicial and legislative entities concerning the unlawful entry into the headquarters of the Democratic National Committee, and the cover-up thereof, and concerning other unlawful activities including those relating to the confirmation of Richard Kleindienst as Attorney General of the United States, the electronic surveillance of private citizens, the break-in into the offices of Dr. Lewis Fielding, and the campaign financing practices of the Committee to Re-elect the President.

In disregard of the rule of law, he knowingly misused the executive power by interfering with agencies of the executive branch, including the Federal Bureau of Investigation, the Criminal Division, and the Office of Watergate Special Prosecution Force, of the Department of Justice, and the Central Intelligence Agency, in violation of his duty to take care that the laws be faithfully executed.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

ARTICLE 3

In his conduct of the office of President of the United States, Richard M. Nixon, contrary to his oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has failed without lawful cause or excuse to produce papers and things as directed by duly authorized subpoenas issued by the Committee on the Judiciary of the House of Representatives on April 11, 1974, May 15, 1974, May 30, 1974, and June 24, 1974, and wilfully disobeyed such subpoenas. The subpoenaed papers and things were deemed necessary by the Committee in order to resolve by direct evidence fundamental, factual questions relating to Presidential direction, knowledge or approval of

actions demonstrated by other evidence to be substantial grounds for impeachment of the President. In refusing to produce these papers and things Richard M. Nixon, substituting his judgment as to what materials were necessary for the inquiry, interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States.

Wherefore, Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.'

Articles of Impeachment adopted by the House Judiciary Committee, 27 July 1974

Nixon resigned twelve days later on 8 August 1974.

'Well, when the President does it that means that it is not illegal.' **Former President Richard Nixon, television interview by David Frost, 19 May 1977**

'"I've always maintained I'm a new generation judge. I do not shy away from dirtying my hands in my judicial work. That explains my philosophy when it comes to what a court should be doing," said Mlambo. … I want to believe that Legal Aid SA is a shining example of how things should have been done constitutionally in terms of access to justice," he told the JSC.' **Mlambo JP quoted in 'I'm a new-generation judge', *City Press*, 13 May 2012**

LASA Board chairperson Mlambo JP promoted from Judge President of the Labour Court to Judge President of the Gauteng Division of the High Court, with effect from 1 November 2012.

On ... the Judicial Conduct Committee of the Judicial Service Commission found ... . On .... Mlambo JP was ... .

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24 November 2015

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R B G Choudree SC

The Society of Advocates of KwaZulu Natal

3rd Floor, Durban Club Place

Durban,

KwaZulu-Natal, 4001

Email: kznbar@law.co.za;

Dear Choudree SC,

RE: COMPLAINT ON THE UNPROFESSIONAL CONDUCT OF ADVOCATE ANTHONY ROBIN BRINK

Please find the complaint which is self-explanatory.

Yours Faithfully,

Thembile Mtati

Attorney of Legal Aid South Africa

THEMBILE VUYO MTATI COMPLAINANT

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AND

ANTHONY ROBIN BRINK RESPONDENT

WRITTEN DECLARATION UNDER OATH INSTITUTING A COMPLAINT AGAINST ADVOCATE ANTHONY ROBIN BRINK

I, the undersigned

THEMBILE VUYO MTATI,

do hereby make oath and state as follows:-

1.

1.1 I am an adult male Attorney employed as the Corporate Services Executive by Legal Aid South Africa with its offices situated at Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg, and I am duly authorised to depose to this affidavit.

1.2 The facts contained herein fall within my personal knowledge and are both true and correct, except where it appears otherwise from the context.

2.

2.1 The purpose of this affidavit is to institute a complaint against Advocate Anthony Robin Brink, a major male Advocate of the High Court of South Africa currently employed in the capacity of an acting magistrate in Eshowe Magistrates Court.

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2.2. This complaint is brought in terms of section 7 (2) of the Admission of Advocates Act 74 of 1964 as amended.

2.3 The nature of the complaint deals with the manner in which Advocate Brink conducts his litigation, unwarranted, abusive and defamatory statements made against members of the bench including his colleagues and other officials.

2.4. The statements referred to above relate to, among others, Judge President Mlambo of North and South Gauteng Divisions of High Court, Judge President Waglay of the Labour Court Division and Judge Cele of the Labour Court.

2.5. I deal below with the specific causes of my complaint but deem it appropriate to start with the background of the matter.

3.

BCKGROUND

3.1 Advocate Brink applied for a vacant position of a Senior Litigator in our Pietermaritzburg Justice Centre. He was interviewed and recommended to proceed to the second round of interviews which was to be held at Johannesburg consisting of Senior Executives of Legal Aid SA including the Chairperson of the Board of Legal Aid SA, Judge President D. Mlambo.

3.2. The second round of interviews was not proceeded with as a result of budget uncertainties facing the organisation at the time. The budget uncertainties led to ultimate freezing of all recruitment of the Senior Litigators. All candidates recommended for the second round of interviews were duly informed of the position.

4.

ADVOCATE BRINK'S CASE

4.1. Advocate Brink wrote a number of letters through electronic mail enquiring of progress on his recruitment which were responded to. He then resorted to sending requests in terms of Promotion of Access to Information Act (PAIA) seeking certain information.

4.2. Every response given in terms of PAIA led to another until when Advocate Brink instituted action against Legal Aid SA in the Durban Labour Court. His case was briefly that he was not appointed to the position of Senior Litigator because of his stance against provision of anti-retrovirals and race. The statement of claim, which forms part of the complaint to which I will revert, is attached marked **"TVM1"**. All other annexures are separately binded and annexed to this affidavit.

4.3. Advocate Brink's claim was dismissed with costs at the Labour Court, Durban by Honourable Judge Cele. Application for Leave to Appeal was also dismissed. Advocate Brink filed a petition which was also dismissed.

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4.4. Towards the end of September 2015, we received an urgent application from Advocate Brink seeking to interdict the Taxing Master from finalising taxation of the Labour Court case to enable us to get our *allocator*. In this urgent application, Advocate Brink made further unwarranted allegations against the Honourable Judge President Waglay.

4.5. The urgent application was dismissed with costs accompanied by concerns by Honourable Judge Pillay about the conduct of Advocate Brink.

4.6. Advocate Brink also sends his concerns about his non-appointment to the Office of the Public Protector, South African Human Rights Commission, Portfolio Committee on Justice and Constitutional Development (as it then was) and to every other person he thinks might agree with his view that he was discriminated against.

4.7. Without unnecessarily compounding this affidavit with all annexures, below we make reference to specific letters, record of the trial and pleadings and all these will be separately attached to this complaint. The annexures only are just over 2000 pages.

5.

COMPLAINT

5.1. It is my submission that the conduct of Advocate Brink is not befitting of an officer of the Court more so to act as a Magistrate. The language used is unprofessional, the manner he relates to colleagues and Judges requires sanction. Below is an extract of statements and language used against fellow Advocates, Judges, Attorneys and other professionals.

UNFOUNDED DEFAMATORY, DEMEANING AND INSULTING ALLEGATIONS MADE BY ADVOCATE BRINK IN HIS STATEMENT OF CASE AT THE LABOUR COURT UNDER CASE D529/11 AGAINST MLAMBO JP AND VEDALANKAR.

5.2. Advocate Brink, in his statement of case before the Labour Court, made several defamatory, derogatory, demeaning and insulting allegations including the following:

Paragraph Number	Excerpts
Par 4	*The applicant will show on a conspectus of the open facts weighed with the probabilities that following his selection and recommendation by the professional selection panel for appointment as Senior Litigator, Pietermaritzburg, the respondent's chairperson Dunstan Mlambo and Chief Executive*

	*Officer Vidhu Vedalankar, motivated by unlawful political (or alternatively racial) prejudice aborted his appointment off the record and without announcing the fact; and that many months later, under pressure to account, Mlambo and Vedalankar attempted to camouflage their direct discrimination against the applicant on prohibited grounds by concocting and advancing a false cover story for it based on a fake financial justification- unsupported and contradicted by the respondent's business record; conflicting with Vedalankar's CEO report for 2009/10; conflicting with deliberately misleading statements Vedalankar made on two occasions to the Portfolio Committee on Justice and Constitutional Development (**as it then was**); and contradicting the express wishes of the Minister of Justice and Constitutional Development known to both Mlambo and Vedalankar.*
Par 5	*The Applicant will further show that in furtherance of Mlambo's and Vedalankar's scheme to cover up their unfair discrimination against the Applicant, Mlambo lied to the Minister on several scores in a "Confidential report to him Re: Adv Anthony Brink, which lies Mlambo repeated to the Chairperson of the Portfolio Committee and by so doing Mlambo deliberately misled the respondent's executive authority and Parliament in order to (a) allay their further enquiries into the complaints against the Respondent, which he had copied to the Minister and Committee Chairperson, of unfair discrimination against him and unlawful refusal to surrender material records duly requested under the Promotion of Access to Information Act and (b) to put them off discovering the falsity of the bogus financial justification for their abortion of the Applicant's recruitment dishonestly advanced by Vedalankar to the applicant and by Mlambo to the Minister and to the Committee chairperson."*
Par 31	*Because Vedalankar informed Nair that she did not agree with the applicant's recruitment as a political (or racial) undesirable, Nair never 'signed off' the Motivation to record 'RECOMMENDATION ACCEPTED' by him of the professional selection panel's selection and recommendation of the applicant for appointment, and the recruitment process to appoint the applicant was thus brought to an end.*
Par 33	*The first strategy adopted by Mlambo and Vedalankar to conceal from the applicant their unfair discrimination against him was deliberate inaction and silence.*
Par 34	*The reason Mlambo and Vedalankar opted for this initial simple strategy was because:*

	(a) it entailed the minimum possible risk that the applicant would discover their unfair discrimination against him; and, *(b) they bargained that after being kept waiting in the dark for several months, the applicant would lose hope, conclude that he had been unsuccessful at his interview, give up pursuing the post for which he had applied, and withdraw himself from the recruitment process of his own accord, thus achieving Mlambo's and Vedalankar's objectives in shutting him out and concealing their decision to do so."*
Par 55	*Appreciating (a) that the applicant had not been put off by Mlambo's and Vedalankar's inaction and silence strategy, and that half a year after his interview he was still agitating for the finalisation of his appointment, and (b) that Mlambo's and Vedalankar's scheme to covertly discriminate against the applicant therefore needed elaboration, the complication posed by Mngadi's stalled internal promotion to the Durban Senior Litigator post was disposed of by Vedalankar's and Mlambo's decision to finally abort his appointment too; and in April/May 2010 Mngadi was notified seemingly by Brijlal by e-mail that the respondent had decided not to fill the post for which he had applied, alternatively that the respondent had decided not to fill its remaining vacant Senior Litigator posts, no reason given him (Mngadi assumed some 'internal restructuring' had taken place)."*

RECORD OF THE PROCEEDINGS UNDER CASE NUMBER: 529/11

5.3. It is worth mentioning that at the hearing of his case and under cross examination (**it is on record**), Advocate Brink withdrew all the defamatory, derogatory, demeaning, and insulting allegations against Mlambo JP and Vedalankar. His only explanation was that he was at all times under the impression that both Mlambo JP and V. Vedalankar were involved and had now (**in court**) realised that it was only Brian Nair(National Operations Executive).

5.4. For the purpose of convenience, I refer to the following relevant pages and paragraphs of the record:-

Page 133 Lines 2 to 5	***Mr Du Toit*** *"Then just by the way, Judge Mlambo you say is one of the top judges in the country is the person you called a liar about 30 times?"---* ***Mr Brink*** *"This is before I discovered that Nair was abusing his office, abusing his name to convey falsehoods to Parliament and to the Minister."*
Page 137 Lines 7 to 9	***Mr Du Toit*** *"What are you saying?"* ***Mr Brink*** *"I am saying that Judge Mlambo and I mean it with absolutely no disrespect and I really rule about my misconceptions about Judge Mlambo's role in this matter."*

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Page 154 Lines 5 to 14	***Mr Du Toit*** *"Okay. By the way, Mr Brink, having called Ms Vedalankar a liar and dishonest in concocting defenses, do you really think that you could possibly be appointed in an organisation where she continues to be the chief executive officer?"---* ***Mr Brink*** *"It is my conclusion from reading her two letters to me, that they were written by Brian Nair, consequently it is my relatively late conclusion, after the case began and consequently I believe that the CEO as Judge Mlambo was, the CEO's higher office and Gormy abused by Nair to convey lies to me. Sir I hold CEO Vedalankar clear in this matter."*
Page 158 Lines 3 to 8	***Mr Du Toit*** *"But you have said that it was the chief executive officer who was involved in this plot"---* ***Mr Brink*** *"But I thought so; I thought so, because of her letters to me. But later I discovered I faulted and I am sure it will be confirmed, but she did not write those letters, so I was misled."*
Page 159 Lines 1 to 24.	***Mr Brink*** *"In the early days for the better, before one discover that Judge Mlambo was innocent in this thing and I have since formed the conclusion that Vedalankar too. You see, I had her letters to me, full of lies. Judge Mlambo's report to the Minister, full of lies, what could I conclude, it was a nightmare, it was very shocking, so I had to draw what conclusion but that they are the authors, but now I know they are not the authors."---* ***Mr Du Toit*** *"Well let us clarify exactly what you are withdrawing now. You are saying firstly that Ms. Vedalankar not plot or struck your appointment, is that what you are saying?"---* ***Mr Brink*** *"This is my current conclusion in the fullness of the evidence."---* ***Mr Du Toit*** *"And you are saying that Judge Mlambo did not plot to obstruct your appointment"---* ***Mr Brink*** *"Correct"* ***Mr Du Toit*** *"That is right, okay. So she is out of the picture, she did not discriminate against you that is what you say now?"---* ***Mr Brink*** *"That is the look of it to me now, neither (**I think it meant Nair**) may well surprise us all and say, no, no, I neatly discussed it with Vedalankar and she agreed. He may tell us that, I do not know, but the look of it on the evidence before me, that I have assembled, the look of it now, that Vedalankar was not involved, not involved."*

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Pages 172(Lines 1-25) Continue at Lines 1 to 2 page 173.	***Mr Du Toit*** *"But you now say this falls away?"---* ***Mr Brink*** *"It does. I hold her clear, unless Mr Nair implicates her, but we will have to see, but I have no knowledge here."---* ***Mr Du Toit*** *"And then in paragraph 17, you again say that the chairperson of the respondent's board, Dunstan Mlambo, supported and was partied to the decisions took, to abort the applicant's recruitment and thereafter to camouflage the true reason for doing so, under the cover of a lying alibi"---* ***Mr Brink*** *"That is right, and that conclusion was founded on my receipt from the chairperson, the portfolio of Judge Mlambo's updated report to parliament, a pack of lies, including the manifestly untruthful alibi."---* ***Mr Du Toit*** *"And this falls away as well?"---* ***Mr Brink*** *"Oh yes"---* *"Then"---(intervene)* *"Just about everything falls away in my first claim."* ***Mr Du Toit.*** *"I see---"* ***Mr Brink***- *"Ja"* ***Mr Du Toit*** *"Well, let's just get it clear, because I think it is necessary both for your sake and for the sake of Judge Mlambo at least to get this absolutely clear"---* ***Mr Brink*** *"Yes, yes"---* ***Mr Du Toit*** *"And then in paragraph 18, we refer to the grounds, Mlambo and Vedalankar rejected was because you were politically undesirable and well, if there was no plot, then this must fall away as well."---* ***Mr Brink*** *"Right. It falls away to the extent that they were not the actors, but Nair was."---* ***Mr Du Toit*** *"I see, okay. And then in 19 Mlambo's and Vedalankar's decision to reject the applicant's appointment on prohibited ground was taken, communicated to Nair behind the scenes and off the record and accordingly no record exists. Now if there was no decision by them, then it could not have been communicated."--* ***Mr Brink*** *"It is quite obvious."--*
Page 173 Lines 3 to 8	***Mr Du Toit*** *"Okay, so that falls away. I just want to make a note of these allegations that now are…Withdrawn?"---* ***Mr Brink*** *"Withdrawn, yes.* ***Mr Du Toit*** *"Then in paragraph 20 you have here at page 44, Mlambo neither consulted nor informed the rest of the board of his decision jointly, Ms. Vedalankar's discriminate, does that also fall away?"* ***Mr Brink*** *"Ja"*
Page 188 Lines 15 to 20	***Mr Du Toit*** *"Now why would Ms. Vedalankar who you have exonerated already from any participation and any unfair discrimination against you why would she tell you a lie?"--*

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	Mr Brink *"Because she did not write the letter; I am pretty sure she did not write the letter. I could be surprised by this, but I do not think she wrote the letter; I think it was Nair who wrote the letter"*
Pages 205-206 Lines 21 to line 11 on page 206.	***Mr Du Toit*** *"Then you go on in paragraph 32 at page 49, not only had you expand on this, you say, Nair having been instructed as it were by Vedalankar, informed by Vedalankar, he then deliberately does not do something, because he is now carrying out his CEO's instruction. He is astute not to note, because appreciating the decision to abort was unlawful, so in other words he is now part of the plot, construed by Ms. Vedalankar."---* ***Mr Brink*** *"This is my conclusion, because I am many miles away, I am on the other end of the world and I am peacefully developing about bits and pieces that the American Right is taller than these things, bits and pieces. And the accumulation evidence, someone required quite recently as profoundly shifted my understanding of what actually happened in this matter. Now, sir, you can hammer away that my early statement declare but I tell you it was based on numerous fundamental misconceptions to which I had been led by Nair."*
Page 213 Lines 14 to 16	***Mr Du Toit*** *"But she could not have joined Vedalankar's scheme, because you already accepted that there was no scheme by Vedalankar."---* ***Mr Brink*** *"Correct."---*
Page 214 Line 4 to 5	***Mr Du Toit*** *"Paragraph 48 stands, paragraph 49 stands, 50 stands, 51 stands, save that is no longer Mlambo and Vedalankar's scheme, but Nair's"*
Page 215 Lines 18 to 20	***Mr Du Toit*** *"And then the heading, page 57, the scheme, that is also wrong."---* ***Mr Brink*** *"Ja, it was wrong to the extent that Mlambo and Vedalankar are named the Nair scheme."*
Page 219 Lines 23 to 24	***Mr Du Toit*** *"Right, and in paragraph 90, or 89 you attribute lies to Ms. Vedalankar."---* ***Mr Brink*** *"Ja."*
Page 220 Lines 1 to 2	***Mr Du Toit*** *"That must fall away?---* ***Mr Brink*** *"No you must reallocate the blame to Nair."*
Page 221 Lines 5 to 8	***Mr Du Toit*** *"In paragraph 99 on page 68, you describe to Judge Mlambo a desire to obstruct your efforts under the Promotional Access to Information Act. Do you stand by those contentions?"---* ***Mr Brink*** *"You know I do not."* ----------
Page 221 Lines 22 to 24	***Mr Du Toit*** *"You really are challenging, I asked you, are you still attributing falsity against Judge Mlambo?"---*

	Mr Brink *"I have said it a hundred times, that I am not doing so, I am not attributing."*
Page 223 Lines 8 to 10	***Mr Brink*** *"Really, I have no quarrel with Judge Mlambo, I think he was misled, he was given a bad picture and that is the start of this irritable e-mail on the…"*
Page 224 Lines 3 to 5	***Mr Du Toit*** *"Now, in paragraph 108, page 73, you have accused Judge Mlambo of a blatant lie."---* ***Mr Brink*** *"Ja, it is Nair's blatant lie, it is so easy to show and indeed it is going to be retracted."*
Page 227 Lines 11 to 13	***Mr Brink*** *"I do not, do you want me to repeat bluntly, I do not think Judge Mlambo is a liar, and that is it, I used to I mean what else was there to conclude from the secret report?"*
Page 228 Lines 22 to 24	***Mr Du Toit*** *"You slandered a senior judge in a most disgraceful way."---* ***Mr Brink*** *"I agree, I agree, M'Lord, I agree and I tell you it was inadvertent and I regret it."*
Page 231 Lines 10 to 14	***Mr Du Toit*** *"You make the allegation that Judge Mlambo made a false allegation concerning the knowledge of the executives; do you attribute falsity against Judge Mlambo?"* ***Mr Brink*** *"I do not. But the rest of the paragraph is absolutely sound, to the actual extent that it is Nair's false allegation via Judge Mlambo."*
Page 241 Lines 23 to 24	***Mr Brink*** *"Well, we got over and over, but you know I hold Judge Mlambo clear…"*
Page 242 Lines11 to 13	***Mr Brink*** *"No. The financial cover story and the report were fake, but Judge Mlambo is not the author of that lie."*
Page 264 Lines 10 to 11 and lines 19 to 22.	***Mr Du Toit*** *"Paragraph 265, 122 and I imagine you do not attribute falsity to Judge Mlambo."---* ***Mr Brink*** *"That is right"* --- ***Mr Du Toit*** *"Well, just to save us the agony of going through the rest, can we assume that for the rest you have assume I think, exonerated Judge Mlambo and Mrs Vedalankar from any accusation of dishonesty and discrimination?"---* ***Mr Brink*** *"Yes"*
Page 269 Lines 1 to 3	***Mr Du Toit*** *"And you have attributed delinquency to persons involved in this matter."---* ***Mr Brink*** *"Correct. My scope was broaden, it was broader then than it is now. Because I thought Vedalankar was involved and so on."*

UNFOUNDED DEFAMATORY, DEMEANING AND INSULTING ALLEGATIONS MADE BY ADVOCATE BRINK IN HIS PETITION FOR LEAVE TO APPEAL TO LABOUR APPEAL COURT UNDER CASE D529/11 AGAINST MLAMBO JP, CELE J, V. VEDALAKAR, AND B. NAIR.

Par 2	*"This is an extraordinarily serious matter with colossal implications extending way beyond my personal interest in its resolution. It concerns the personal and professional integrity of a sitting judge president, formerly of this court, and that of the most senior management executives of a major public entity. I speak of the perversion of separate Ministerial and Parliamentary enquiries by dint of multiple, objectively demonstrable lies, and different lies told to me, to the LASA Board, to the SAHRC, and to court(different lies told in the pleadings and interlocutory affidavits, and then at trial), and of the gross breakdown of proper corporate governance and the rule of law at LASA, all of which the trial judge looked past in his seemingly clear and definitive, but in fact deplorably inattentive, glib, crude and perfunctory judgement, riddled with the most basic legal and factual misdirection, omissions and non-sequiturs, and characterized by his failures over and over again to consider the radical contradictions and the ludicrously improbable, manifestly untruthful, and objectively contradicted evidence of LASA's single witness at trial, National Operations Executive Brian Nair"*
Par 3	*"I'll advert later in this affidavit to the capital misconduct and massive and pervasive corruption to which I allude here, as well as to the judge's own gravely prejudicial misconduct in the case that thwarted a full and proper ventilation of the issues that I looked to him and trusted him to try."*
Par 4	*"In his refusal the judge didn't treat the clear-cut new evidence surfaced after trial showing unequivocally that Nair had lied to him on oath in two respects. To the judge, Nair's categorically proven repeated mendacity in court made no difference to his assessment of the credibility of his evidence."*
Par 5	*"The judge elliptically conceded his fundamental legal misdirection, identified in my application, that in deciding the case he'd misallocated the final onus of proof, which he'd placed on me instead of on LASA. He then sought to avoid the fatal ramifications of the radical error by two means:"*
Par 6	*"The judge's response was to silently look away."*
Par 7	*"And second by asserting that even if I was right about the incidence of onus, irrespective of where it lay his decision wouldn't have been any different-notwithstanding that LASA relied on the mere say-so of its single witness Nair, unsupported by any records, and indeed contradicted by them, a witness the judge acknowledged I'd shown to have been 'not generous with the truth' on numerous scores. Instead of considering the implications of this for Nair's credibility as a witness, he took him at his word, mechanically reciting his evidence as gospel, without any endeavor to assay its veracity. It seems to have been*

	inconceivable to the judge that such a high public officer could be a practiced, confident, spontaneously inventive, unctuous, bare-faced, abject liar."
Par 8	*"In his refusal, the judge failed utterly to address and deal with the rest of my attack on his judgment in my application, in which I demonstrated all his basic errors, too many to recite here, including the huge prejudice he caused me by refusing to allow me to cross-examine LASA's officers I'd subpoenaed for the purpose, thus depriving me of some major artillery I'd lined up; and he swept the whole thing-all 59 pages and 323 paragraphs-off the table in a single dismissive paragraph."*
Par 22	*"Nonetheless, in view of Nair's unbelievably foolish dissimulation at trial-he was a pathetic liar- contradicted by the documentary record and by LASA's pleaded case, that LASA's entry-level lower criminal court public defender posts were critical, and not its top professional echelon specialist Senior Litigator posts, I showed at trial and called the judge's attention in my heads to all the manifold evidence that Senior Litigator posts are indeed critical, and that the bottom-rung lower criminal court posts can't possibly be and aren't. The judge evidently didn't read that far."*
Par 24	*"And what they unequivocally show is that she* ***(Vedalankar)*** *lied to me in October 2010 about the reason my appointment was aborted. That is, to camouflage the true reason, she'd fed me a false cover-story, as very smooth and convincing as it sounded…The lies then multiplied chaotically in all directions in the classic dynamic of a disintegrating cover-up."*
Par 25	*"At trial I mentioned my conclusions from the evidence I'd found of this that Nair had ghost-written Vedalankar's letters, and Board chairperson Mlambo JP's subsequent false reports to the Minister and to Parliament to pervert their enquiries into my complaints, and for this reason I held them both clear.* ***(my underlining and this must be read with paragraph 13 above)****. But in his evidence, Nair denied any hand in Vedalankar's letters to me; and although in evidence he ultimately admitted writing Mlambo JP's reports, he could 'only assume the Judge personally wrote that' (having first insinuated it might have been Vedalankar and then again) i.e. that Mlambo JP had amplified the report for the Minister before sending it to Parliament, with its further lies added about LASA's compliance with my three PAIA requests, and the nature and scale of my claim I'd just referred to the CCMA for conciliation. (It's quite clear Nair lied to the judge about this, and that he, not Mlambo JP, amplified the report with these additional lies.) That is to say, after I'd told the Judge that I held them clear (more about this below), Nair went on to directly implicate Vedalankar and Mlambo JP in lying to me, to the Minister and to Parliament."*
Par 26	*"True to the Minister's assurance, the OSD money was indeed included in the mid-term budget in October 2010, as Vedalankar informed the Portfolio Committee on the 12th-but not me, from who she*

	concealed this hotly material fact in her letter to me six days late, the better to maintain her pretense that LASA was still too skint to hire me."
Par 28	*"In her second letter to me in January 2011, illegally refusing my second PAIA request testing her financial alibi for the abortion of my appointment, not only did Vedalankar conceal this payment from me, she positively lied to me, again and again, that LASA was still in a financial jam---------- (And Vedalankar, Nair and other national management executives took home magnificent, unprecedented bonuses.)*
Par 29	*"In March 2011, responding to my third PAIA application, Vedalankar, Nair and Clark all confirmed the lying budgetary excuse on affidavit. That is, LASA's CEO, NOE, and HRE all swore the lie was true."*
Par 30	*"Even though it was already obviously false, the financial alibi was inadequate to cover and explain Nair's inaction in finalizing my appointment in the initial three-and-a-half month period between the dates he received my recommendation on 26 November 2009 and when the OSD uncertainty arose on 10 March 2010. So to patch the gap he concocted another story-later twice retracted by him on affidavit as an obvious error, and consequently nowhere pleaded or alleged in any interlocutory affidavit, then contradicted with a different story he told the judge. Who didn't think to note any of this dismal shambles in his judgment"*
Par 31	*"In his reports written for Mlambo JP to sign and submit to pervert the ministerial and parliamentary enquiries I'd initiated, Nair now claimed that what initially held up the alleged next step in my recruitment-a so-called second round interview-was difficulty encountered in coordinating a date suitable for all members of this panel to meet. Another smooth and ostensibly convincing story. After I exposed and refuted it as an outright lie in my original statement of claim, Nair retracted it on oath as 'an error…palpably an error' that Mlambo JP had made. Except that Nair himself was the author of this brazen lie to the Minister and to Parliament; it was not Mlambo JP's 'error'.*
Par 32	*"But Mlambo JP knew full well that this new story was false, because as a member of this so-called second round interview panel he'd never been contacted for a date. At trial Nair claimed, quite absurdly, that he never opened the recommendation and CV email attachments that he'd specially telephoned for, not until more than a year later, when he did so out of simple curiosity. (The judge found this perfectly credible, even though Nair had told a different story on affidavit before trial, which destructive contradiction I pressed in my heads. The judge didn't note this, and accepted and believed Nair's childishly obvious, self-contradicted new lie told in court, which had featured nowhere in any correspondence, report, pleading or affidavit before trial, all justifying LASA's failure to proceed with my appointment. This was one of the fundamental failures of the judgment.)*
Par 33	*"So, contrary to his lie told to the Minister and Parliament in Mlambo JP's name about this, there was no difficulty fixing a date for it because*

	no attempt was ever made to do so…So Mlambo JP knew full well that the report, which Nair had written for him to sign and to give the Minister and the chairperson of the Portfolio Committee to put down my complaints and pervert their independent enquiries contained in a flagrant lie about why no steps were taken to finalise my recruitment in the first few months before the OSD uncertainty arose several months after my selection."
Par 34	*"Mlambo JP also knew full well that the budgetary justification Vedalankar had fed me to cover the true reason my appointment had been aborted, which Nair repeated in the reports he drew for him, was another lie, because he'd chaired the meeting of the Board in July 2010 at which it approved executive management's proposal to trim costs by temporarily freezing recruitment to some lower criminal court posts only…Deceptively silent about it, Vedalankar repeatedly falsely reported LASA's Strategic Plan 2009/12 to have been implemented and completed as regards the employment of Senior Litigators in her CEO report for 2011/12 to the Minister and the National Assembly."*
Par 35	*"My discoveries about Nair's authorship led me to inform the judge on the first day that I held them clear, and that I held Nair solely responsible for the lies these documents contained."* ***(my underlining and this statement must be read with paragraph 13 which he withdrew all allegations against Mlambo JP and Vedalankar)***
Par 36	*"In his chambers on the second day, when I told the judge I still had a lot more evidence to lead, having already blown the fake budgetary pretext to pieces on the facts set out in my Timeline, he warned me: 'I don't want to tell you how to run your case, but don't make the mistake of throwing your net so far out that you catch more than you can bring in.' These were his exact words, spoken off the record, but contemporaneously recorded that evening in emailed reports of the court day to my family and friends. I understood the judge was giving me an indication, as we lawyers say, and a severe indication at that, namely to limit the spray of my case, and keep it fixed on Nair alone, as I'd indicated I intended doing at commencement, and not present any further evidence implicating the big fish; for if I dared make the dangerous mistake of doing so, this would be too much, and it would doom my prospects of succeeding in his court with my claim. It seemed clear to me that the judge wanted the evidence contained. He did not want me to lead more evidence beyond the smaller fry."*
Par 38	*"After I'd discredited the budgetary pretext fed me for not appointing me, and then the initial delay pretext fed to the Minister and Parliament for not immediately proceeding with my appointment, Nair cooked up and fed the Board two brand-new, totally different stories to justify his failure to finalise my appointment at Pietermaritzburg, an internal candidate's promotion at Durban, and another internal candidate's transfer to Mthatha, namely 'recruitment challenges' encountered in filling the posts, and alleged uncertainty that the six incumbent Senior Litigators were up to professional scratch. Both lies. Waffling feebly,*

	Nair was unable to support his first new story and radically changed his second, before which it was repeatedly exposed as a lie by LASA's records."
Par 40	*"It was a risible new lie, sharply contradicting LASA's pleaded and sworn version before trial, unsupported by any record, not alleged in any affidavit or pleading, and contradicted by LASA's recruitment/vacancy statistics for June 2010. But Nair's new lie in evidence made no impression on the judge, as said, he didn't mention it."*
Par 41	*"The LAC is also certain to treat an important aspect of the case, entirely disregarded by the judge (notwithstanding his fine grasp of the specifics of public service appointment procedure displayed in his Baxter judgment), namely Nair's incompetent and illegal so-called second round interview scheme for Senior Litigator candidates-unauthorised by the Board's Recruitment code and inconsistent with its Approval Framework. Unlike the judge, the LAC is certain to remark on the disgraceful breakdown of lawful recruitment procedure at LASA, in blatant disregard of the Board's said regulatory instruments which precisely govern this, and on Mlambo JP's participation in a grossly irregular, prejudicial, and unlawful recruitment practice."*
Par 42	*"His lies proliferating in court as he was trying to shore up his collapsing story about why he never signed his approval (or disapproval) of my recommendation by the selection panel as the Approval Framework required of him, and as provided at the foot of the document (with its legal nonsense, at his instance, about a further interview), Nair claimed in court that he didn't have to-a lie repeatedly and squarely contradicted by LASA's pleadings and interlocutory affidavits. The judge didn't note this; again the LAC is sure to."*
Par 43	*"Unlike the judge who accepted and believed it, the LAC is also sure to find stupidly ridiculous and manifestly false Nair's evidence, building on his just-mentioned lie, but again explicitly contradicted by LASA's pleadings and interlocutory affidavits…"*
Par 44	*"The LAC is certain to find Nair's evidence to have been obviously untruthful just about whenever he opened his mouth…It failed to do so, because its various explanations given were obviously untrue. So what?"*
Par 47	*"I did not expect the judge to be nodding off during the afternoon sessions, and finally claiming perversely, but revealing to his negative animus, that I ought rather to have taken LASA's abortion of my appointment on 'review'. As if I shouldn't have come bothering him to deliver the justice I craved, and had laboured bitterly year after year before trial to achieve, in the face of every obstacle corruptly placed in my way, viciously defamed all the while, contemptuously redoubled when I complained of it. In a matter of such enormous importance, and with so much on the line extending far beyond my personal interest in the case, and with so much fact to traverse and complex argument to present, including relevant, applicable international labour law*

	jurisprudence mentioned in my opening address, I did not expect the judge to prescribe that our heads shouldn't exceed a manifestly insufficient 'fifteen to twenty pages' suggesting that he'd already made up his mind to toss my case. I did not expect that five months after I filed my replying argument the judge hadn't troubled himself to read our heads, and was hearing our oral argument without having prepared for it ten months after the evidence, and relying only on his fading and defective memory of it presented in the course of a nine-day trial concluded the best part of a year earlier. In giving judgment, I did not expect the judge to misstate my case, omitting critical facts and including irrelevant matter, and portray as maladroit and whimsical my precisely considered tactical and strategic decisions taken, wrongly forced by him on the record and improperly pressed by him off it. I did not expect the judge to sugar Nair's lies for his judgment, by stretching and exaggerating them to help them go down. And that besides getting the final onus wrong, he should also have placed on me an impossible, pivotal, evidential onus I very obviously didn't bear and couldn't possibly have discharged."
Par 48	*"Professional and personal networks and loyalties being what they are in the real world, I appreciated from the outset that I was up against very long odds, and that notwithstanding his oath of office it would be no easy thing for a judge to impeach the conduct of his own (then) court president, and now president of the biggest, most important high court in the country, and thereby trigger a gargantuan scandal. But the truth must be out, and justice needs doing fearlessly."*
Par 49	*"An unattended splinter, so easily removed, has led to a widespread gangrene at the top of a major public entity, generally perceived to be the jewel in the crown of the Justice cluster, and a model of good governance."*
Par 50	*"Having regard to the profusion of contradictory lies that have spewed out of LASA, including to the highest authorities, in the cover-up following the illegal abortion of my appointment, to get away with and escape accountability for it-successfully so far, like Nixon nearly did after Watergate-your lordships can expect absolutely any lie from LASA in its answering papers, any subterfuge to persuade you to shut down further enquiry into this matter by refusing this petition. Since in-house attorney Mtati acting on instruction can offer you no more than hearsay about the case, and hasn't stinted at committing the most grotesque, poisonous perjury on affidavit on Nair's instructions to prejudice me in the court's eyes before trial, and since the judge found Nair to have been untruthful under oath on any number of scores, I respectfully entreat your lordships to require CEO Vedalankar, and not the former discreditable and unreliable persons, to depose to any answering affidavit under LAC rule 4(6) in regard to why I should be denied leave to argue my case before three senior, experienced, and attentive judges of appeal…The prospect of being jailed may chill any*

	inclination she might have to repeat under oath to your lordship the lies she told me."

UNFOUNDED DEFAMATORY, DEMEANING AND INSULTING ALLEGATIONS MADE BY ADVOCATE BRINK IN HIS SUPPORTING AFFIDAVIT TO URGENT APPLICATION AT PIETERMARITZBURG HIGH COURT UNDER CASE 12977/15 AGAINST WAGLAY JP,

Par 14	*"…(ii) my covering letters to Labour Appeal Court judges Davis and Sutherland JJA, falsely implicated by the order in the perversion of my petition…"*
Par 21	*"I've been busy with my draft complaint to the JSC for months- it's quite intricate, and includes similar fact evidence of the surreptitious perversion, by dint of multiple easily demonstrable lies, of separate Ministerial and Parliamentary enquiries I'd caused to be initiated; the subornation of perjury; and other grave corruption, all clearly shown…"*
Par 22	*"…(ii) that the order is a demonstrable fake…"*
ANNEXURE A: LETTER DATED 7 SEPTEMBER 2015 TO REGISTRAR OF THE LABOUR COURT, THULANI VILAKAZI WHICH FORMS PART OF ADVOCATE BRINK'S SUPPORTING AFFIDAVIT	
Par 32	*"The document is a forgery."*
Par 5- page 2	*"The registrar of the Labour Appeal Court in Johannesburg isn't your superior; and doesn't have the power to issue orders on judicial decisions made in your court. Had my petition been decided in Durban, as alleged in Phophi's order, it would have been signed and issued by you, and not by him in Johannesburg."*
Par 6, page 3	*"Davis and Sutherland JJA wouldn't have associated themselves with such a dull contradictory order. Nor with the pitifully defective logic in its second paragraph."*
Par 11- page 4	*"…according to the fake order…"*
Par 13, page 4	*"…phoney dismissal order…"*
Par 14- page 4	*"(Unlike Cele J, who shamelessly admitted in his chambers before the argument of my case a whole ten months after the two-week trial-set down for three days since my main heads alone were a phone-book thick bristling with 857 footnotes to the 1037 pages of bundled trial documents and to LASA's dense, lengthy pleadings (tactically elicited) and several interlocutory affidavits contradicted again and again by its single trial witness, but which argument he cut to a few hours, saying he just wanted our leading points-that he hadn't troubled to prepare himself in this manner; as might have been expected of a highly paid judge trying an exceptionally serious case involving fundamental rights*

	violations, millions of rand in damages, and serious maladministration, abuse of power and pervasive corruption in the top echelons of a major public entity headed by a Judge President. It explains his abysmal judgment whitewashing it a further three-and-a-half months later, disgracefully enabling the guilty to evade accountability and to walk away smirking.)
Par 20-page 6	*"Contrary to the false implication of the order that the dismissal of my petition was the unanimous decision of the three named judges-and Phophi later repeated this lie to me expressly in a letter ghost-written for him (Annexure 'L'), his second paragraph perfectly irrelevant, his third a flourish of dismally obtuse contradiction and illogic…You've got the file in your office; you can see for yourself."*
Par 21, page 6	*"To pre-empt any tampering with the real evidence of judicial corruption that the file closes…"*
Par 23, page 6	*"Contrary to the false information uttered in the forged order; calculated to defraud me into abandoning my pursuit of justice after years of struggle-with criminal prosecution and terrible sanctions in store for those who brazenly lied to the Justice Portfolio Committee in the National Assembly about my matter, and perjured themselves in the Labour Court and in the Labour Appeal Court-Davis and Sutherland JJA weren't involved in rejecting my petition, and their names were abused in the perpetration of the fraud on me without their knowledge. Ask them, they'll tell you."*
Par 25, page 7	*"He then covered up his malicious obstruction of my right to appeal (if, under LAC rule 4(8), at least two designated appeal judges thought I was in with a chance), firstly by ordering his registrar in Johannesburg to issue a counterfeit order he'd ghost-written, pretending that he, Davis and Sutherland JJA had considered and unanimously rejected my petition in Durban on 18 February 2015, and secondly by ghost-writing a letter for the said registrar to send to me, repeating this lie and basically telling me to push off and stop asking dangerous questions threatening to blow the lid on his impeachable misconduct."*
Par 26, page 7	*"It isn't any mystery why Waglay JP intentionally violated my fundamental right to due process guaranteed by section 34 of the Constitution by blocking my access to the Labour Appeal Court to appeal and remedy the complete hash that Cele J made of my case. In a magnificent stroke of good fortune, I landed the written evidence of the stunningly dishonest improper influence that caused him to do so."*
Par 28, page 7	*"I've substantially completed drawing such a complaint regarding the perversion of my petition, identifying the other corrupt judges responsible for it and his motives, and I'll be filing it imminently."*
Par 29, page 8	*"…as the bogus order falsely implies…"*
Par 30, page 8	*"…in full knowledge that the so-called order on which it relies is a fraud, and that contrary to false appearances my case is still very much alive*

	and has yet to be properly determined on petition and then on appeal, you'll be acting improperly, in bad faith and unlawfully."
Par 31, page 8	*"…and will put this letter up with my application to demonstrate that you turned a deliberate blind eye to the true facts that I brought to your attention, and proceeded to tax a bill you well knew is not yet due."*

Having set the excerpts above and in totality looking at the tone and language used by Brink, it is my submission that he has no respect to his office and other officers of Court. He is treading on the path of demeaning, insulting and defaming any person who holds a divergent view to his own. He is quick to make conclusions that are based on his delusionary theory and without any factual basis. It is my submission that, as an officer of the court, based on his conduct, the public can be susceptible to far reaching negative implications.

Deponent

THUS SWORN AND SIGNED BEFORE ME AT JOHANNESBURG ON THIS ___ DAY OF NOVEMBER 2015. THE DEPONENT HAVING ACKNOWLEDGED TO ME THAT SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, SHE CONSIDERS THE CONTENTS THEREIN TO BE BINDING ON HER CONSCIENCE AND SHE HAS NO OBJECTION TO THE TAKING OF THE PRESCRIBED OATH.

COMMISSIONER OF OATHS

FULL NAMES : Ronji Ko T/Chaka

DESIGNTION : ST

ADDRESS No 01 Clarendon Place

Hillbrow Saps

SUID-AFRIKAANSE POLISIE
STATION COMMANDER
SOUTH AFRICAN POLICE SERVICE

S.7 R7

TO: **G. O. VAN NIEKERK SC**

CHAIRMAN OF THE BAR COUNCIL, KZN

FROM: **R. J. A. CALLUM SC**

REPORT OF THE COMPLAINTS COMMITTEE

Dear Van Niekerk SC,

I have convened a number of meetings of the Complaints Committee since it was established for the purposes of determining the veracity of complaints which have been allocated to this Committee.

I report on the eleven complaints that have been referred to this Committee as follows:

1. **BRINK**

This matter arises out of a complaint lodged by the Legal Aid Board pursuant to review proceedings that Brink (a non-member) instituted in the Labour Court. The Complainant has furnished the Society with a record of the proceedings from which it is evident that Brink gratuitously defamed the Chairman of the Board, the Honourable Mr Justice Mlambo, and specifically alleged that he was manifestly dishonest and further that he colluded with other members of the Board to avoid appointing Brink to a position that had been advertised. He persisted with this version in the review and was ultimately forced to concede that he had been

incorrect in his assessment of the Honourable Judge's conduct. He has not made any attempt to address the import of his disgraceful behaviour and this Committee is of the view that Brink's behaviour towards a respected member of the judiciary is so manifestly reprehensible that it would be appropriate to institute proceedings to have him struck off, alternatively suspended from practice due to his scurrilous attack on the dignity of the Court which he has a duty to uphold.

To that end, the Committee addressed a letter to Brink, a copy of which is annexed hereto for your ease of reference, calling upon him to make representations, if any, before the Society considers whether it would be an appropriate case for it to initiate strike-off proceedings.

Brink has failed to respond to this letter and this Committee, accordingly, is of the view that strike-off proceedings would be appropriate in the circumstances.

2. [redacted]

[redacted]

[redacted]

R7

Gmail Anthony Brink <anthonybrink.sa@gmail.com>

Re: Brink's second request for records under PAIA: Three issues.

4 messages

Anthony Brink <anthonybrink.sa@gmail.com> 12 January 2021 at 13:17
To: Kate Peniston - Society of Advocates of KZN <kznbar@law.co.za>

Dear Ms Penniston

Thanks for your response yesterday to my second PAIA request in November last year.

Three issues arise:

1.
The excerpt of the record you provided me headed 'Report of the Complaints Committee', addressed to Van Niekerk SC by Callum SC, marked '5.7' in manuscript in the top right corner, and presented at the meeting of the bar council in February 2017, is undated, inasmuch as the last signature and date page of the report was omitted. Please supply me the last page of the report showing its date.

2.
In the penultimate paragraph of Callum SC's said report on me, he states:

'the Committee addressed a letter to Brink, a copy of which is annexed for your ease of reference, calling on him to make representations, if any before the Society considers whether it would be an appropriate case for it to initiate strike-off proceedings. Brink has failed to respond ...'

Kindly furnish me with a copy of that 'letter to Brink, a copy of which is annexed' to the report.

(I didn't receive this letter, which is why I was amazed to learn by chance in April 2017 that the Council had resolved in February 2017 that I be struck off, before I'd been afforded an opportunity to answer LASA's complaint against me.)

3.
Your response to item 13 on my list of requested records, namely for:

'Any and all correspondence between the Society and the Judicial Service Commission regarding progress in the JCC's determination of Brink's gross misconduct complaints against Mlambo JP and Waglay JP'

was:

'please find attached ... Correspondence between the JSC and Society dated 18 August 2018, there is no other correspondence for this item.'

This correspondence supplied me comprises Society chairperson Van Niekerk SC's email on 8 August 2018 (not the 18th) to the late Lynette Bios, then secretary of the Judicial Service Commission ('JSC'), in response to her 'enquiry of today's date' (per the email).

The quoted phrase shows that Ms Bios enquired earlier in the day on 8 August 2018 regarding the Society's contemplated strike-off application against me, which Van Niekerk SC informed her would be finally decided upon once the JSC (actually the JSC's Judicial Conduct Committee) had decided my complaints against Mlambo JP.

(It's almost certain Ms Bios was the source of the information provided to the Society and repeated in the Litigation Sub-Committee reports of July and August 2018 that my complaints had been 'referred to the Judicial Misconduct Sub-Committee of the JSC.')

If written, Ms Bios's enquiry is responsive to my record specification under item 13 of my request, and I require a copy please. If telephonic, please advise me who took her call, recorded her enquiry, and referred it to Van Niekerk SC to answer.

And after this, I don't expect I'll be troubling you again.

Yours sincerely
Anthony Brink

On Mon, 11 Jan 2021, 12:05 Kate Peniston, <kznbar@law.co.za> wrote:

> Dear Mr Brink

R7

Please find attached herewith a letter for your attention.

Kind regards

Kate Peniston

Administrative Secretary

SOCIETY OF ADVOCATES OF KWAZULU-NATAL

3rd Floor

6 Durban Club Place

Durban

4001

Tel : 031 301 3099

Fax : 031 304 4415

Fax2Mail : 086 401 5567

From: Anthony Brink <anthonybrink.sa@gmail.com>
Sent: Wednesday, 18 November 2020 22:00
To: Kate Peniston - Society of Advocates of KZN <kznbar@law.co.za>
Subject: Brink's second request for records under PAIA

Dear Kate
I attach my second request for access to records under the Promotion of Access to Information Act 2 of 2000 for the attention of your chairperson.

Please see the 'Note' at the very end of it.
Sincerely
Anthony Brink

Anthony Brink <anthonybrink.sa@gmail.com> 28 January 2021 at 16:42
To: Kate Peniston - Society of Advocates of KZN <kznbar@law.co.za>

Dear Ms Peniston
More than a fortnight on, I write to request a reply to my email to you of the 12th.
Really important.
Yours sincerely
Anthony Brink
[Quoted text hidden]

Kate Peniston <kznbar@law.co.za> 17 February 2021 at 08:15
To: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Mr Brink

My apologies for the late reply.

R7

Item 1. The last page of the complaints committee report is attached.

Item 2. The letter is not annexed to the report that I have on file. I have enquired with the LPC and await their reply.

Item 3. Advocate van Niekerk SC has confirmed that he spoke with Ms Bois by telephone call and responded to her query with the email sent to her on 8 August 2018.

[Quoted text hidden]

SKM_36721021616570.pdf
38K

Anthony Brink <anthonybrink.sa@gmail.com> 17 February 2021 at 08:30
To: Kate Peniston - Society of Advocates of KZN <kznbar@law.co.za>

Thanks very much, Kate.
Best
Anthony
[Quoted text hidden]

Complaint against Advocate A. R. Brink

1. **Membership**

According to the latest membership list, Brink is no longer a member of the Society. Brink is apparently presently a contracted additional Magistrate, stationed in Eshowe.

2. **The identity of the complainant**

An attorney employed as a corporate services executive by Legal Aid South Africa (henceforth 'LASA').

3. **The nature of the complaint**

The complainant has alleged that Brink's conduct is not befitting of an officer of the court, nor that of a Magistrate. The complaint is in excess of 500 pages in length. The complainant alleges

R8

that Brink's language is '**unprofessional**' and he requires sanctioning.

4. Summary of facts

4.1 Brink applied for a job at LASA as a senior litigator at the Pietermaritzburg Justice Centre and progressed to the second round of interviews. The second round of interviews did not proceed as a result of budgetary uncertainties, according to LASA. Brink, however, believed that he had not been successful in securing employment because of his controversial views on the effect of anti-retroviral drugs in treating AIDS (he is a well known, self taught, dissident in this field, believing that ARV's kill rather than cure). He consequently instituted litigation against LASA in the Labour Court alleging, **inter alia**, that he had been unfairly discriminated against in terms of the Employment Equity Act 55 of 1998.

4.2 The litigation was conducted in Brink's name, he being the Applicant. It appears that he drafted the

R8

papers. Brink testified at the hearing. At the hearing in the Labour Court, Brink was initially represented by counsel (Hunt) and an attorney, but at the beginning of the matter dismissed both of them and represented himself.

4.3 The matter served before Mr. Justice Cele (henceforth 'Cele J'). On 18 September 2014, Brink's application was dismissed by Cele J, with costs. On 27 November 2014, Cele J refused Brink's application for leave to appeal and to lead new evidence on appeal.

4.4 On 7 December 2013 (this should perhaps have been dated 2014), Brink petitioned the Judge President of the Labour Court. His petition was refused on 18 February 2015.

4.5 On 7 October 2015, Brink brought an urgent application in the High Court in Pietermaritzburg in an attempt to interdict the Taxing Master in the Labour Court from finalising the taxation of the costs he was ordered to pay by Cele J in the Labour Court. The

R8

Order sought by Brink (who appears to have been represented on this occasion) was pending an application to declare that the dismissal of his petition to the Judge President was a nullity and that it be set aside (he claimed that the Registrar who signed the Order recording the dismissal of the petition was not a Registrar in Durban, that there was no evidence in his petition file that his petition had, in fact, been refused nor was there any evidence that the three Judges who considered it were in Durban on the date the Order issued). This application was dismissed on the day that it was first set down, with costs ordered against Brink on the attorney client scale.

5. **The specific complaints**

5.1 The conduct that the complainant refers to stems largely from allegations that Brink made in his '**Statement of Claim**' in the Labour Court. In that document Brink, **inter alia**, stated that:

R8

5.1.1 Mr. Justice Dunstan Mlambo, the Chairperson of LASA (henceforth 'the Judge'), and the CEO of LASA (henceforth 'the CEO) had been motivated by unlawful political prejudice, alternatively racial prejudice, directed at himself;

5.1.2 the Judge and the CEO had orchestrated a cover up in order to disguise the true reason why Brink was not appointed to the position in LASA;

5.1.3 the Judge had lied about the matter when reporting on the matter to the Minister of Justice and Constitutional Development in order to cover up his and the CEO's unfair discrimination against Brink;

5.1.4 the Judge lied to the chairperson of the Parliamentary Portfolio Committee when reporting to it on the matter and thereby misled, **inter alia**, parliament;

5.1.5 the financial justification for not appointing him was a bogus reason concocted by the Judge and the CEO.

5.2 Under cross examination at the hearing, Brink was forced to retract all the allegations that he had made against the Judge and the CEO. He now indicated that he exonerated the Judge and the CEO from any accusations of dishonesty and discrimination. He, however, now stated that another person had concocted the plot against him.

5.3 Brink claimed his statements about the Judge and the CEO were based on '**misconceptions**'. He also stated that he had made the allegations against the Judge and the CEO '**inadvertently**'.

5.4 In his petition to the Judge President of the Labour Court Brink, notwithstanding his earlier retraction of all the allegations against the Judge and the CEO at the trial, stated that:

5.4.1 the matter continued to involve

'the personal and professional integrity of a sitting judge president, formerly of this court,

R8

and that of the the most senior management executives of a major public entity.'

This is clearly a continued reference to the Judge and the CEO.

5.4.2 as a consequence of

'multiple, objectively demonstrable lies'

there had been a perversion of separate Ministerial Parliamentary enquiries. This again refers to a proposition that he had allegedly previously distanced himself from.

5.4.3 the Judge had known that a

'new explanation'

that the Judge had advanced

'was false'

R8

and that the budgetary constraints reason advanced by him

'was another lie'.

5.4.4 The Judge had participated in

'a grossly irregular, prejudicial, and unlawful recruitment process.'

5.4.5 The Judge is an active political promoter of the American and European medical industrial complex's HIV-AIDS-ARV business model,

'under the mantle of human rights.'

5.4.6 Both the Judge and the CEO are partisans of pharmaceutical interests and

'the chemical merchandise they promote'.

5.4.7 The Judge and the CEO concocted a false explanation to cover the true reason for aborting Brink's recruitment.

R8

5.4.8 The Judge

> **'would later consciously and deliberately tell the same lies, and more lies of his own ... to the Minister of Justice and Constitutional Development, which lies he repeated some months later to the chairperson of the Portfolio Committee.'**

5.4.9 Cele J, who heard the matter in the Labour Court, was guilty of

> **'gravely prejudicial misconduct'**

that resulted in him thwarting a full and proper ventilation of the issues and had made several errors in law.

5.4.10 Cele J's judgment against him was a

> **'deplorably inattentive, glib, crude and perfunctory judgment...'**

6. Discussion

6.1 Brink has consistently identified himself as an advocate in the papers that he has drawn, even at a time when acting as a Magistrate. However, it is difficult to discern whether in making the allegations that he has made whether he was acting in his capacity as an advocate or in his capacity as a litigant in person. At best for Brink, the line between these capacities is blurred. He will no doubt allege that he was not expressing himself as an advocate but as a litigant. However, he ought to have conceived that the unsubstantiated allegations that he made might be attributed to him in his role as an advocate. Certainly this is the view adopted by the complainant, and he is justified in taking that view.

6.2 The allegations that Brink made are serious: to call the Judge dishonest and to allege that he has lied cannot be anything but serious. In addition, his disdain for the Bench is further demonstrated in the unpalatable way he has referred to Cele J. To wilfully impugn another's integrity in a profession, such as

law, where integrity is crucial is impermissible. Such allegations ought not to have been made without any evidence justifying them being made. They appear to have been gratuitously made in order to advance Brink's personal agenda of a conspiracy against him.

6.3 The fact that the allegations were withdrawn in the proceedings before Cele J does not stand to Brink's credit. Firstly, in the absence of evidence, they ought not have been made at all. Secondly, it does not appear to have been a true withdrawal, as in his petition he appears to have persisted in the scandalous allegations he had apparently withdrawn. He had had time to reflect on what he had said and pleaded and decided, in drawing his petition, to continue with allegations that he had admitted under oath were not true.

6.4 The statement that Brink had '**inadvertently**' slandered the Judge in a most disgraceful way must be considered as a dishonest statement. There was nothing inadvertent about Brink's conduct: it was deliberate and formed part of his strategy.

R8

7. **Finding**

It is found that there is merit in the complaint.

8. **Recommendation**

Notwithstanding that Brink is not a member of the Society of Advocates, it is recommended that a striking off application be launched.

Complaints Committee 2

R. G. Mossop S.C.

M. Konigkramer

M. Manikam

17 February 2017.

MINUTES OF THE MEETING OF THE BAR COUNCIL OF THE SOCIETY OF ADVOCATES OF KWAZULU-NATAL HELD ON 23RD FEBRUARY 2017 IN THE MEETING ROOM, 15TH FLOOR, 6 DURBAN CLUB PLACE, DURBAN.

1. WELCOME

The Council meeting commenced at 17h00 and the chairman welcomed the members of the Council present.

2. ATTENDANCE AND APOLOGIES

Present:

GO van Niekerk SC (Chairman)
VM Naidoo SC (Deputy Chairman)
P Hemraj SC
TG Madonsela SC
W Nicholson
C Jaipal
S Mahabeer
KP Thango
K C McIntosh
GR Thatcher SC (Honorary Secretary)
D Pillay (Assistant Honorary Secretary)
K Peniston (Administrative Secretary)

Apologies:

AJ Troskie SC (Honorary Treasurer)
CG Van der Walt

3. CONFIRMATION OF MINUTES OF MEETING ON 19 JANUARY 2017

3.1. There were no amendments to the minutes.

[redacted]

5.6. [redacted]

5.6.1. [redacted]

5.6.2. [redacted]

5.7. **Complaints Committee 1 Report (Annexure 5.7, pages 1-6)**

The report of complaints committee 1 was tabled and the following was resolved:

5.7.1. Brink: the complaint against Brink by the Legal Aid Board was considered by this complaints committee as well as complaints

R9

committee 2, both of which made the same recommendation, namely that an application for Brink's striking off ought to be brought.

Resolved:

It was resolved that the complaint against Brink would be referred to the Litigation Committee to launch an application for Brink's striking off.

5.7.2. [redacted]

5.7.3. [redacted]

5.8. [redacted]

5.8.1. [redacted]

5.8.2. [redacted]

6. **FINANCE (ANNEXURE 6, PAGES 1-5)**

6.1. [redacted]

Annexure "AA24"
R10

SOCIETY OF ADVOCATES OF KWAZULU-NATAL

3rd Floor, 6 Durban Club Place, Durban, 4001
Tel (031) 301 3099 Fax (031) 304 4415 Email kznbar@law.co.za

23 March 2013

Mr Solly Sekgota
Email: SollyS@legal-aid.co.za

Dear Sir

RE: COMPLAINT AGAINST ADVOCATE A R BRINK

I write to advise you that the report by the complaints committee dealing with your complaint against Advocate A R Brink was tabled before the Bar Council and was noted. A copy of the report is attached hereto.

The Bar Council has referred your complaint to the Litigation committee for a striking off application against Advocate A R Brink.

I trust you find the above in order.

Yours faithfully

KATE PENISTON
Administrative Secretary

cc: **Thembile Vuyo Mtati**
Legal Aid Board
ThembileM@legal-aid.co.za

2016/2017 BAR COUNCIL
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CG van der Walt : KC McIntosh : KP Thango : S Mahabeer : AR Khan : WAJ Nicholson : C Jaipal : M Mazibuko
G R Thatcher SC (Hon. Secretary): AJ Troskie SC (Hon. Treasurer): D Pillay (Hon. Asst. Secretary)
KL Peniston (Administrative Secretary)

25 Balcomb Ave
Zini River Estate
Mtunzini 3867

24 April 2017

Gardiner van Niekerk SC,
Chairman: KwaZulu-Natal Bar
3rd Floor, Durban Club Place
Durban

By email: kznbar@law.co.za

Cc: Venesen Naidoo SC,
Vice-Chairman: KwaZulu-Natal Bar
17 Prince Edward Street
Pietermaritzburg

By email: pmbbar@pmblaw.co.za

Dear Van Niekerk

REQUEST TO BE HEARD BEFORE THE BAR ACTS
ON AN UNPROFESSIONAL CONDUCT COMPLAINT

Imagine my amazement to learn from a replying affidavit filed last month (Pmb HC: 12124/16) that the Complaints Committee 2 (Mossop SC et al.) had just decided, on the strength of a complaint made in 2015 by Legal Aid South Africa ('LASA'), that I should be struck off for persistently slandering its chairperson Mlambo JP.

Without affording me a hearing.

The purpose of this letter is to request a copy of the complaint and that I be permitted to answer it before the Bar takes the matter any further. I'll be pointing out some basic factual mistakes in the Complaints Committee's finding, which it wouldn't have made had it heard me.

My enclosed letter to Corruption Watch on 6 March, particularly the last paragraph on page 3 et seq., points up the extraordinary gravity of this matter.

My answering affidavit in the above-mentioned application – 960 paragraphs, 270 pages, and 80 annexures – comprehensively traverses my disputes with LASA; addresses much of what LASA appears to have complained about; and anticipates what I'll have to say in my answering affidavit should the Bar decide

to proceed. I'll print and send it up on request. Alternatively it can be downloaded immediately from my Dropbox folder named 'For Corruption Watch' (https://goo.gl/sKooCO); it's item #4.

Still I'd like to see a copy of the complaint itself, and to answer it specifically.

I'll shortly be applying to the Judge President under section 13(1)(a) of the Supreme Court Act for the appointment of a full bench to hear LASA's said application (simultaneously with my own application against LASA (1118/16) brought three weeks earlier, opposed but unanswered; also in the Dropbox folder), in view of the factual density of the matter, and Mlambo JP's impeachable misconduct on multiple scores, detailed with supporting documents in my answering affidavit.

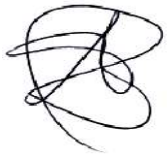
I mention this, because my capital complaints against Mlambo JP that LASA has complained about, are likely to come before court later this year. That is, they'll be aired, irrespective of the Bar's reconsidered decision of LASA's complaint, in light of the staggering documented facts set out in my answering affidavit that LASA almost certainly didn't share with the Bar when making its complaint.

To repeat my question:

Will the Bar let me see the complaint against me, and apply the audi alteram partem rule before proceeding?

Your reply by email would be preferred.

Yours sincerely



ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

SOCIETY OF ADVOCATES OF KWAZULU-NATAL

3rd Floor, 6 Durban Club Place, Durban, 4001
Tel (031) 301 3099 Fax (031) 304 4415 Email kznbar@law.co.za

12 May 2017

Mr Anthony Brink
Per email : anthonybrink.sa@gmail.com

Dear Mr Brink

Your letter of 24 April 2017 refers.

In view of what is contained in your letter, the Society has decided that it will, at its next meeting, set aside its decision to bring an application for your striking-off and to provide you with an opportunity of a hearing. I will refer the complaint against you back to Complaints Committee 2 who are familiar with the case and request Mossop SC to consider any representations you wish to make to that committee. I will also request him to forward to you a copy of the complaint.

I do not wish the Society to become embroiled in a lengthy debate with you about the merits of the complaint and I will accordingly request your representations to be made expeditiously and as brief as you can possibly make them.

Yours faithfully

G O van Niekerk SC
Chairman

c.c. Advocate R Mossop SC
Per email : rgmossop@law.co.za

c.c. Kate Peniston
Society of Advocates
Per email : kznbar@law.co.za

2016/2017 BAR COUNCIL
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G R Thatcher SC (Hon. Secretary): AJ Troskie SC (Hon. Treasurer): D Pillay (Hon. Asst. Secretary)
KL Peniston (Administrative Secretary)

MINUTES OF THE MEETING OF THE BAR COUNCIL OF THE SOCIETY OF ADVOCATES OF KWAZULU-NATAL HELD ON THURSDAY 25 MAY 2017 IN THE DJ SHAW QC ROOM, 3RD FLOOR, 6 DURBAN CLUB PLACE, DURBAN.

1. **WELCOME**

The Council meeting commenced at 17h00 and the chairman welcomed everyone. He extended a special welcome to J Nxusani SC, a new member of the council who had replaced Hemraj SC following her resignation and who was attending his first council meeting.

2. **ATTENDANCE AND APOLOGIES**

Present:

GO van Niekerk SC (Chairman)
TG Madonsela SC
J Nxusani SC
CG van der Walt
M Mazibuko
C Jaipal
S Mahabeer
KP Thango
W Nicholson
AJ Troskie SC (Honorary Treasurer)
GR Thatcher SC (Honorary Secretary)
D Pillay (Assistant Honorary Secretary)
Ms K Peniston (Administrative Secretary)

Apologies:

VM Naidoo SC (Deputy Chairman)
KC McIntosh

R13

3. **CONFIRMATION OF MINUTES OF MEETING ON 20 APRIL 2017**

3.1. There were no amendments made to the minutes.

3.2. CG van der Walt proposed that the minutes be confirmed and adopted and S Mahabeer seconded this proposal.

4. **MATTERS ARISING / TRACKING ITEMS**

4.1. [redacted]

4.2. **Complaints register**

4.2.1. [redacted]

4.2.2. Committee 2

The council had resolved to bring an application to strike Brink, a non-member, from the roll of advocates. Brink had subsequently written requesting that he receive a hearing, contending that he ought to have received one before a resolution for his striking off was taken. After discussion:

It was resolved:

The resolution to strike Brink off is rescinded. He would be given a hearing after which the matter would be considered afresh.

SOCIETY OF ADVOCATES OF KWAZULU-NATAL

3rd Floor, 6 Durban Club Place, Durban, 4001
Tel (031) 301 3099 Fax (031) 304 4415 Email kznbar@law.co.za

15 May 2017

Mr Anthony Brink
Per email: anthonybrink.sa@gmail.com

Dear Mr Brink

Complaint: Legal Aid South Africa

I refer to the abovementioned matter and van Niekerk SC's letter to you dated 12 May 2017.

Please find attached the complaint in pdf format. I assume that you have the source documents to which reference is made in the complaint. Should this not be the case, please let me know which documents you do not have.

Would you let us have your answer to the complaint at your earliest convenience.

Yours faithfully

R. G. Mossop SC
Convenor: Complaints Committee 2

c.c **Advocate G. van Niekerk SC**
Per email: michellemack@law.co.za

c.c **Kate Peniston**
Society of Advocates
Per email: kznbar@law.co.za

2016/2017 BAR COUNCIL
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G R Thatcher SC (Hon. Secretary): AJ Troskie SC (Hon. Treasurer): D Pillay (Hon. Asst. Secretary)
KL Peniston (Administrative Secretary)

SOCIETY OF ADVOCATES OF KWAZULU-NATAL

3rd Floor, 6 Durban Club Place, Durban, 4001
Tel (031) 301 3099 Fax (031) 304 4415 Email kznbar@law.co.za

25 July 2017

Mr. Solly Sekgota
Corporate Legal Manager
Legal Aid South Africa

Per email: SollyS@legal-aid.co.za

Dear Mr. Sekgota

Complaint: Advocate A. Brink

Further to the above, an answer has been received from Advocate Brink concerning the Society of Advocate's intention to remove his name from the Roll of Advocates. That response consists, at this stage, of eight volumes of complaints against the Honourable Mr. Justice Mlambo JP.

I have broken down those eight volumes into smaller scanned bundles to aid email transmission. The eight volumes are thus contained in eleven separate bundles of documents. I shall send each bundle to you by separate email in an attempt to ensure that it is not rejected by your server. The complaints thus run in sequence from bundle one to bundle eleven.

Could I ask you to consider the contents of the answer and let me know whether you have any response thereto.

A swift response would be appreciated, but may not be possible given the voluminous nature of the answer and the detail contained therein.

I look forward to receiving your response.

Yours sincerely

Rob Mossop SC*
Complaints Committee 2: Convenor

*Electronically transmitted and therefore not signed

2016/2017 BAR COUNCIL
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G R Thatcher SC (Hon. Secretary): AJ Troskie SC (Hon. Treasurer): D Pillay (Hon. Asst. Secretary)
KL Peniston (Administrative Secretary)

Legal Aid South Africa
Your voice. For justice.
Independent and within reach.

29 De Beer Street
Braamfontein
Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

Our Ref: Sollys/complaint/KZN

23 August 2017

Advocate Rob Mossop SC

c/o Society of Advocates of Kwa Zulu Natal

6 Durban Club Place

Durban

4001

Per e-mail: kznbar@law.co.za

Dear Advocate Mossop SC

Complaint: Advocate A. Brink

We acknowledge receipt of your letter dated 25 July 2017 and confirm having separately received 9 (nine) volumes of attachments consisting of 8 (eight) complaints by Advocate Brink to the Judicial Service Commission.

The complaints consist of 264 (two hundred and sixty four) pages in number and having read through all of them, it was apparent that there are no new issues that Advocate Brink is raising. The substantial part of the complaints have already been ventilated and dealt with at the Durban Labour Court and the Labour Appeal Court. Other matters raised arise out of the applications he made at Eshowe Magistrates Court which now form part of two applications set down for 27 October 2017 at the Pietermaritzburg High Court.

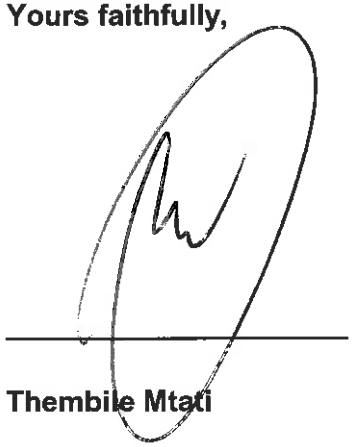
Advocate Brink does not respond to our complaint submitted to your Society but rather demonstrates that he has also lodged complaints against Judge President Mlambo.

It is not our intention to respond to his complaints, however it is interesting to note that he further makes unsubstantiated inflammatory statements against Judge President Wagley.

We have furnished you with a record of the Labour Court proceedings highlighting the causes of complaint and we affirm our position and request that the matter be finalised swiftly.

We also attach for your convenience, the answering affidavit of Advocate Brink in the pending proceedings scheduled for 27 October 2017 to indicate his continued unrepentance towards the judiciary.

Yours faithfully,



Thembile Mtati

Legal Executive

Legal Aid SA

R17

Gmail Anthony Brink <anthonybrink.sa@gmail.com>

Response of Legal Aid

12 messages

Rob Mossop <rgmossop@law.co.za> 29 November 2017 at 06:58
To: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Mr. Brink

I see that I omitted to send to you a copy of LASA's response to your representations.

Please find same attached.

Kind regards

Rob Mossop SC

2 attachments

PastedGraphic-1.png
16K

Complaint Advocate A Brink 23- August 2017.pdf
54K

Anthony Brink <anthonybrink.sa@gmail.com> 29 November 2017 at 09:37
To: Rob Mossop <rgmossop@law.co.za>

Thanks.
When did they come in?
Cheers
AB
[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 29 November 2017 at 09:39
To: Rob Mossop <rgmossop@law.co.za>

Scratch that.
I've just opened the doc to read it, and see it's dated 23 August.
[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 29 November 2017 at 09:41
To: Rob Mossop <rgmossop@law.co.za>

OK, read it.
Letter to follow.
[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 29 November 2017 at 20:33

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R17

To: Rob Mossop <rgmossop@law.co.za>

Dear Mossop
Please forward to me Legal Aid SA's recent communication with you which prompted you this morning to suddenly remember, three months on, to provide me with its letter to you of 23 August, in which it told you, 'It is not our intention to respond to his [my] complaints' to the JSC against Mlambo JP.
Please also forward your response to this recent communication by LASA.
I know you and LASA have indeed communicated about this, because around 4 this afternoon, several hours after your email to me, I received LASA's response to my PAIA request a month ago for a copy of its comment on my JSC complaints – which complaints you forwarded to LASA on 25 July – telling me that 'it has already been confirmed to us by the Society of Advocates that the requester is already in possession of this record.'
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[Quoted text hidden]

Vedalankar 2 November 2017.pdf
62K

Rob Mossop <rgmossop@law.co.za> 30 November 2017 at 09:38
To: Anthony Brink <anthonybrink.sa@gmail.com>

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R17

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[Quoted text hidden]

On Nov 29, 2017, at 20:33, Anthony Brink <anthonybrink.sa@gmail.com> wrote:

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<Vedalankar 2 November 2017.pdf>

2 attachments

PastedGraphic-1.png
16K

Email from Sekgota.pdf
1027K

Anthony Brink <anthonybrink.sa@gmail.com> 30 November 2017 at 10:23
To: Rob Mossop <rgmossop@law.co.za>

Thanks, Mossop, for your prompt and completely satisfactory answer.
Might I have please the further correspondence I mention, namely, 'all correspondence exchanged between LASA and the Society, in the period between LASA's complaint and your original lopsided finding against me, both of which

R17

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Or were these earlier communications also over the telephone?
Regards
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[Quoted text hidden]
Kind regards

Rob Mossop SC

<Vedalankar 2 November 2017.pdf>

Rob Mossop <rgmossop@law.co.za> 30 November 2017 at 11:00
To: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Mr. Brink

I enclose all the correspondence that I have had with LASA.

I specifically do not include your response to LASA's allegations, although I did send this through to LASA. I also do not include the email of 28 November 2017 which I have already sent to you.

I trust that this is what you were seeking.
[Quoted text hidden]

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<Vedalankar 2 November 2017.pdf>

R17

2 attachments

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16K

Correspondence.pdf
2183K

Anthony Brink <anthonybrink.sa@gmail.com> 30 November 2017 at 11:19
To: Rob Mossop <rgmossop@law.co.za>

Thanks so much, Mossop, for your time and trouble, and on the double!
If LASA were as transparent as the Society is, I wouldn't be suing to compel its compliance with my PAIA requests for the seventh time.
I'm dealing with complete morons.
Letter in the main matter to follow, like I said.
Best
Brink

[Quoted text hidden]
[Quoted text hidden]

On Nov 30, 2017, at 10:23, Anthony Brink <anthonybrink.sa@gmail.com> wrote:

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Might I have please the further correspondence I mention, namely, 'all correspondence exchanged between LASA and the Society, in the period between LASA's complaint and your original lopsided finding against me, both of which documents I have.'
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[Quoted text hidden]

[Quoted text hidden]
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Rob Mossop SC

<Vedalankar 2 November 2017.pdf>

Anthony Brink <anthonybrink.sa@gmail.com> 30 November 2017 at 11:41
To: Rob Mossop <rgmossop@law.co.za>

Dear Mossop
In your letter to Sekgota of 14 September 2017, I read that 'A recommendation will today be sent to the Bar Council after consideration of the detailed representations made by Adv. Brink.'
Please let me have a copy of your Complaints Committee's recommendation.
Obviously I don't want to waste time on writing that intended letter if LASA's complaint has already been determined.
Sincerely
Brink

[Quoted text hidden]

Rob Mossop <rgmossop@law.co.za> 30 November 2017 at 11:47
To: Anthony Brink <anthonybrink.sa@gmail.com>

Mr. Brink

You only asked for:

'all correspondence exchanged between LASA and the Society, in the period between LASA's complaint and your original lopsided finding against me, both of which documents I have.'

I have given you that.

R17

Kind regards

Rob Mossop SC

ROB MOSSOP SC
CHAMBERS THIRTEEN NORTH
SIX DURBAN CLUB PLACE DURBAN
T 031 304 8699/301 2262 F 031 304 9922
E rgmossop@law.co.za

[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 30 November 2017 at 11:50
To: Rob Mossop <rgmossop@law.co.za>

Indeed so.
Because I wasn't aware until minutes ago that your Committee had made its recommendation.
Looking forward to the recommendation in September please.
AB

[Quoted text hidden]

REPORT TO THE BAR COUNCIL

COMPLAINT CONCERNING ADVOCATE A. R. BRINK

1. As the Bar Council will recall, Legal Aid South Africa laid a complaint against Advocate A. R. Brink concerning his conduct in certain litigation in which he, **inter alia**, called Mr Justice D. Mlambo a liar and claimed that the Judge had misled a select committee of parliament. The nature of the complaint is dealt with fully in the report of this committee dated 17 February 2017.

2. Advocate Brink is not a member of the Bar, but serves the State as an additional magistrate.

3. Following receipt of the complaint and its consideration by this committee, a decision was taken by the Bar Council to proceed with a striking off application against Advocate Brink.

4. When Advocate Brink was informed of this decision, he demanded a right to respond to the allegations made about him by Legal Aid South Africa. This had not been afforded him before the decision to strike off was taken.

5. The request of Advocate Brink was acceded to and he was

invited to make submissions in response to the allegations made by Legal Aid South Africa.

6. Ultimately, Advocate Brink submitted his representations. They consisted, primarily, of eight complaints that he has either submitted, or intends submitting, to the Judicial Services Commission concerning the conduct of Mr. Justice Mlambo. The eight complaints (and therefore the representations), contained in nine volumes, cover 264 pages.

7. Legal Aid South Africa were invited to reply to the answer of Advocate Brink and were sent his representations. After substantial reflection, Legal Aid South Africa decided that it would not reply in detail but contented itself with a general statement that Advocate Brink had raised nothing new in his answer but persisted in his allegations made against Mr. Justice Mlambo as well as another Judge.

8. This committee has considered the answer of Advocate Brink. He has persisted in his allegations against the Judge and has constructed the most elaborate conspiracy theory in an attempt to try and prove what he alleges. He has failed in this regard as the response is verbose and rambling but ultimately lacks substance. The committee, after a fresh consideration of the

matter, believes that the matter still warrants that a striking off application be brought.

9. The committee again comments that a striking off application will offer Advocate Brink the sort of platform (and, potentially, publicity) that he appears to relish in order to advance his theories. He has apparently made contact with international organisations seeking their support for his position and allegations and he has drawn the matter to the attention of Noseweek magazine.

10. The recommendation is therefore made to the Bar Council that the striking off application continues and that Advocate Brink be so advised, as well as Legal Aid South Africa.

Complaints Committee 2

R. G. Mossop SC

M. Sponneck

M. Manikam

14 September 2017.

Note from Mahen Manikam, member of Complaints Committee 2:

I agree with the views of Mossop SC in the report of committee 2 regarding Adv Brink. However, I raise a concern for consideration.

In terms of section 8 of the Judicial Service Commission Act 9 of 1994, the judicial conduct committee is chaired by the Chief Justice and the rest of the committee's members consist of judges. Therefore, by its nature such a disciplinary organ would be construed to be a higher forum than our committee and we would be expected to show deference to the former committee. Brink's allegations to the JSC overlap with his responses made by him to our committee. Gauging from the litigious history of the matter and noting also that Brink has made representations to the Human Rights Commission, he may consider it appropriate to take the decision of the bar council on review and he may contend that we ought to have allowed the JSC to rule on his complaints first before the bar council made a finding against him."

R19

WHY DO PRESIDENT MBEKI AND DR TSHABALALA-MSIMANG WARN AGAINST THE USE OF ARV DRUGS LIKE AZT?

DO THEY KEEP PEOPLE HEALTHY?

DO THEY MAKE SICK PEOPLE BETTER?

OR ARE THEY DEADLY POISONOUS AND COMPLETELY USELESS?

A presentation by Adv Anthony Brink, Chairman of the **Treatment Information Group**, to the 'Provincial Interactive Strategic Conference on a Holistic Approach to the Treatment and Management of HIV and AIDS' convened by the KwaZulu-Natal Department of Health at Pietermaritzburg on 22-24 November 2006

Appendix: African death rates on ARVs – reports in 2007

TREATMENT INFORMATION GROUP
thinking about AIDS drugs

"Concerned to respond appropriately to [AIDS in South Africa], many in our country have called on the government to make the drug AZT available in our public health system. … There … exists a large volume of scientific literature alleging that, among other things, the toxicity of this drug is such that it is in fact a danger to health. These are matters of great concern to the government as it would be irresponsible for us not to heed the dire warnings which medical researchers have been making. I have therefore asked the Minister of Health, as a matter of urgency, to go into all these matters so that, to the extent that is possible, we ourselves, including our country's medical authorities, are certain of where the truth lies."

– President Thabo Mbeki, Parliament, 28 October 1999

"[Dr Tshabalala-Msimang confirmed that there was indeed] a body of scientific research and information which indicated that AZT was a dangerous drug, and had not been designed for the treatment of HIV/AIDS. Because it was unable to target only the human immunodeficiency virus when it went to work in the body, it further weakened the immune system. There was also a danger that ... mothers taking the drug might produce children with disabilities [*]. Tshabalala-Msimang said her ministry would not like to look back ten or fifteen years down the line and find it had exposed the vast majority of historically disadvantaged people in South Africa to a dangerous drug. … there was no data proving that AZT was of any use to rape victims."

– SAPA report of Dr Manto Tshabalala-Msimang's statement outside Parliament immediately after President Mbeki's warning about AZT, 28 October 1999

"The antiretroviral drugs currently licensed in the United Kingdom are zidovudine (azidothymidine) [*AZT*], zalcitabine (ddC) and didanosine (ddI). … All are very toxic. Suppression of bone marrow elements can occur with any of the three, as can peripheral neuropathy."

– *Adverse Drug Reaction Bulletin*, No.178 (1996)

"AZT is a drug that was developed for use in chemotherapy for cancer patients. It was, however, never used in cancer patients because it was regarded as too toxic to use. Tests have clearly shown that rats that were exposed to … AZT [*in the womb during gestation*], developed vaginal cancer [*]. This is a very serious finding. Other toxicological data exists with respect to AZT, including damage to nerves, muscles and bone marrow. All of this data needs to be assessed very thoroughly. As the Minister of Health I have a responsibility for ensuring that South Africans get appropriate and affordable healthcare. This responsibility extends to ensuring that no healthcare intervention has a long-term negative effect on people."

– **Dr Tshabalala-Msimang, Parliament, 16 November 1999**

"… for AIDS patients, it is urgently necessary to develop a remedy substituting this toxic substance, AZT."

– **Hayakawa et al. *Biochemical and Biophysical Research Communications* 176:87-93 (1991)**

"AZT is a confirmed carcinogen. ... The fact is that some of the mice [*exposed to AZT in the womb*] have contracted cancer [*]. It attacks bone marrow. It is very toxic."

– **Dr Tshabalala-Msimang, *Mail&Guardian*, 1 December 1999**

"It is self-evident that ANAs [*antiretroviral nucleoside analogues, such as AZT*], like all drugs, have side-effects. However, the prevalent and at times serious ANA mitochondrial toxic side-effects are particularly broad ranging with respect to their tissue target and mechanisms of toxicity: Haematological [*blood*]; Myopathy [*muscles*]; Cardiotoxicity [*heart*]; Hepatic toxicity [*liver*]; Peripheral neuropathy [*nerves*]."

– **Lewis and Dalakas, *Nature Medicine* 5:417-22 (1995)**

"[AZT and other nucleoside analogue drugs] are much more toxic than we considered previously. … The layer of fat-storing cells directly beneath the skin, which wastes away … is loaded with mitochondria … other common side effects of [AZT and similar drugs are] nerve and muscle damage, pancreatitis and decreased production of blood cells … all resemble conditions caused by inherited mitochondrial diseases."

– **Brinkman et al. *Lancet* 354(9184):1112-5 (1999)**

"What we are trying to do is to put on the table information so that [if] the citizens of the country … get hold of AZT they do so knowingly, so that tomorrow nobody should say we were not told."

– **Dr Tshabalala-Msimang, 'The Truth on AZT', e.tv documentary, 12 December 1999**

"AZT underwent clinical trials and was introduced as a specific anti-HIV drug many years before there were any data proving that the cells of patients are able to triphosphorylate the parent compound to a level considered sufficient for its putative pharmacological action. Notwithstanding, from the evidence published since 1991 it has become apparent that no such phosphorylation takes place and thus AZT cannot possess an anti-HIV effect. However, the scientific literature does elucidate … a number of biochemical mechanisms which predicate the likelihood of widespread, serious toxicity from use of this drug. … Based on all these data it is difficult if not impossible to explain why AZT was introduced and still remains the most widely recommended and used anti-HIV drug. [The continued administration of AZT] either alone or in combination … to HIV sero-positive or AIDS patients warrants urgent revision."

– **Papadopulos-Eleopulos et al. *Current Medical Research and Opinion* 15, Supplement 1: 'A Critical Analysis of the Pharmacology of AZT and its Use in AIDS' (1999)**

"RETROVIR (ZIDOVUDINE) MAY BE ASSOCIATED WITH HEMATOLOGIC TOXICITY INCLUDING GRANULOCYTOPENIA AND SEVERE ANEMIA [*massive destruction of white (immune) and red blood cells respectively*]. … ANTIRETROVIRAL NUCLEOSIDE ANALOGUES, INCLUDING RETROVIR … ARE POTENTIALLY FATAL."

– GlaxoSmithKline: AZT 'Product Information'

"What it does, it suppresses the immune system. The very system we want to boost. … I wouldn't take AZT, I would not."

– Dr Tshabalala-Msimang, 'The Truth on AZT', 12 December 1999

"[Due to their] potent immunosuppressive properties … profound immunosuppression … often accompanies therapy with nucleoside analog drugs. … they have a number of associated toxicities, some of what may be severe. Of particular concern is immunosuppression which is uniform with standard treatment programs. Each of the nucleoside analogs is associated with a profound lymphocytopenia [depletion of immune cells], with a reversal of the CD4/CD8, and opportunistic infections."

– Cheeson, Keating and Plunkett, *Nucleoside Analogs in Cancer Therapy* (New York: Marcel Dekker Inc., 1997)

"In your letter to me of June 19, you make the extraordinary statement that AZT boosts the immune system. Not even the manufacturer of this drug makes this profoundly unscientific claim. The reality is the precise opposite of what you say, this being that AZT is immuno-suppressive. Contrary to the claims you make in promotion of AZT, all responsible medical authorities repeatedly issue serious warnings about the toxicity of antiretroviral drugs, which include AZT."

– President Mbeki, letter to DA leader Tony Leon, 1 July 2000

"The drug [*AZT*] can inhibit the production of red blood cells and may reduce white blood cell counts to the point where the drug has to be discontinued to avoid infections."

– **US Food and Drug Administration press release, 5 March 1990**

"I think AZT can only hasten the demise of the individual. It's an immune disease and AZT only further harms an already decimated immune system."

– **Professor Jay Levy, Director of the Laboratory for Tumor and AIDS Virus Research, University of California at San Francisco, *Newsday*, 12 June 1990**

"Extended follow-up of patients in one [major AZT] trial, the Concorde study, has shown a significantly increased risk of death among the patients treated early."

– **Phillips et al. *New England Journal of Medicine* 336: 958-959 (1997)**

"I don't want to be pushed or pressurized by a target of three million people on antiretrovirals by 2005. WHO set that target themselves. They didn't consult us. … It is not about chasing numbers. It is about the quality of health care we provide for our people. … I will also continue to advise people on the side effects of ARVs. I cannot stand on a pedestal and say everything is hunky-dory. … It is absolutely critical that our people know about the side effects, particularly because these are new medicines and not much is known about them. When we were being pressured to use ARVs we did warn about the side effects and, when I get reports about the people on ARVs, nobody presents to me how many people have fallen off the programme or died because of the side effects. I don't know what happens to those who started on antiretrovirals. … There was a time when we were told to give everyone ARVs and we resisted. We were right, I think. … When it comes to talking about the side effects I will always do

it. … We must be upright and frank about informing citizens about the use of ARVs. … I'm not happy [with reports of how many people are being treated with them, and will] interrogate [the statistics to establish how many people had died of ARV toxicity]. I will continue to educate the people in this country about the side effects of ARVs … you know me, I tell the truth."

– Dr Tshabalala-Msimang, media briefing at Union Buildings in Pretoria, 5 May 2005

"The results of this collaborative study, which involved … over 20 000 patients with HIV-1 from Europe and North America, show that the virological response after starting HAART [*Highly Active Antiretroviral Therapy*] has improved steadily since 1996. However, there was no corresponding decrease in the rates of AIDS, or death, up to 1 year of follow-up. Conversely, there was some evidence for an increase in the rate of AIDS in the most recent period. [We noted a] discrepancy between the clear improvement we recorded for virological response and the apparently worsening rates of clinical progression."

– The Antiretroviral Therapy (ART) Cohort Collaborative, *Lancet* 368:451-458 (2006)

"The major findings are that, despite improved initial HIV virological control … there were no significant improvements in early immunological response as measured by CD4-lymphocyte count, no reduction in all-cause mortality, and a significant increase in combined AIDS/AIDS-related death risk in more recent years."

– *Lancet* editorial commenting on 'these somewhat paradoxical trends' reported in the above-cited study

"The Western Cape report showed that: – Out of a total of 4251 patients enrolled in 3 months, a total of 207 (4.8%) patients died. Out of the total of 2715 patients enrolled in 6 months, a total of 196 (7.2%) patients died. Out of the 914 patients enrolled in 12 months, a total of 114 patients

(12.2%) patients died.” (Plotted on a graph as X and Y values, these data reveal a perfect linear relationship between the death rate of people taking ARVs and the duration of their treatment; and they predict that within seven years everyone on ARVs will be dead. The high treatment dropout rate reflected by these data are consistent with numerous published reports on the unendurable toxicity of ARVs for most people prescribed them.)

– Information per Department of Health Media Liaison Officer Maupi Monyemangene, 6 October 2005

“United Nations Special Envoy for HIV/AIDS in Africa Stephen Lewis expressed concern on Tuesday over Malawi’s rising number of deaths among people receiving HIV/AIDS treatment in the country. Lewis was speaking at the end of his three-day visit to the impoverished southern African country when he was briefed by Malawian government officials that the country was grappling with an 11 percent death rate of people who were receiving free antiretroviral (ARV) drugs in public hospitals. Malawi has managed to increase the number of people receiving free ARVs from about 4,000 two years ago to 70,000 at present.”

– ‘UN concerned about Malawi’s rising deaths of AIDS patients on ARVs’, China *People’s Daily Online*, 1 November 2006

“South Africa’s Ministry of Health has confirmed that close to 6,000 HIV-positive people had died while receiving antiretroviral (ARV) drugs since the government rollout began in 2004 … just below 3 percent of the number of HIV-positive people accessing treatment at government ARV sites during the same period. Health department spokesman Sibani Mngadi said … ‘The number of people being treated with antiretroviral therapy through our “Comprehensive Plan on HIV and AIDS” has increased [by] 60,000 in the past year to 235,378 by the end of September 2006.’”

– ‘SOUTH AFRICA: Govt AIDS programme on course but people still dying’, Reuters Foundation (Source: IRIN), 14 Nov 2006

"We have not been able to discover why doctors prescribe a toxic drug called AZT (Zidovudine) to people who have no other complaint than the presence of antibodies to HIV in their blood. In fact, we cannot understand why humans would take that drug for any reason."

– Dr Kary Mullis PhD, 1993 Chemistry Nobel Laureate, in his foreword to *Inventing the AIDS Virus* by Professor Peter Duesberg (Washington: Regnery, 1996)

"Look, there's no sociological mystery here … It's just people's income and position being threatened … That's why they're so nasty. In the AIDS field, there is a widespread neurosis among scientists … there's just so much slowly accumulating evidence against them. It's really hard for them to deal with it. They made a really big mistake and they're not ever going to fix it. They're still poisoning people."

– Dr Kary Mullis in 'Out of Control: AIDS and the corruption of medical science' by Celia Farber, *Harper's Magazine*, March 2006

"In my heart I believe it is not right to hand them [*AZT and other ARV drugs*] out to my people."

– Dr Tshabalala-Msimang, launching an anti-TB campaign, c.15 March 2003

"… you are justified in sounding a warning against the long-term therapeutic use of AZT, or its use in pregnant women, because of its demonstrated toxicity and side effects. Unfortunately, the devastating effects of AZT emerged only after the final level of experiments were well underway, that is, the experiments which consisted of giving AZT to large numbers of human patients over a long period of time. Your effort is a worthy one … I hope you succeed in convincing your government not to make AZT available."

– Professor Richard Beltz, inventor of AZT in autumn 1961, to Adv Brink, 11 May 2000

"We have seen colonization, we have seen imperialism, we have seen apartheid ... and all of them used against us as a people. [Africans have] won their liberation and now they are fighting another war and they are being psychologically terrorised once more because people want to sell [ARV drugs] and make profits. And there is no benefit in those products. The only thing that can really happen is that once you touch the antiretrovirals you can go one way."

– **Peter Mokaba MP, the *Star*, 4 April 2002**

APPENDIX:
African death rates on ARVs - reports in 2007

"[A] distressingly high loss-to-follow up rates [was] reported by some large ART-dispensing facilities … at the 3rd South African AIDS Conference. … For instance, 27% of the first tranche of patients enrolled at King Edward VIII Hospital in Durban starting after April 2004 were 'non-persistent' (defined as having failed to return for prescription refills for 90 days or more) within 12 months of starting ART. … Dr Helen Schneider of the Centre for Health Policy at the University of Witwatersrand … concluded about a third of these 'drop-outs' were deaths."

– **AIDSmap.com, 'Patient retention difficulties for South Africa's public sector' in *HIV & AIDS Treatment in Practice #90*, 31 August 2007**

"… Felege Hiwat hospital in Bahir Dar, in the northern Amhara region [Ethiopia] … started over 3600 patients on ART by the end of 2006. However 22% of those patients were lost to follow-up … Home visits and other enquiries were able to locate just 6% of patients, with a further 44% of the LTFUs discovered to be dead, and the remainder still missing. In South Africa, Klerksdorp Hospital in the North-West province … the loss to follow-up rate … reached 21%. The vast majority of those lost to follow-up defaulted during the first six months of treatment, but an audit of 300 patients lost to follow-up could only identify 126 deaths from local death records. The remainder were still out there somewhere,

but, said Dr Ebrahim Variava [*without saying how he knew*], either their address details weren't complete, or they weren't answering their mobile phones.❞

– **AIDSmap.com, *HIV & AIDS Treatment in Practice #92*, 26 September 2007**

❝ … we conducted a systematic search of the English-language published literature, gray literature (project reports available online), and conference abstracts between 2000 and 2007. … We included 32 publications reporting on 33 patient cohorts totaling 74,289 patients in 13 countries in our analysis. … Under the worst-case scenario, 76% of patients would be lost by 2 y [*years*]. The midpoint scenario predicted patient retention of 50% by 2 y. … losing up to half of those who initiate ART within two years is cause for concern. From the data as reported, attrition averaged roughly 22% at 10 mo [*months*] of follow-up. This average comprised mainly deaths (40% of attrition) and losses to follow-up (56%). … we believe that actual attrition is higher than … we report … The midpoint scenario suggests that approximately half of all patients started on ART were no longer on treatment at the end of two years. … A recent attempt to trace lost-to-follow-up patients in Malawi determined that 50% had died, 27% could not be found, and most of the rest had stopped ART ... those reporting on these cohorts do not know what ultimately happened to patients categorized as lost to follow-up … our analysis is necessarily limited to publicly available reports and thus potentially subject to publication bias. Researchers may be less inclined to publish long-term outcomes from cohorts that have experienced very high early attrition. … Better information on those who are lost to follow-up is urgently needed.❞

– **Rosen S et al. 'Patient retention in antiretroviral therapy programs in sub-Saharan Africa: A systematic review'. *PLoS Med* 4(10): e298, October 2007**

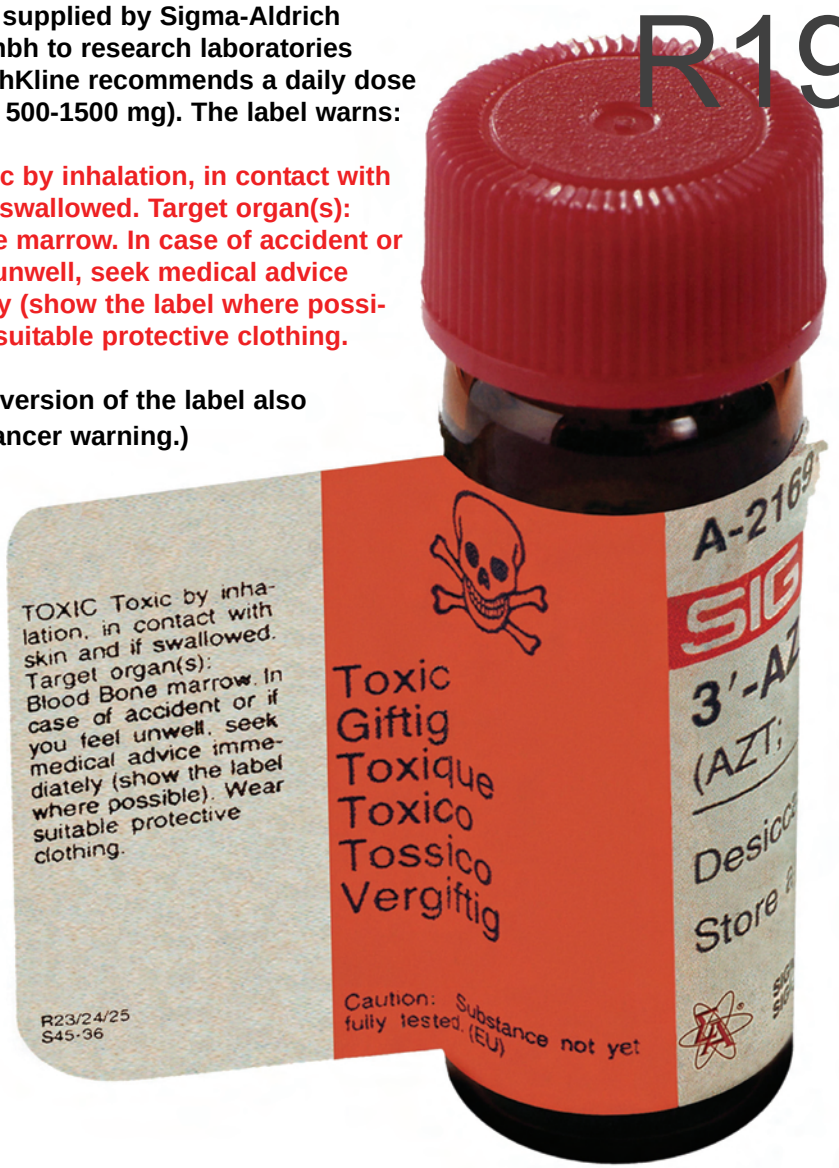
***The extensive research literature reporting the foetal toxicity and transplacental carcinogenicity of AZT, to which Dr Tshabalala-Msimang has referred, is canvassed in depth in *Poisoning our Children: AZT in Pregnancy*, and in a brief overview: *Why do Zackie Achmat, Nathan Geffen and Mark Heywood want pregnant African women and their babies to be given AZT? What AZT does to unborn and newly born children* – accessible online in the 'Quick links' column of the Treatment Information Group website, www.tig.org.za. See further: *Introducing AZT*; *Inventing AZT*; *Licensing AZT*; *Debating AZT: Mbeki and the AIDS drug controversy*; and *The trouble with nevirapine*, also posted there.**

25 mg AZT supplied by Sigma-Aldrich Chemie Gmbh to research laboratories (GlaxoSmithKline recommends a daily dose of between 500-1500 mg). The label warns:

TOXIC Toxic by inhalation, in contact with skin and if swallowed. Target organ(s): Blood Bone marrow. In case of accident or if you feel unwell, seek medical advice immediately (show the label where possible). Wear suitable protective clothing.

(The latest version of the label also carries a cancer warning.)

R19



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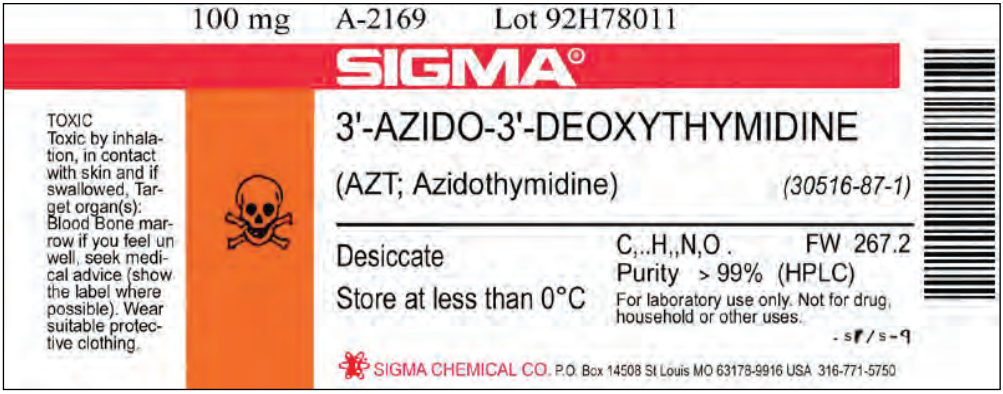
WHY DO ZACKIE ACHMAT, NATHAN GEFFEN AND MARK HEYWOOD WANT PREGNANT AFRICAN WOMEN AND THEIR BABIES TO BE GIVEN AZT?*

R20

WHAT AZT DOES TO UNBORN AND NEWLY BORN CHILDREN



Reports from the medical literature compiled by Adv Anthony Brink, chairman of the **Treatment Information Group**

'AZT FOR PREGNANT WOMEN'

Treatment Action Campaign street demonstration placard

R20

'By increasing the availability of drugs, particularly for preventing mother to child transmission, the government is going to save lives.'

Zackie Achmat, TAC leader, *Mail&Guardian*, 28 October 2006

'Toxic Giftig Toxique Toxico Tossico Vergiftig … TOXIC Toxic to inhalation, in contact with skin and if swallowed. Target organ(s): Blood Bone marrow. In case of accident or if you feel unwell, seek medical advice immediately (show the label where possible). Wear suitable protective clothing.'

Label on 25 mg bottles of AZT supplied by Sigma-Aldrich Chemie Gmbh for research use, bearing an orange stripe imprinted with a skull and crossbones icon to signify potentially fatal toxic chemical hazard – the latest version of which also carries a cancer warning

'Our findings support the hypothesis of a link between mitochondrial dysfunction [*in babies and infants*] and the perinatal administration of prophylactic nucleoside analogues.' (Eight children were born with severely impaired energy metabolism and corresponding muscle and other cell damage, manifesting in heart muscle injury and muscle weakness generally. Five children, of whom two died, presented with delayed neurological symptoms – extensive brain damage in the form of massive cortical necrosis, cortical blindness, epilepsy and spastic quadriplegia, and three were described as 'symptom-free' but had 'severe biological or neurological abnormalities'. Four of the children had been exposed in utero and after birth to AZT and 3TC (a similar drug) combined, and four to AZT alone. None were HIV-positive. Please see the annexed APPENDIX for an excerpt from this report detailing these injuries. Following further 'exhaustive' investigation by Barret et al., the 'hypothesis of a link' between perinatal AZT exposure and grave harm to unborn and newly born babies was 'confirmed'; see the report cited immediately below.)

Blanche et al. *Lancet* 354(9184):1084-9 (1999)

'An exhaustive study in a large prospective cohort [*of AZT- and 3TC-exposed children found*] unexplained symptoms compatible with mitochondrial dysfunction. A total of 2644 of 4392 children were exposed to antiretrovirals … All the children with "established" or "possible" mitochondriopathy diagnosed in this study had been exposed to antiretroviral drugs … in the pre, per- and post-partum periods. … The finding that the use of antiretroviral nucleoside analogues in the perinatal period is associated with persistent mitochondrial disease is confirmed … a risk about 30 times higher than that in the general population. … Despite active screening, no similar cases were found in the antiretroviral unexposed group. … by age 18 months … a coherent syndrome is appearing with three main features: neurological symptoms (principally developmental retardation, seizures and behavioral disturbances), significant abnormalities on cerebral MRI (principally lesions of the white matter and brainstem) and often hyperlactataemia either persistent or transient outside the treatment period. First described

as a myopathy associated with zidovudine [*AZT*], the issue of mitochondrial toxicity of nucleoside analogues is currently a growing problem. Its clinical expression is highly variable, from peripheral neuropathy to severe lactic acidosis.'

R20

Barret et al. *AIDS* 17(12):1769-1785 (2003)

'Mitochondrial dysfunction has been reported in HIV-negative children perinatally exposed to zidovudine [AZT], a drug often used in HIV-seropositive mothers during pregnancy. The purpose of this study was to determine the incidence of cerebral MR imaging findings in HIV-uninfected children exposed to zidovudine who present with unexplained neurologic symptoms. … Images observed in children with antiretroviral-induced mitochondrial dysfunction are similar to those observed in congenital mitochondrial diseases.'

Tardieu et al. *American Journal of Neuroradiology* 26(4):695-701 (2005)

'AZT exposure causes a persistent depletion of mtDNA [(mitochondrial DNA) in babies exposed to AZT in the womb. Because] chemically induced tumors take 20 to 30 years to develop … the possibility … exists that exposed children might have an elevated cancer risk that will be manifested later in life. … the results presented here underscore the necessity for long-term follow-up of children of HIV-infected mothers receiving prenatal HAART therapy.'

Poirer et al. *Journal of the Acquired Immune Deficiency Syndrome* 33(2):175-183 (2003)

'The probability of developing severe disease at 3 years of life was significantly higher in children born to mothers [administered AZT during their pregnancies] than in those born to [*untreated*] mothers. … The same pattern was observed for severe immune suppression: the probability of developing severe immune suppression was significantly higher in children born to [*AZT-treated*] mothers … than born to [*untreated*] mothers. … Finally, survival probability was lower among children [*born to AZT-treated mothers*] … compared with children born to [*untreated*] mothers.'

De Martino et al. *AIDS* 13(8):927-33 (1999)

'Prenatal and perinatal ZVD [*AZT*] exposure were associated with 1.8-fold increased risk of progression to AIDS or death after adjusting simultaneously for all variables associated with disease progression … Restricting the analysis to children born after April 1994 (date of public release of the results of ACTG 076), ZDV exposure was associated with 2.5-fold increased risk of progression to AIDS or death after adjusting simultaneously for the same variables. … Steady improvements in prognosis of [HIV] infected children unexposed to ZVD were observed in each successive birth cohort, but infected children exposed to ZVD lagged behind these temporal changes. Our results ... are consistent with recent results from the Italian Registry for HIV Infection in Children [*reported by de Martino, cited above*].'

Kuhn et al. *Journal of Infectious Diseases* 182(1):104-11 (2000)

'In this retrospective study, the risk of RPD [*rapid progression of disease*] was five to six times higher among infants born to [*AZT*] treated compared with untreated mothers. … RPD was three times more likely to occur in infants born to [*AZT*] treated compared with findings in untreated mothers.'

R20

De Souza et al. *AIDS* 24(2):154-61 (2000)

'AZT-exposed [*Macaca nemestrina monkey*] infants took three times as many sessions (6) as controls (2) to meet criterion on Black-White Learning, a simple discrimination task [and performed] significantly [worse in locating] the reward. … Postnatal weight increase was significantly lower in AZT-exposed infants … Hemoglobin dropped significantly in the AZT-treated animals after treatment began and remained low until the end of the study … The hematological toxicities reported here are consistent with those seen in 500 mg/day AZT-treated humans.'

Ha et al. *Journal of Acquired Immune Deficiency Syndromes and Human Retrovirology* 7(2):154-7 (1994)

'The AZT animals [*Macaca nemestrina monkeys given AZT during pregnancy*] developed an asymptomatic macrocytic anemia, but hematologic parameters returned to normal when AZT was discontinued. Total leukocyte count decreased during pregnancy and was further affected by AZT administration. AZT caused deficits in growth, rooting and snouting reflexes, and the ability to fixate and follow near stimuli visually.'

Ha et al. *Journal of Acquired Immune Deficiency Syndromes and Human Retrovirology* 18(1):27-38 (1998)

'The study cohort included 92 HIV-1-infected and 439 uninfected children … Antiretroviral therapy (nonprotease inhibitor) was independently associated with FTT [*Failure to Thrive*] in our cohort … ZDV [*AZT*], in particular, alters mitochondrial metabolism and may have direct nutritional effects.'

Miller TL et al. *Pediatrics* 108(6): 1287-96 (2001)

'Antiretroviral drugs (ARV) as prophylaxis to prevent mother-to-child transmission of HIV results in decreased haematological parameters during and shortly after exposure, with recent data suggesting a more prolonged inhibition of haematopoiesis until at least 18 months [*i.e. ARV drugs given to pregnant women cause persistent bone marrow suppression reducing blood cell production*]. In uninfected children … ARV exposure [before birth was] associated with reduced neutrophil count until at least 8 years of age. … CONCLUSION: A considerably longer effect of exposure to ARV was shown in uninfected children than previously thought.'

European Collaborative Study, *AIDS* 18(15):2009-17 (2004)

'[In a major review of data collected between 1986 and April 2004, AIDS drugs such as AZT were found to cause a] substantially increased risk of severely curtailed pregnancy [*i.e. dangerously critical prematurity*] ... coupled with a very high neonatal mortality rate.'

R20

Thorne et al. *AIDS* 18(17):2337-2339 (2004)

'Premature infants of HIV-positive mothers may be more likely to develop a rare, but potentially fatal, bowel condition, according to French research [*by Desfrere* et al.] published in the September 23rd [*2005*] edition of AIDS [*19:1487-1493*]. In a retrospective study the investigators found that having an HIV-positive mother was an independent risk factor for developing necrotising enterocolitis in babies born before the 37th week of pregnancy. The investigators suggest that mitochondrial toxicity, resulting from the use of AZT to prevent mother-to-child transmission of HIV, is a possible cause. … Necrotising enterocolitis is a gastrointestinal disease which can affect premature infants and can result in destruction of the bowel. … Of the 30,000 infants born at the investigators' unit, 4009 were premature. A total of 79 (2%) of these premature infants developed necrotising enterocolitis. The incidence of necrotising enterocolitis was 2% (72/3931) in the premature infants of HIV-negative mothers, but 9% (7/78) in the premature infants of HIV-positive mothers. None of the seven infants born to HIV-positive mothers were infected with HIV. … All seven infants with necrotising enterocolitis and an HIV-positive mother received doses of AZT to prevent mother-to-child transmission of HIV. Six of the seven mothers were also taking anti-HIV therapy; in two this consisted of AZT monotherapy, the other four women were taking a three-drug combination (AZT or ddI with 3TC and a protease inhibitor).'

Michael Carter, *AIDSmap News*, 7 September 2005

'Children born to HIV-positive women who take antiretroviral therapy (ART) during pregnancy are significantly smaller in terms of height, weight and head circumference compared with children born to HIV-positive women not on ART, or who took monotherapy, according to the results of a European study examining the effects of ART on uninfected children's growth up to the age of 18 months [*European Collaborative Study,* JAIDS *40(3):364-370 (2005)*].'

Edwin Bernard, *AIDSmap News*, 3 November 2005

'Two new animal studies [*Walker et al.; Hong et al.*] have examined the cancer-causing effects of transplacental exposure to AZT in mice and rats and found increased rates of tumors and tumors with gene changes that frequently occur in human cancer. In addition, two human studies [*Escobar et al.; Witt et al.*] are the first to observe the induction of mutations and large scale chromosomal damage in red blood cells of newborns exposed to NRTIs [*nucleoside analogue reverse transcriptase inhibitors*] in utero. These, and other, studies were published in April 2007 in a special issue of Environmental and Molecular Mutagenesis that examines the latest research on DNA damage and potential health risks related to the use of NRTIs.

Besides the effects of NRTIs on nuclear DNA and cancer risk, the issue also contains recent findings on the toxicity of these drugs toward mitochondrial DNA.'

***Science Daily*, 7 April 2007**

R20

APPENDIX

Blanche et al. describe eight children severely harmed by AZT exposure in the womb and postnatally, two fatally, in 'Persistent mitochondrial dysfunction and perinatal exposure to antiretroviral nucleoside analogues', *Lancet* 1999 Sep 25;354(9184):1084-9.

Note that in all cases the crippling injuries caused by AZT during gestation and after birth were not immediately evident, but only became apparent several months later.

And in common with the others cited above, the researchers do not consider and report the likelihood of widespread subclinical, undiagnosable, permanent neurological and mental/psychological impairment resulting from AZT exposure in utero and after birth.

'At age 4·5 months, the first patient presented with visual impairment. Cerebral nuclear magnetic resonance imaging showed initially (at age 5·0 months) demyelinating lesions of the brainstem that became more severe and secondarily associated (at 11·0 months) with sustentorial lesions. From age 4·5 months to 11·0 months, the growth was abnormal and associated with vomiting. There were no important hepatic, pancreatic, muscle enzyme, or haematological abnormalities, but blood and cerebrospinal fluid lactate concentrations were high (2·5 mmol/L [normal <1·5 mmol/L] and 4·5 mmol/L [<2·0 mmol/L], respectively). The child died aged 13 months because of respiratory and cardiac-rhythm disorders. The symptoms were compatible with Leigh's syndrome and mitochondrial investigations were done at age 12 months.

'The second patient, from age 4 months until death at 11 months, had refractory epilepsy and deterioration of cognitive and psychomotor abilities. Cerebral imaging showed diffuse demyelinating lesions associated with massive cortical necrosis (figure). There were no substantial biological abnormalities for liver, pancreas, muscle, or haematological markers. The blood lactate concentration was high (2·5 mmol/L) but cerebrospinal fluid lactate was normal. Several disorders were excluded because of normal results from the following diagnostic procedures: organic-acid chromatography (urine), aminoacid chromatography (serum, urine, cerebrospinal fluid), serum cholesterol, triglycerides, vitamins A and E, pyruvate dehydrogenase activity in lymphocytes, fatty-acid oxidation and biotinidase activities (lymphocytes), very long-chain fatty acids (serum), lysosomal enzymes (galactosidase, galactosylceramidase, arylsulfatase A, mannosidase, GM1 and GM ganglioside), copper and ceruloplasmin (serum), and oligosaccharide excretion (urine). These symptoms were consistent with ALPERS syndrome, and led to mitochondrial investigations between ages 5 months and 7 months.

'At age 8 months, during a febrile episode, patient three had a seizure and was thought to be hypotonic. At age 15 months, the child showed symptoms of hypokinetic hypertrophic cardiomyopathy. Blood hepatic and pancreatic enzyme concentrations were normal but the child had neutropenia neutrophils 0·931 09/L [normal > 1·531 09/L), high concentrations of muscle creatine phosphokinase in blood (350 IU/L [<250 IU/L]), and persistently high blood lactate concentrations (4mmol/L), although cerebrospinal lactate was normal. Endomyocardiac biopsy showed intracytoplasmic vacuolisation in myocytes, but without inflammation. The cardiomyopathy progressively improved and symptoms of peripheral myopathy were seen at age 2·5 years. At age 4·0 years, the child's cardiac function was normal, but moderate muscular deficit persisted; lactate and muscle creatine phosphokinase concentrations in blood remained high. Electroretinography showed macular and peripheral abnormalities. Cerebral nuclear magnetic resonance imaging was normal.

'In the fourth patient, early development was normal. Between ages 14 months and 27 months, the child had four episodes of febrile seizures. Neurological assessment at age 27 months showed mild spastic diplegia. Haematological and biochemical findings, including lactate concentrations in blood and cerebrospinal fluid, were normal. Cerebral nuclear magnetic resonance imaging showed moderate hypersignal of the white matter in T2-weighted images, with no evidence of necrosis (figure).

'From age 7 months until 15 months, patient five had repeated seizures. Cognitive development and neurological assessments between episodes were normal until age 15 months. The child developed status epilepticus for 4 h, which led to severe neurological dysfunction with cortical blindness and spastic tetraparesis. Biological tests at 15 months showed only high blood hepatic enzyme concentrations (aspartate and alanine aminotransferases 200 IU/L [<40 IU/L]), which progressively returned to normal. Blood and cerebrospinal fluid lactate concentrations were measured only at the time of mitochondrial assessment and were not retrospectively available. Nuclear magnetic resonance imaging at age 16 months showed large necrotic lesions of the white matter and cortical grey matter. At age 3·5 years the child had severe sequelae and microcephaly.

'Patient six was symptom-free until age 14 months, but persistent biochemical abnormalities were seen on standard follow-up of the epidemiological survey (which included lactate assays). The child had had high concentrations of blood lactate (4 mmol/L), hepatic aspartate aminotransferase (50 IU/L), and pancreatic lipase (200 IU/L [<150 IU/L]) since birth that persisted until age 14 months. Cerebrospinal fluid lactate was normal. These biological abnormalities led to specific mitochondrial investigation, including cerebral nuclear magnetic resonance imaging that showed delayed myelinisation, which is difficult to interpret at that age.

'Patient seven was symptom-free until age 4 months, at which time he became hypotonic with apnoea. The child regained normal breathing and consciousness after resuscitation, with no apparent sequelae. There were no biological abnormalities during routine biological follow-up, but blood lactate concentrations (routinely assayed in this institution) were continuously high (>4 mmol/L) from the first test at 4 weeks to 7 months. Cerebral nuclear magnetic resonance imaging was normal. Near-miss syndromes and lactataemia justified mitochondrial investigations.

'The eighth child was symptom-free. Persistent hepatic and pancreatic abnormalities (alanine aminotransferase 80 IU/L and lipase 180 IU/L) were seen from birth in the routine prospective biological follow-up. Blood lactate concentrations that were systematically added to the normal screening in the institution were normal, as were cerebrospinal fluid concentrations. At age 20 months, biological abnormalities persisted unchanged; a specific mitochondrial investigation was therefore done, including electroretinography, which was abnormal, and cerebral nuclear magnetic resonance imaging that showed abnormalities of the periventricular white matter.

'No child was infected with HIV-1, and all were HIV-1 seronegative at age 15 months, or at death before this age for patients one and two. For all children, repeated tests for HIV-1 by PCR and by culture were negative.'

NOTE

For a comprehensive review of the medical and scientific research literature on the foetal and neonatal toxicity of AZT and similar nucleoside analogue drugs, and for a critical discussion of WHO, UNAIDS, UNICEF and US CDC recommendations regarding the use of these drugs in pregnancy, see *Poisoning our Children: AZT in Pregnancy* by Adv Brink – online in the 'Quick links' column at **www.tig.org.za**.

Even as they report the harm that ARV exposure causes babies in the womb, many researchers continue to support the use of such drugs in pregnancy on the basis that they prevent mother to child transmission of HIV, and thereby save lives. In fact, there is no evidence supporting the notion that children born to HIV-positive mothers given AZT (and/or other ARVs) live, whereas children born to untreated mothers will get seriously sick and die; as the research findings cited above demonstrate, the contrary is the case.

Whether ARVs such as AZT really do prevent mother to child transmission of HIV is examined and debunked in an extensive analysis by Papadopulos-Eleopulos et al., *Mother to*

Child Transmission of HIV and its Prevention with AZT and Nevirapine: A Critical Analysis of the Evidence (monograph, 2001) – also online in 'Quick links' at the **TIG** website.

The TAC's call for AZT and similar drugs to be given to pregnant African women and their newborn babies in South Africa is supported by Nicoli Nattrass, Professor of Economics, University of Cape Town; by Ferial Haffajee, editor of the *Mail&Guardian*, backed by the newspaper's governing board; and by Kerry Cullinan, editor of Health-e, an AIDS drug promoting news service.

The reason for general ignorance in South Africa about the harm that AZT causes unborn and newly born children is because the dissemination of information about it has been banned in the commercial media. On 22 November 2004 the Treatment Information Group (TIG) summarized the above-cited research findings in an article in the *Mail& Guardian*: 'Numerous studies have found that children exposed to AZT in the womb suffer brain damage, neurological disorders, paralysis, spasticity, mental retardation, epilepsy, other serious diseases and early death', preceded by the note that 'Hundreds of studies have found that AZT is profoundly toxic to all cells of the human body, and particularly to the blood cells of our immune system.' Outraged public reaction to the statement of these unacceptable facts led M&G editor Haffajee to apologize for publishing them, and to promise readers never to do so again. On 9 March 2005, following a complaint by the TAC, the Advertising Standards Authority proscribed the offending statements; and consequently they may not be repeated in the media, nor accepted for reproduction by any printing firm in South Africa.

On 28 October 2005 Medicines Control Council chairman Professor Peter Eagles wrote to say that his MCC was unconcerned by research reports concerning the foetal and neonatal toxicity of AZT, which the TIG had drawn to its attention, and said the MCC stood by its recommendation in July the year before that the drug be given to pregnant African women and their newborn babies (see the correspondence in *Poisoning our Children: AZT in Pregnancy*). The MCC's indifference to these reports may possibly be explained by the fact that its members are predominantly white and Indian.

✱ 'With great honesty the TAC has always tried to understand medical science. And this is something with which all South Africans have always struggled. We are scientifically illiterate.'

Zackie Achmat, leader of the Treatment Action Campaign, *Rapport* (translated from Afrikaans), 10 February 2002

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MINUTES OF THE MEETING OF THE BAR COUNCIL OF THE SOCIETY OF ADVOCATES OF KWAZULU-NATAL HELD ON 26 OCTOBER 2017, IN THE MEETING ROOM, 15TH FLOOR, 6 DURBAN CLUB PLACE, DURBAN.

1. **WELCOME**

The Council meeting commenced at 17h00. The chairman welcomed the members and in particular the new members of the council who were present and expressed the hope that the year would be a productive one.

2. **ATTENDANCE AND APOLOGIES**

Present:

GO van Niekerk SC (Chairman)
J Nxusani SC
KC McIntosh
BZ Mthethwa
V Moodley
S Mahabeer
W Nicholson
GR Thatcher SC (Honorary Secretary)
D Pillay (Assistant Honorary Secretary)
Ms K Peniston (Administrative Secretary)

Apologies:

VM Naidoo SC (Deputy Chairman)
TG Madonsela SC
BJ Buthelezi
M Mazibuko
AR Khan

R21

5.4. **Complaint Report: Legal Aid SA and AR Brink (Annexure 5.4, pages 1 – 4)**

The complaints committee had recommended that an application be brought for the striking off of Brink who is currently acting as a magistrate. In the light of Brink's response to the complaint, the chairman stated that it could be anticipated that this would be a lengthy and expensive process.

It was resolved that:

The complaint would be referred to the GCB for action by it.

5.5. [redacted]

5.6. [redacted]

6. **FINANCE (Annexure 6, pages 1 – 5)**

6.1. [redacted]

MINUTES OF THE MEETING OF THE BAR COUNCIL OF THE SOCIETY OF ADVOCATES OF KWAZULU-NATAL HELD ON THURSDAY THE 23rd NOVEMBER 2017 IN CLUB ROOM 6, 15TH FLOOR, 6 DURBAN CLUB PLACE, DURBAN.

1. **WELCOME**

The Council meeting commenced at 17h00 and the chairman welcomed the members of the Council present.

2. **ATTENDANCE AND APOLOGIES**

Present:

GO van Niekerk SC (Chairman)
VM Naidoo SC
M Mazibuko
BZ Mthethwa
KC McIntosh
W Nicholson
A R Khan
L Law (Honorary Treasurer)
D Pillay (Assistant Honorary Secretary)
Ms K Peniston (Administrative Secretary)

Apologies:

GR Thatcher SC
TG Madonsela SC
S Mahabeer
V Moodley
A R Khan

R22

4.3 [redacted]

[redacted]

It was resolved:

[redacted]

4.4 **Complaint Report : Legal Aid SA and AR Brink**

The chairperson reported that he would be raising this item at the EXCO meeting of the GCB and that the GCB will be requested to attend to litigating against Brink because our membership is unable to finance such protracted and costly litigation.

4.5 [redacted]

[redacted]

It was resolved: [redacted]

MINUTES OF THE MEETING OF THE BAR COUNCIL OF THE SOCIETY OF ADVOCATES OF KWAZULU-NATAL HELD ON THURSDAY THE 25TH JANUARY 2018 IN CLUB ROOM SIX, 15TH FLOOR 6 DURBAN CLUB PLACE, DURBAN.

1. **WELCOME**

The Council meeting commenced at 17h00 and the chairman welcomed the members of the Council present.

2. **ATTENDANCE AND APOLOGIES**

Present:

GO van Niekerk SC (Chairman)
J Nxusani SC
KC McIntosh
S Mahabeer
WAJ Nicholson
BZ Mthethwa
CB Buthelezi
GR Thatcher SC (Honorary Secretary)
D Pillay (Assistant Honorary Secretary)
Ms K Peniston (Administrative Secretary)

Apologies:

VM Naidoo SC (Deputy Chairman)
L Law (Honorary Treasurer)
AR Khan
V Moodley
M Mazibuko

R23

7. [redacted]

It was resolved:

[redacted]

8. [redacted]

It was resolved:

[redacted]

9. **COMPLAINT: LEGAL AID / AR BRINK – RESOLUTION TO STRIKE OFF**

The chairman reported that at the meeting of the GCB Executive in December 2017, he had raised the matter of an application to strike Brink from the roll of advocates. He had advised the GCB that the legal costs that the Society would incur in bringing such an application were unaffordable and he had requested the GCB to bring the proceedings. The GCB declined to do so but resolved to fund the litigation. The chairman then recapitulated the history of the matter which was as follows:

(a) a complaints committee of the Bar Council had delivered a report dated the 17th February 2017 in a complaint made by Legal Aid South Africa ("LASA") in which the committee recommended that the Society launch an application for Brink to be struck from the roll of advocates;

(b) that report was placed before the Bar Council and at a meeting held on the 23rd February 2017 at which it was resolved that the Society launch an application for Brink's striking off;

(c) when Brink was informed of this decision, he contended he had a right to respond to the allegations made about him by LASA and he had not been afforded this right before the council had taken the decision to strike him from the roll;

(d) the request of Brink was acceded to and the decision to strike him off was rescinded on 25 May 2017. He was invited to make submissions in response to the complaint levelled against him by LASA;

(e) Brink made written representations and LASA was invited to reply thereto and it did so although the gist of its reply was that Brink had not raised new matter in his representations;

(f) the complaints committee considered the representations of Brink and concluded that an application should be brought for Brink's striking off;

(g) at a meeting of the Bar Council held on the 26th October 2017, the report of the complaints committee was placed before the council and it was resolved to refer the complaint to the GCB for its action as it was anticipated that any application to strike Brink off would be a lengthy and expensive process which the Society could not afford.

It was resolved that:

Brink's representations and the report of the complaints committee headed by Mossop SC which had previously reported on the matter, be circulated amongst council members for their consideration and that they would notify the chairman

R23

of their decision as to whether the council should resolve to apply for Brink's removal from the roll of advocates.

10. [redacted]

11. [redacted]

12. [redacted]

It was resolved that:

(a) [redacted]

(b) [redacted]

MINUTES OF THE MEETING OF THE BAR COUNCIL OF THE SOCIETY OF ADVOCATES OF KWAZULU-NATAL HELD ON 22 FEBRUARY 2018 IN THE COMMON ROOM, ADVOCATES CHAMBERS, 17 PRINCE EDWARD STREET, PIETERMARITZBURG

1. **WELCOME**

The Council meeting commenced at 17h00 and the chairman welcomed the members of the Council present. The chairman noted that he would have welcomed J Nicholson, but as she was not present he would undertake to do so at the next council meeting.

2. **ATTENDANCE AND APOLOGIES**

Present:

GO van Niekerk SC (Chairman)
VM Naidoo SC (Deputy Chairman)
J Nxusani SC
TG Madonsela SC
KC McIntosh
V Moodley
WAJ Nicholson
AR Khan
M Mazibuko
BZ Mthethwa
D Pillay (Assistant Honorary Secretary)
Ms K Peniston (Administrative Secretary)

Apologies:

L Law (Honorary Treasurer)
J Nicholson
G R Thatcher (Honorary Secretary)

R24

4.11 [redacted]

[redacted]

4.12 [redacted]

[redacted]

4.13 **Complaint : Legal Aid / A R Brink**

The chairman apologised for not providing the complaint against Brink and his response thereto but pointed out that it was not possible to provide Brink's response which ran into 8 volumes of documents.

R24

The essence of the dispute related to allegations made by Brink (whilst acting as a magistrate) against Judge Mlambo which were sufficiently serious enough to warrant a striking off application being brought against him. The chairman raised a query regarding the status of the complaint at the Judicial Services Commission and whether we should await the outcome of that decision before embarking on litigation.

It was resolved:

That a letter be written to the JSC enquiring as to the status of the complaint and that Nxusani SC is to provide a memorandum as to whether it would be proper to bring a striking off application if Brink was at the time acting as a magistrate.

14.14 [redacted]

14.15 [redacted]

MINUTES OF THE MEETING OF THE BAR COUNCIL OF THE SOCIETY OF ADVOCATES OF KWAZULU-NATAL HELD ON MONDAY THE 19TH MARCH 2018 IN CLUB ROOM SIX, 15TH FLOOR 6 DURBAN CLUB PLACE, DURBAN.

1. **WELCOME**

The Council meeting commenced at 17h10 and the chairman welcomed the members of the Council present. He extended a special welcome to J Nicholson who was attending her first council meeting after having been co-opted onto the Council following the resignation of S Mahabeer.

2. **ATTENDANCE AND APOLOGIES**

Present:

GO van Niekerk SC (Chairman)
J Nicholson
W Nicholson
CB Buthelezi

GR Thatcher SC (Honorary Secretary)
D Pillay (Assistant Honorary Secretary)
Ms K Peniston (Administrative Secretary)

Apologies:
VM Naidoo SC (Deputy Chairman)
L Law (Honorary Treasurer)
V Moodley
KC McIntosh

The chairman noted that the meeting was initially not quorate.

R25

[redacted]

4.11. **Complaint: Legal Aid / AR Brink**

At the previous council meeting it was resolved that Nxusani SC would provide a memorandum as to whether it would be proper to bring a striking off application if Brink was at the time of the alleged offence acting as a magistrate. No memorandum had been received. In the meantime the chairman had communicated with the Judicial Services Commission who had reported that Brink had lodged a complaint against Mlambo JP and Waglay JP which a committee of the JSC was investigating. The JSC had however advised the chairman that the Society should proceed with an application to strike Brink off. The chairman reported that it would be appropriate that the outcome of the JSC committee's investigation should be awaited since if that committee determined that Brink's complaint was without merit, the way would then be clear to move an application for the striking off of Brink from the roll. The chairman did note that in those circumstances in all probability this complaint would be dealt with by the Legal Council.

4.12. [redacted]

[redacted]

SOCIETY OF ADVOCATES OF KWAZULU-NATAL

LITIGATION SUB-COMMITTEE REPORT

This report has been prepared by the Litigation Sub-Committee of the Society of Advocates of KwaZulu-Natal, to be presented to the Annual General Meeting of the General Council of the Bar to be held on 14 July 2018.

The following are the pending striking-off applications with which the Society is involved:

(a) [redacted]

(b) [redacted]

(c) [redacted]

(d) Advocate A. Brink.

[redacted]

A report on each of these matters follows hereunder.

R26

[redacted]

[redacted]

[redacted]

The complaint involved many volumes of documents. After considering the same, the Committee decided that Brink's allegations were unfounded and contemptuous of the two Judges. It accordingly recommended that striking-off proceedings be brought against him.

When Brink learnt of this decision, he contacted the Society and requested to be allowed to make representations before any final decision was made in this regard. The Society agreed that he may do so. Brink then delivered written representations which, together with annexures, exceeded 250 pages. The Complaints Committee re-considered the matter in the light of these representations but still determined that an application should be brought for his striking-off.

Simultaneously with lodging the written representations, Brink lodged a complaint with the Secretariat of the Judicial Services Commission ("the JSC") regarding the conduct of Justices Mlambo and Waglay. This complaint has apparently been referred to the Judicial Misconduct Sub-Committee of the JSC.

Whilst the Society is of the view that there is no substance to Brink's complaint, it is of the view that it would be advisable to await the decision of the Judicial Misconduct Sub-Committee on the complaints, before proceeding with the striking-off application.

DATED AT DURBAN THIS DAY OF JULY 2018.

From: Gardner van Niekerk <gardner@law.co.za>
Sent: Wednesday, August 8, 2018 3:30 PM
To: 'lbios@judiciary.org.za'
Cc: Kate Peniston - Society of Advocates of KZN <kznbar@law.co.za> (kznbar@law.co.za)
Subject: Subject: RE: Advocate Anthony Brink

Dear Ms Bios

Thank you for the enquiry of today's date.

The bar council decided that it will for the time being not institute strike-off proceedings against Brink and that it will await the outcome of the complaint to the Judicial Service Commission. We are aware that there is nothing preventing the Society from moving an application but we are reluctant to do so because of the cost implications of such an application. We will know where we stand once the complaint to you has been dealt with and a decision will then be made as to the question of an application.

Kind regards

ADVOCATE G O VAN NIEKERK SC
Chairman, Society of Advocates, KZN
6 Durban Club Place
Durban, 4001
gardner@law.co.za
michellemack@law.co.za
Telephone: (031) 301 8693
Fax: 0866 824 802
Home: (031) 209 7660
Cell Phone: 082 555 1183

SOCIETY OF ADVOCATES OF KWAZULU-NATAL

LITIGATION SUB-COMMITTEE REPORT

This report is prepared for the purposes of the Annual General Meeting of the Society, to be held on 8 September 2018.

The Litigation Committee is presently dealing with the following matters:

1. A complaint against J N N Ngema (non-member);
2. A complaint against M Mvune (non-member);
3. A complaint against Ms C Ludick (non-member);
4. A complaint A Brink (non-member);
5. The application proceedings against P Hunt (Ms)

1.

Complaint Against J N N Ngema

The Council authorised the appointment of counsel to consider the complaint and the institution of proceedings for Ngema's strike-off or suspension if so advised by counsel. Govindasamy SC was appointed for this purpose and has subsequently advised that the Council should not proceed with the matter. The committee has accepted this advice and will advise the Council accordingly.

R28

[redacted]

5.

A Brink

Brink made serious allegations regarding the conduct of Mr Justice Mlambo and Mr Justice Waglay, who are currently the Judge President of the North Gauteng High Court and the Labour Court respectively. The allegations arose from their refusal to recommend Brink for appointment to the staff of the Legal Aid Board in Pietermaritzburg. Brink alleged that the two Judges acted *male fides* in doing so with the intention of damaging his career.

The complaint involved many volumes of documents. After considering the same, the Committee decided that Brink's allegations were unfounded and contemptuous of the two Judges. It accordingly recommended that striking-off proceedings be brought against him. When Brink learnt of this decision, he contacted the Society and requested to be allowed to make representations before any final decision was made in this regard. The Society agreed that he may do so. Brink then delivered written representations which, together with annexures, exceeded 250 pages. The Complaints Committee re-considered the matter in the light of these representations but still determined that an application should be brought for his striking-off.

Simultaneously with lodging the written representations, Brink lodged a complaint with

the Secretariat of the Judicial Services Commission ("the JSC") regarding the conduct of Justices Miambo and Waglay. This complaint has apparently been referred to the Judicial Misconduct Sub-Committee of the JSC.

Whilst the Society is of the view that there is no substance to Brink's complaint, it is of the view that it would be advisable to await the decision of the Judicial Misconduct Sub-Committee on the complaints, before proceeding with the striking-off application.

C J Pammenter SC

A E Potgieter SC

M Collins SC

H S Gani

Chambers, Durban

16 AUGUST 2018

Kate Peniston

From: Kate Peniston <kznbar@law.co.za>
Sent: Thursday, 19 September 2019 15:40
To: 'Engela Pienaar'
Subject: RE: REPORT ON PENDING LITIGATION MATTERS

Dear Engela

My apologies for not replying.

There is no updated report on these matters as yet. I have handed over the papers to Nadhira on the 30 August.

Kind regards

Kate Peniston
Administrative Secretary

SOCIETY OF ADVOCATES OF KWAZULU-NATAL
3rd Floor
6 Durban Club Place
Durban
4001
Tel : 031 301 3099
Fax : 031 304 4415
Fax2Mail : 086 401 5567

From: Engela Pienaar <engelap@lpc.org.za>
Sent: Monday, 16 September 2019 12:18
To: Kate Peniston <kznbar@law.co.za>
Subject: REPORT ON PENDING LITIGATION MATTERS
Importance: High

Dear Kate

I am referring to you the Report on pending litigation matters which was before the Council at the August meeting. It will be appreciated if you can do the necessary changes to the matters from the Society of Advocates from items 20 to 25 and also add any new items, if any.

Please let me have the updated report by close of business tomorrow.

Kind regards

ENGELA PIENAAR
Secretary to the Director

KWAZULU-NATAL PROVINCIAL OFFICE
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P O Box 1454 | Pietermaritzburg | 3200
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Kate Peniston

From: Kate Peniston <kznbar@law.co.za>
Sent: Tuesday, 20 August 2019 14:31
To: 'Engela Pienaar'
Cc: pearlm@lpc.org.za
Subject: RE: PENDING LITIGATION MATTERS
Attachments: Annex - July Report on Pending Litigation Matters.doc

Importance: High

Dear Engela

Please find attached herewith the Pending Litigation Matters spread sheet with the Society's matters included.

I trust you find the above in order.

Kind regards
Kate Peniston

From: Engela Pienaar <engelap@lpc.org.za>
Sent: Friday, 16 August 2019 12:03
To: Kate Peniston - Society of Advocates of KZN <kznbar@law.co.za>
Subject: PENDING LITIGATION MATTERS
Importance: High

Dear Ms Peniston

I enclose herewith our report regarding pending litigation matters. The Council **resolved** at the July meeting that the report of the Society of Advocates be incorporated into the existing template. It will be appreciated if you can add the litigation report of the Society of Advocates at the end of the Schedule and let me have same by not later than Tuesday, 20 August 2019 to enable me to upload the Agenda by not later than Wednesday morning.

Kind regards

ENGELA PIENAAR
Secretary to the Director

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LEGAL PRACTICE COUNCIL: KWAZULU-NATAL
REPORT ON PENDING LITIGATION MATTERS

ITEM	REF NO.	NATURE OF MATTER / RESPONDENT DETAILS	STATUS OF MATTER / PROGRESS OF MATTER / OUTCOME OF MATTER
1.	NH/C5/13792012	**Suspension Application:** [redacted] The conduct which forms the basis of the Suspension Application against [redacted] is his failure to respond to the complaint lodged by [redacted]	The Provincial Council is to **note** that the Application was heard on 20 June 2019. The Respondent filed his Answering Affidavit and the matter was adjourned *sine die*. The Applicant was ordered to file its Replying Affidavit by 2 August 2019. The Respondent tendered the costs of the adjournment on an Attorney and client scale.
2.	NH/11092018	**Suspension Application:** [redacted] **) : Closing Requirements**	The Provincial Council is to **note** that the Application papers have been finalized and are in the process of being signed.
3.	NH/V0108/12	**Strike-Off Application:** [redacted] The conduct which forms the basis of the Strike-Off Application is that [redacted]: 1) Failed to properly attend to the administration of the deceased estate. 2) Wrongfully appropriated R182 670,20 in respect of fees which were due to the deceased estate. 3) Misrepresented to the Executor that she submitted four Liquidation and Distribution Accounts when in fact only one was submitted. 4) Unlawfully claimed a fee of 6% in respect of the deceased business from the period (October 2008 to May 2010).	The Provincial Council is to **note** that the Application for Strike off was pended as the Respondent had lodged an Appeal. The Panel Attorneys have filed their Heads of Argument and Practice Notes. We are awaiting the Notice of Set Down.

		Vahed J submitted a complaint to the Society to the effect that when [redacted] appeared before Steyn J in an urgent application, she alleged that she had been instructed by a firm of attorneys, but those attorneys denied having instructed her. The Complaints Committee recommended that an application be brought for [redacted]s striking-off.	Senior and junior counsel were appointed by the Society to draft the necessary application papers. This has not occurred as yet. Junior counsel has been replaced and the new Junior has been instructed to expedite the production of a draft set of papers for submission to senior counsel.
20.	Advocate	**Application to Strike-off A Brink** Brink made serious allegations regarding the conduct of Mr Justice Mlambo and Mr Justice Waglay, who are currently the Judge President of the North Gauteng High Court and the Labour Court respectively. The allegations arose from their refusal to recommend Brink for appointment to the staff of the Legal Aid Board in Pietermaritzburg. Brink alleged that the two Judges acted male fides in doing so with the intention of damaging his career. The complaint involved many volumes of documents. After considering the same, the Committee decided that Brink's allegations were unfounded and contemptuous of the two Judges. It accordingly recommended that striking-off proceedings be brought against him. When Brink learnt of this decision, he contacted the Society and requested to be allowed to make representations before any final decision was made in this regard. The Society agreed that he may do so. Brink then delivered written representations which, together with annexures, exceeded 250 pages. The Complaints Committee re-considered the matter in the light of these representations but still determined that an	The Society's Complaints Committee recommended that an application be instituted for Brinks striking-off. Brink lodged a complaint with the Judicial Service Committee and Litigation Committee recommended that the decision of the Judicial Misconduct Sub-Committee should be awaited before proceeding with the proposed strike-off application. If a decision is not received before the next report of the Litigation Committee falls due, the Litigation Committee will advise the Bar Council on resolving to institute a strike-off application against Brink.

		application should be brought for his striking-off. Simultaneously with lodging the written representations, Brink lodged a complaint with Page 4 the Secretariat of the Judicial Services Commission ("the JSC") regarding the conduct of Justices Miambo and Waglay. This complaint has apparently been referred to the Judicial Misconduct Sub-Committee of the JSC. Whilst the Society is of the view that there is no substance to Brink's complaint, it is of the view that it would be advisable to await the decision of the Judicial Misconduct Sub Committee on the complaints, before proceeding with the striking-off application.	
21.	Advocate	**Application to Strike-off** [redacted] Complaint by [redacted]	During late 2018 the Council referred to the Committee a complaint against Advocate [redacted] in respect of which the Complaints Committee had recommended that a strike-off application be instituted. The complaint is to the effect that Phewa took an amount of R50 000.00 from a client with regard to the transfer of a property, but the property was never transferred and the monies never refunded. A further complaint was thereafter received against Phewa which was then referred to the Complaints committee and is pending. The Litigation Committee has appointed counsel to consider the merits of an application to strike-off Phewa based on the first complaint and, if considered to be of merit, to draft the necessary application whereafter the Litigation Committee will make appropriate recommendations to the Bar Council.
22.	Advocate	**Litigation matter: Advocate** [redacted] This is not a “complaint” in the true sense of the	A draft affidavit has been prepared for signature by the Chairman. In terms thereof, inter alia, it is pointed out

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LEGAL PRACTICE COUNCIL

Advocate Anthony Brink

Email: anthonybrink.sa@gamil.com

YOUR REF:

OUR REF : Nadira

Please Quote Our Reference

10 March 2020

Dear Sirs

RE: COMPLAINT BY MR T V MTATI OBO LEGAL AID BOARD

The above matter refers.

Please be advised that the Legal Practice Council at its meeting held on 7 March 2020 considered your complaint and the Reports submitted by the Complaints Committee of the Society of Advocates and resolved to commence with investigations into this matter de nova as the Society of Advocates did not have the necessary authority to deal with the matter as the Legal Practice Council had taken office on 1 November 2018.

Kindly provide us with your reply by 1 April 2020.

Yours faithfully

Nharipersad

MRS N HARRIPERSAD
SENIOR LEGAL OFFICIAL
DISCIPLINARY DEPARTMENT

Executive Committee: Ms. Kathleen Matolo - Dlepu – Chairperson, Adv Anthea Platt SC - Deputy Chairperson, Adv. Greg Harpur SC, Ms. Trudie Nichols, Mr Lutendo Sigogo, Mr Jan Stemmett, Adv. Phillip Zilwa SC, Executive Officer (acting) Ms. Charity Nzuza

KWAZULU-NATAL OFFICE - DIRECTOR: PEARL ARNOLD MFUSI

36 Pearson Street
Eshowe 3815
1 April 2020

Your ref: Nadira

Mrs N Harripersad
Senior Legal Official
Disciplinary Department
Legal Practice Council
KwaZulu-Natal Provincial Office
1st Floor, 200 Hoosen Haffejee Street
Pietermaritzburg

Dear Mrs Harripersad

COMPLAINT BY MR T V MTATI OBO LEGAL AID BOARD

I refer to your letter of the 10th ultimo in this matter.

I should begin by advising that the LPC has to do here with an extraordinarily serious case of criminal and other corruption at Legal Aid South Africa ('LASA'), in which both the Chief Justice and the Auditor-General have just recently taken a direct personal interest (further described below). The National Director of Public Prosecutions will shortly be doing likewise.

You tell me that the Legal Practice Council ('LPC') 'considered your complaint and the Reports submitted by the Complaints Committee of the Society of Advocates'. I haven't filed any complaints with the LPC yet (they're still to come), so by 'your complaint' I assume you're referring to former LASA Legal Executive Thembile Mtati's complaint against me to the Society of Advocates of KwaZulu-Natal ('the Society'), chiefly about my allegedly disgraceful, unprofessional criticism of then LASA Board chairperson Dunstan Mlambo JP's gross misconduct before and during my labour litigation against LASA several years ago.

If so, the LPC is very mistaken in thinking 'the Society of Advocates did not have the necessary authority to deal with the matter as the Legal Practice Council had taken office on 1 November 2018', because Mtati's complaint was made to the Society in November 2015, three years before that, and long before the LPC 'had taken office'.

The Society then dealt with Mtati's complaint as follows. Without thinking to afford me a hearing or even inform me of the complaint, the Society's Complaints Committee considered and decided to uphold it, and recommended to the Society that I be struck off on account of it; and the Society agreed and resolved to apply against me to the High Court for this. When I later chanced to hear about this amazing development, and requested a belated opportunity to answer the complaint, the Society agreed to reverse its decision and to hear me. I answered Mtati's complaint by furnishing the Complaints Committee with copies of my eight gross misconduct complaints just lodged in mid-2017 with the Judicial Conduct Committee ('JCC') of the Judicial Service Commission ('JSC') against the said judge. Invited by the Complaints Committee to comment on my response to his complaint (i.e. to comment on my eight complaints against Mlambo JP to the JCC), Mtati declined to do so. This full investigation by the Complaints Committee of the Society took place in 2017, a year before the LPC 'had taken office'. As I told the Chief Justice recently (see below), the conclusion I drew from the Society's silence after this was that my extraordinarily serious complaints against Mlambo JP lodged with the JCC resulted in the Society ultimately dismissing Mtati's complaint that I'd made an unwarranted, insupportable attack on the judge's integrity. In other words, I believed Mtati's complaint against me to have been finally disposed of, and that the matter had died its natural and proper death.

In your letter you tell me that on 7 March 2020 the LPC 'considered ... the Reports submitted by the Complaints Committee of the Society of Advocates'. It seems to me then that the LPC wasn't furnished with and doesn't have copies of my complaints to the JCC against Mlambo JP, which I provided to the Society's Complaints Committee in mid-2017 as my complete answer to Mtati's complaint

against me that I'd defamed this judge, and that the LPC didn't consider them before resolving to re-investigate Mtati's old complaint.

In order to reply properly, as the LPC requires of me, per your letter, I require the following information and documents please:

INFORMATION REQUIRED

1. What is the LPC's case file number in this matter?
2. Do you confirm that the LPC has not been furnished with copies of my complaints to the JCC against Mlambo JP, which I supplied to the Complaints Committee as my answer ('my response') to Mtati's complaint that I'd defamed Mlambo JP, which response the Complaint's Committee copied on to Mtati for his comment, and which response LASA therefore has in its possession?
3. Did LASA Chief Legal Executive Patrick Hundermark ask the LPC to reinvestigate the complaint? If not him, who is the current complainant against me on LASA's behalf? Who is now accusing me of professional misconduct?

DOCUMENTS REQUIRED

1. A copy of Mtati's complaint against me to the Society in 2015, and any addendum updating or supplementing it, if such exists.

2. Given that Mtati resigned from LASA a year or two ago, all correspondence between the LPC and Hundermark and/or other LASA officer, past or current, regarding the revival of Mtati's complaint for re-investigation by the LPC.

3. If Hundermark or other LASA officer has resubmitted to the LPC Mtati's old complaint to the Society, a copy of the resolution by LASA's Board authorising and instructing him to resubmit the complaint to the LPC on LASA's behalf. (Since Mtati no longer works for LASA, he obviously has no authority to make any complaint to the LPC against me on LASA's behalf. If Mtati, Hundermark, or other LASA officer is

complaining to the LPC against me at his own initiative, unauthorised by LASA's Board, and not on LASA's behalf, then no such Board resolution will have been passed, and no minute of it will exist to provide me.)

4. All 'Reports submitted by the Complaints Committee of the Society of Advocates' (per your letter) considered by the LPC on 7 March 2020.

5. Any other documents considered by the LPC on said date.

6. The LPC's resolution on 7 March 2020 'to commence with investigations into this matter de novo'.

The LPC will be interested to learn that the JCC found my charges against Mlambo JP substantial, and required him to respond to them. That is, they weren't found to be frivolous and baseless and subject to summary dismissal under section 15 of the Judicial Service Commission Act. Following Mlambo JP's deplorable response to my complaints, I was invited by the JCC to comment on it, which I did in forthright terms.

When the JCC appeared to me to be foot-dragging with its disciplinary process against Mlambo JP, I complained directly to JSC chairperson Mogoeng Mogoeng CJ at the end of last year, and on 18 February 2020, I received a call from his office – after hours at 8.33 pm (I have a log of the call) – urgently requesting copies of my complaints for immediate consideration, and ascribing the long delay in prosecuting them to the illness, incapacity and death of former JSC Secretary Lynette Bios, in which period administration broke down. As requested I duly provided PDF copies of my complaints, Mlambo JP's response, and my invited comments, by Dropbox link emailed later that night to the Chief Justice's man waiting in his office for them. With the Chief Justice now personally onto the case, I expect movement on my capital complaints against Mlambo JP soon.

On 9 March, the Office of the Auditor-General acknowledged my affirmed, documented complaint addressed to him personally of massive financial corruption in LASA's national office and assured me of the Auditor-General's

personal attention to it at a meeting to be held to discuss it. Two days ago, on 30 March, I received a further email from the Auditor-General's in-house corporate legal services advocate dealing with my complaint, informing me that it was now in the hands of the Auditor-General's investigating unit, and that she would shortly be drawing a summary report for personal discussion with the Auditor-General.

Bottom line is the law is at last on the move against LASA's prodigiously corrupt past and current top officers.

I intend reporting this latest development at the LPC to the Chief Justice, to update him on the 'RETALIATION' section of my letter to him, concerning LASA's (Mlambo JP's, Hundermark's) ongoing endeavour to professionally ruin the whistleblower calling attention to the criminal corruption I've uncovered at LASA (going even to the extreme of perverting judicial proceedings in their favour by dint of a note slipped to a judge – unfortunately, for them, inadvertently left in the court file, and copied for me by the registrar – the subject of a separate complaint pending before the JCC against Mlambo JP's long-time deputy and then successor, Labour Appeal Court head Basheer Waglay JP).

Meanwhile, as I informed the Auditor-General's in-house advocate in reply, I intend this month to commence drawing criminal complaints against Hundermark and his colleagues variously for their perjuries, contradictory lies to the Justice Portfolio Committee, and criminal contraventions of the Public Finance Management Act.

I look forward to the information and documents specified above. No rush. I appreciate that the national lockdown is slowing and disrupting everything.

Yours sincerely

ANTHONY BRINK

R32

Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

COMPLAINT BY MR T V MTATI OBO LEGAL AID BOARD

Anthony Brink <anthonybrink.sa@gmail.com> 1 April 2020 at 16:34
To: Shoba Harkhu <shobah@lpc.org.za>

Dear Mrs Harripersad
I attach my reply to your letter of the 10th last month.
Sincerely
Anthony Brink
[Quoted text hidden]

JPC_1.pdf
38K

589

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

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

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number:

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

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

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

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

Legal Practice Council
Thornhill Office Park
Building 20
94 Bekker Road
Vorna Valley
Midrand 0002

info@lpc.org.za

B. Particulars of person requesting access to the record

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

Full names and surname	:	**Anthony Brink**
Identity number	:	**5902255116081**
Postal address	:	**36 Pearson Street, Eshowe 3815, KwaZulu-Natal**

Fax number	:	**None**
Telephone number	:	**083 779 4174**
E-mail address	:	**anthonybrink.sa@gmail.com**

C. Particulars of person on whose behalf request is made: N/A

D. Particulars of record

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

See annexure.

E. Fees

*(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid.*
(b) You will be notified of the amount required to be paid as the request fee.
*(c) The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.*

F. Form of access to record

Mark the appropriate box with an "X".
(a) Your indication as to the required form of access depends on the form in which the record is available.
(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.
(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in written or printed form -

X	copies of records		inspection of record

2. If record consists of visual images - N/A

3. If record consists of recorded words or information which can be reproduced in sound - N/A

4. If record is held on computer or in an electronic form -

	printed copy of record		printed copy of information derived from the record*	X	copies to be emailed as file attachments.

G. Notice of decision regarding request for access

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

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

Signed at Eshowe on 22 July 2020

SIGNATURE OF REQUESTER

FORM A ANNEXURE

RECORDS REQUIRED

1. A copy of the 'Complaint by Mr T V Mtati obo Legal Aid Board', i.e. Legal Aid South Africa ('LASA'), referred to in the heading of the letter to me on 10 March 2020 by Nadira Harripersad, Legal Practice Council ('LPC') Senior Legal Official: Disciplinary Department, KwaZulu-Natal Provincial Office ('the letter').

2. Any addendum updating or supplementing the said complaint, originally made to the Society of Advocates of KwaZulu-Natal ('the Society') in November 2015.

3. All correspondence between LASA (and/or by any past LASA officer) and the LPC regarding the revival of the complaint for re-investigation by the LPC.

4. All 'Reports submitted by the Complaints Committee of the Society of Advocates', considered by the LPC at its meeting on 7 March 2020, mentioned in the letter.

5. The minutes of all and any resolutions passed by the Society in regard to the disposal of the complaint, considered by the LPC at its 7 March 2020 meeting.

6. All and any other documents considered by the LPC at its 7 March 2020 meeting before resolving 'to commence with investigations into this matter de nova [*sic*]' – the 'matter' being LASA's complaint to the Society against me in November 2015.

7. The minute of the LPC's resolution passed at its 7 March 2020 meeting 'to commence with investigations into this matter de nova'.

8. Any record identifying the original author of the allegation made in the letter, if not Ms Harripersad herself:

> [T]he Society of Advocates did not have the necessary authority to deal with the matter as the Legal Practice Council had taken office on 1 November 2018.

Advocate A Brink
E-mail: anthonybrink.sa@gmail.com

YOUR REF:

OUR REF : NH/mg

Please Quote Our Reference

18 February 2021

Dear Advocate Brink

RE: COMPLAINT BY MR T V MTATI obo LEGAL AID SOUTH AFRICA

We refer to your letter dated 12 January 2021 and respond herewith as follows to your request for further information in so far as it relates to the Legal Practice Council: -

1. Ad paragraph 1 (page 2)

   We enclose herewith a copy of Ms Kola's letter dated 30 November 2020 and advise that the copy received is clear and legible.

2. Ad paragraph 2 (page 3)

   We confirm having received from the Society of Advocates your eight (8) complaints against the erstwhile LASA Board Chairperson, Mlambo J.P.

   We further confirm that we have copies of your following letters in our possession: -

   a) A copy of your letter addressed to Mossop SC dated 3 July 2017; and

   b) A copy of your e-mail addressed to Mossop SC dated 26 July 2017.

   We confirm that we are not in possession of your complaint to the JSC against Waglay J.P.

3. Ad paragraph 2 (page 7)

   1) As requested, please find attached a copy of the complaint by Mr T V Mtati obo the Legal Aid Board.

2) We enclose herewith a copy of Ms Kola's letter referred to above in para 1 in which she has supplemented the original complaint.

3) Attached herewith our correspondence between LASA and the LPC, relating to the revival of the complaint.

4) A copy of the report to the Bar Council by Advocate R G Mossop SC dated 17 February 2017 and 14 September 2017.

5) & 7) We enclose a copy of the LPC's minutes dated 7 March 2020.

6) The following items were considered by the LPC at its meeting held on 7 March 2020: -

   i) The complaint by T V Mtati obo LASA dated 24 November 2015.

   ii) Your letter dated 3 July 2017.

   iii) The Society of Advocate's report – September 2019.

   iv) Reports to the Bar Council by Advocate R G Mossop SC dated 17 February 2017 and 14 September 2017.

8) Please find attached a copy of our minutes from the LPC KZN Provincial Council stating that "all matter referred by the Society of Advocates must be investigated afresh as the latter ceased to have *locus standi* from 1 November 2018".

Yours faithfully

MRS N HARRIPERSAD
SENIOR LEGAL OFFICER - DISCIPLINARY DEPARTMENT

Encl.

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

188, 14th Road, Noordwyk, Midrand, 1685
Private Bag X10, Marshalltown, 2107
Tel: +27 10 493 2500 (Switchboard)
E-mail: info@ judiciary.org.za
www.judiciary.org.za

JUDICIAL CONDUCT COMMITTEE

Enq: Lynette Bios

Tel: (010) 493 2500(switchboard)

Advocate Brink

25 Balcomb Avenue

Zini River Estate

Mtunzini

Per email: anthonybrink.sa@gmail.com

Our Ref: JSC/533/17

Dear Advocate Brink

RE: COMPLAINT AGAINST JUDGE PRESIDENT MLAMBO OF THE GAUTENG DIVISION OF THE HIGH COURT

Kindly find the attached response from Mlambo JP.

The Secretariat requests your comments (if any) by the close of business on 20 June 2018.

Yours sincerely,

L BIOS

Secretariat for the Judicial Service Commission

Date: 07/06/2018

OFFICE OF THE JUDGE PRESIDENT

P O Box 442, PRETORIA 0001 - Tel 012- 314-9003 - Fax 012-326-4940
Palace of Justice, Church Square, Room 13, First Floor, Pretoria
E-mail: TMotswasele@judiciary.org.za / NNdungane@judiciary.org.za

Your Ref: JSC/533/17

THE CHAIRPERSON
JUDICIAL SERVICE COMMISSION
186, 14TH ROAD
NOORDWYK
MIDRAND
1685

Dear Chief Justice

RE: COMPLAINT BY ADVOCATE BRINK AGAINST MLAMBO JP

1. I refer to your letter dated 25 May 2018 wherein you sought my response to the complaint that has been lodged by Mr Anthony Brink ("Brink").

INTRODUCTION

2. At the outset, I wish to point out that the complaint by Brink is not the first or isolated complaint. Brink has on innumerable occasions filed or made complaints against myself and senior officials of Legal Aid South Africa and other judicial officials. These complaints were made not only before the JSC but also in various courts, Parliament and before various Chapter 9 institutions.

3. At the heart of Brink's numerous complaints is his non-appointment to Legal Aid South Africa's Senior Litigator post at its Pietermaritzburg office during or about 2010.

4. Of particular concern though, is the language used by Brink in all the complaints that he has filed. Brink has been, to say the least, very derogatory, defamatory, and, at times, racist, against not only myself, but also senior officials of Legal Aid South Africa and other sitting judicial officers.

5. With this introduction I proceed to address Brink's complaint.

SUMMARY OF THE COMPLAINTS

6. In his complaint, Brink had made eight allegations of gross misconduct against me in my capacity as the Chairperson of the Board of Directors of Legal Aid South Africa ('Legal Aid SA") which I can summarise as follows -

6.1. The first complaint is *"subornation of perjury to defeat an application under section 25 of the Supreme Court Act"* for leave to subpoena me, so as to avoid being cross examined at the trial of Brink's labour action against Legal Aid SA (D529/11) on my "*gross misconduct, including crimes in false reporting and lying on multiple scores to the Justice Portfolio Committee";*

6.2. The second complaint is *"collusion in Legal Aid SA CEO and Information Officer Vidhu Vedalankar's illegal and unconstitutional total refusal to comply with Brink's request duly made under the Promotion of Access to Information Act 2 of 2000 ("PAIA") for access to specified records exposing recruitment corruption in which [I] was directly involved"*. The third to the fifth complaints are similar to the second complaint;

6.3. The sixth complaint is *"false reporting and lying to the Minister of Justice and Constitutional Development (as he was then described) to pervert his enquiry into Vedalankar's repeated illegal and unconstitutional refusal to comply with PAIA, and thereby cover this up, with the object of covering up my own gross misconduct exposed by the illegally refused records which were ultimately surrendered many years later at the point of argument in court for an order compelling their delivery";*

6.4. The seventh complaint is *"false reporting and lying to the Justice Committee to pervert its separate independently instituted enquiry into the same illegal and unconstitutional suppression of public records, with the same corrupt object, in criminal contravention of section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act";*

6.5. The Eighth complaint is *"false reporting and lying to the Minister of Justice and Correctional Services, and to the Justice Portfolio Committee to pervert their separate, independently instituted enquiries into-*

(a) the unauthorised, off the record, illegal abortion of the appointments of recommended candidates to three Senior Litigator posts under cover of a mendacious budgetary insufficiency excuse given to cover recruitment corruption favouring an unsuccessful candidate, [my] former long-time colleague as an acting Judge in the Labour Court which [I] headed at the time; and

(b) the unauthorised, off the record, unlawful, permanent freezing of the fully funded critical posts, substantially disrupting critical specialist legal professional service delivery in KwaZulu- Natal and the Eastern Cape; unlawfully deviating from Legal Aid SA's approved Strategic Plan and unlawfully contravening the Public Finance Management Act in multiple other respects- in the case of the false report to the Portfolio Committee, in criminal

contravention of section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act".

BACKGROUND

7. Having read the complaint lodged, I do not intend to deal with each and every allegation made by Brink as doing so will be unjust to both myself and the Judicial Service Committee (Committee) to burden it with unnecessary and irrelevant information. However, my failure to deal with any of the allegations *ad seriatim* should not be construed as an admission but as a denial.

8. For convenience of the Committee, it is important that I lay the background to the complaints:

8.1. On 12 November 2009, Brink was interviewed and shortlisted for the second round of interviews as a candidate for the Senior Litigator post at the Pietermaritzburg offices of Legal Aid SA. I revert to the interview date as it becomes relevant to one of the complaints relating to my alleged involvement in the appointment of Mr. Ngcamu;

8.2. Legal Aid SA subsequently abandoned the filling of the remaining vacant senior litigator posts due to budgetary constraints and Brink was informed of the decision;

8.3. On 26 August 2010, Brink filed his first PAIA request with Legal Aid SA seeking 51 records relating to the recruitment process for the Senior Litigator post;

8.4. On 18 October 2010, the First Request was refused. The Chief Executive Officer (CEO) of Legal Aid SA addressed a letter to Brink explaining why the recruitment process was discontinued;

8.5. Thereafter, Brink addressed a letter to me as the chairperson of the Legal Aid SA Board of Directors. I responded to the letter on 30 November 2010;

8.6. Dissatisfied with both the Legal Aid SA and my response, Brink proceeded with a claim and challenged Legal Aid SA's decision not to appoint him to the Senior Litigator post in the Labour Court, Durban. He based his challenge primarily on the ground that the failure to appoint him was due to political or racial prejudice as a result of his Aids denialism;

8.7. Brink sought to subpoena me to attend Court. Just before the hearing of the matter, Brink voluntarily withdrew his application;

8.8. In the statement of claim before Court, Brink made various defamatory statements against me and the CEO of Legal Aid SA including the complaints forming part of the current enquiry. In his initial statement of claim, Brink alleged:

8.8.1. I was "*motivated by unlawful political (alternatively racial) prejudice [when I] aborted his appointment*".

8.8.2. I "*attempted to camouflage [my] direct discrimination against [him] on prohibited grounds by concocting and advancing a false cover story for it based on fake financial justification*".

8.8.3. I "*lied to the Minister of Justice and Constitutional Development and the Chairperson of the Portfolio Committee of Justice and Constitutional Development.*"

8.9. It was during the hearing and under cross examination that Brink withdrew such statements exempting me from any alleged involvement in collusion with any official of Legal Aid SA, false reporting, connivance and corrupt activities. I hereby attach a

schedule of some of the statements that Brink made in his statement of claim as well as the excerpts of the transcript of the Labour Court record which I mark **JP001 and JP002**;

8.10. He withdrew and exonerated me and the CEO of Legal Aid SA during cross examination and shifted his focus to the National Operations Executive of Legal Aid SA;

8.11. His claim to the Labour Court was dismissed with costs. The decision is reported as *Brink v Legal Aid South Africa* (2015) 36 ILJ 1020 (LC);

8.12. Brink filed an application for leave to appeal to that Court and the application failed. Brink petitioned the Labour Appeal Court for leave to appeal. In his founding affidavit, Brink's vitriolic attitude and cumulative conduct not only towards Legal Aid SA but also towards me and Cele J erupted. That application, too, failed. I attach relevant excerpts of the application illustrating such attitude and conduct, which I mark **JP003**;

8.13. After his appeal failed, he lodged an urgent application at Pietermaritzburg High Court under case number 12977/15 seeking to interdict the taxation of the bill of costs. Brink continued with his vitriolic attitude and cumulative conduct not only towards Legal Aid SA but now also towards Waglay JP and I, accusing us of corruption and maliciously obstructing his right to appeal. See **JP004.** Brink also levied personal attacks against us, stating that:

8.13.1. Waglay JP ordered his registrar "*to issue a counterfiet order he'd ghost-written, pretending that he, Davis and Sutherland JJA had considered and unanimously rejected*" his petition.

8.13.2. "*The lying defamatory Memorandum was certainly not written by Waglay JP, Davis JA or Sutherland JA, all of whose judgments are written in fine, flawless, plain and unpretentious English, in contradistinction to the haughtily magisterial, aggressive tone of the document in second language English with its grammatical imperfections – such as I noticed listening on my car radio to Mlambo JP's disposal of the costs question after President Zuma dropped his*

application to interdict the Public Protector's state of capture report. (I don't mean to be rude; I wish my Zulu were as strong as his English.)"

8.14. Brink is currently indebted to Legal Aid SA for taxed costs in the total amount R1,647,814.65 which he is not able to pay due to his impecuniosity; and

8.15. Brink now seeks to re-litigate his matter on a new basis that he was not appointed due to my involvement in as he couches it "*plain recruitment corruption*". He now seeks to abuse the PAIA Act, Court processes and even the JSC complaint mechanism in his misguided pursuit to this end.

SUBMISSIONS

9. I deny all the allegations made against me. I specifically deny that I have been involved in recruitment corruption and the appointment of staff or otherwise influenced the appointment of Mr Ngcamu or any other official of Legal Aid SA. I am advised by officials of Legal Aid SA, which advice I accept as true, that at the time when the recruitment process commenced for

the filling of the Senior Litigator positions in Pietermaritzburg and Durban, Mr Ngcamu was not in the employ of Legal Aid SA. He was first appointed as a temporary employee on 1 November 2011 to 28 February 2012 as a Civil Professional Assistant. He was then appointed

again from 19 March 2012 to 16 June 2014 as a Civil Professional Assistant. Both these appointments were at Empangeni Local Office of Legal Aid SA. Mr. Ngcamu was thereafter appointed as a Labour Court Practitioner in Durban Local Office of Legal Aid SA from 17 June 2014 to 31 July 2017. In all these recruitment processes I had no role to play and the relevant officials of Legal Aid SA executed these appointments. As indicated in paragraph 8.1 above, the Senior Litigator recruitment process began long before Mr. Ngcamu joined Legal Aid SA and in particular, the process of recruitment was stalled before he joined the organisation. Whilst Mr. Ngcamu was apparently interviewed during the first round of interviews, it should be mentioned that I did not form part of such a panel. Furthermore, Mr. Ngcamu was not even recommended for the second round of Senior Litigator interviews during the Provincial selection process.

10. I deny that I conducted myself for "*subornation of perjury to defeat an application under section 25 of the Supreme Court Act for leave to subpoena me, so as to avoid being cross examined at the trial of Brink's labour action against Legal Aid SA (D529/11) on my gross misconduct, including crimes in false reporting and lying on multiple scores to the Justice Portfolio Committee*". Firstly, as mentioned in paragraph 8.7 above, Brink withdrew the subpoena against me and exonerated me and the CEO from any wrongdoing. Secondly, the report to the Justice Portfolio Committee confirmed that the reason for not proceeding with the second round of interviews was budget related which I still maintain.

11. I deny that I "*falsely reported and lied to the Minister of Justice and Constitutional Development (as he was then described) to pervert his enquiry into the CEO's repeated illegal and unconstitutional refusal to comply with PAIA, and thereby cover this up, with the object of covering up my own gross misconduct exposed by the illegally refused records*". The report to the Minister also explains the reasons why the second round of interviews was not proceeded with which related to budgetary constraints. In addition, I submit that there is nothing illegal and unconstitutional in all the refusals to records in accordance with PAIA. According to information at my disposal, all the records requested by Brink and as far as legally permissible in terms of the Act, were duly provided to him. To the extent that Legal Aid SA has refused to provide some records, I'm advised that such refusals are subject to determination by the Courts in various applications brought by Brink.

CONCLUSION

12. It needs to be noted that Mr Brink is susceptible to make allegations without factual substantiation and does not spare anyone holding a different view to his, as can be demonstrated with his attacks on me, later Cele J and thereafter with Waglay JP as well as various senior officials of Legal Aid SA. I believe I have demonstrated that Mr Brink has been openly disrespectful and downright malicious to me in particular. I hold the firm view that he has used complaint, PAIA and Parliamentary Portfolio processes to harass me and other officials of Legal Aid SA over the years. He has used these processes to insult me in particular as is clear from his comment regarding my handing down of the Public Protector Judgement. He is perpetuating this conduct in his complaint to the Judicial Conduct Committee against me. The allegations he has made against me in his complaint were retracted by him, as is clear in the transcript of his cross examination, in his failed Labour Court matter. Taking all this into account, I urge the Judicial Complaint Committee to dismiss Mr brink's complaint against me and that he be censured in the strongest of terms. I'm a senior Judicial officer with an unblemished record and do not deserve to be treated in this fashion by anyone including Mr Brink.

Yours Sincerely

D MLAMBO
JUDGE PRESIDENT
GAUTENG HIGH COURTS
07th JUNE 2018

SCHEDULE OF SOME OF THE ALLEGATIONS MADE BY BRINK IN HIS STATEMENT OF CLAIM BRINK MADE AGAINST MLAMBO J AND THE CEO, AMONGST OTHERS.

The following are only some of the many statements he made:

Par 4. *The applicant will show..., the respondent's chairperson Dunstan Mlambo and Chief Executive Officer Vidhu Vedalankar, motivated by unlawful political (alternatively racial) prejudice aborted his appointment off the record and without announcing the fact; and that many months later, under pressure to account, Mlambo and Vedalankar attempted to camouflage their direct discrimination against the applicant on prohibited grounds by concocting and advancing a false cover story for it based on a fake financial justification- unsupported and contradicted by the respondent's business record; conflicting with Vedalankar's CEO report for 2009/10; conflicting with deliberately misleading statements Vedalankar made on two occasions to the Portfolio Committee on Justice and Constitutional Development; and contradicting the express wishes of the Minister of Justice and Constitutional Development known to both Mlambo and Vedalankar.*

Par 5. *The Applicant will further show that in furtherance of Mlambo's and Vedalankar's scheme to cover up their unfair discrimination against the Applicant, Mlambo lied to the Minister on several scores in a "Confidential... report" to him "Re: Adv Anthony Brink", which lies Mlambo repeated to the Chairperson of the Portfolio Committee; and by so doing Mlambo deliberately misled the respondent's executive authority and Parliament in order to (a) allay their further enquiries into the applicant's complaints against the Respondent, which he had copied to the Minister and Committee Chairperson, of unfair discrimination against him and unlawful refusal to*

surrender material records duly requested under the Promotion of Access to Information Act, and (b) to put them off discovering the falsity of the bogus financial justification for their abortion of the Applicant's recruitment dishonestly advanced by Vedalankar to the applicant and by Mlambo to the Minister and to the Committee chairperson.

Par 17. *"Having regard to his subsequent recorded conduct in the matter,... that Mlambo supported and was party to 'the decisions we took'... to abort the applicant's recruitment and thereafter to camouflage the true reason for doing so under cover of a lying alibi"*

Pars 26 & 27. *"Although himself African, Mlambo uncritically subscribes to the American and European industrial complex's HIV-Aids-ARV business model, promoted by the pharmaceutical industry that Africans in South Africa "not whites, coloureds or Indians) are 'new[ly]' riddled with deadly venereal disease... Mlambo actually believes these things and is an active political promoter of these immensely lucrative politico-medical construct on the international stage...*

Par 30. *"The respondent's entire Board and executive management structure actively promote and perpetuate the Western HIV/AIDS/ARV – paradigm in South Africa…"*

Par 31. *Because Vedalankar informed Nair that she did not agree with the applicant's recruitment as a political (or racial) undesirable, Nair never 'signed off' the Motivation … , and the recruitment process to appoint the applicant was thus brought to an end.*

Par 33. *The first strategy adopted by Mlambo and Vedalankar to conceal from the applicant their unfair discrimination against him was deliberate inaction and silence.*

Par 34. *The reason Mlambo and Vedalankar opted for this initial simple strategy was because:*

34.1. it entailed the minimum possible risk that the applicant would discover their unfair discrimination against him; and

34.2. they bargained that after being kept waiting in the dark for several months, the applicant would lose hope, conclude that he had been unsuccessful at his interview, give up pursuing the post for which he had applied, and withdraw himself from the recruitment process of his own accord, thus achieving Mlambo's and Vedalankar's objectives in shutting him out and concealing their decision to do so."

Par 55. *Appreciating (a) that the applicant had not been put off by Mlambo's and Vedalankar's inaction and silence strategy, and that half a year after his interview he was still agitating for the finalisation of his appointment, and (b) that Mlambo's and Vedalankar's scheme to covertly discriminate against the applicant therefore needed elaboration, ..."*

Par 71. *Mlambo's and Vedalankar's purpose in sacrificing the successful Mthatha candidate "In July 2010" off the record ..., was to fabricate a factual foundation for their assertion about to be made to the applicant that the respondent had decided, "due to various reasons", impliedly legitimate, not to fill the respondent's three remaining vacant Senior Litigator posts in order to disguise her and Mlambo's unfair discrimination against the applicant..."*

Par 85. *"... it is probable that Mlambo was the author of the false and misleading statement of the law concerning the applicant's right to information..."*

Par 108. *"It follows that Mlambo's 'Confidential' allegation to the Minister ...was a blatant lie improvised by him to patch the first gaping hole (amongst many others) in his ... lying alibi uttered variously to the applicant, to the Minister and to the chairperson of the Portfolio Committee to mislead and deceive them all,..."*

Par 278. "The horror of the applicant's experience of Mlambo's and Vedalankar's dishonestly camouflaged direct unfair discrimination against him has been considerably exacerbated by his apprehension that Mlambo heads the very court in which he is constrained to seek justice-particularly given the history of Mlambo's appalling, brazen dishonesty in his dissimulations to the applicant...; in his false representations to the Minister...; and in his and Vedalankar's mala fide dealing with the applicant and how best to defeat him, in cabals, behind the scenes and off the record."

JP002

EXCERPTS FROM THE TRANSCRIPT OF THE LABOUR COURT MATTER D529/11 WITH SPECIFIC REFERENCE TO BRINK EXONERATING MLAMBO JP UNDER CROSS EXAMINATION

Page 133	***Mr Du Toit*** *"Then just by the way, Judge Mlambo you say is one of the top judges in the country is the person you called a liar about 30 times?"---* ***Mr Brink*** *"This is before I discovered that Nair was abusing his office, abusing his name to convey falsehoods to Parliament and to the Minister."*
Page 137	***Mr Brink*** *"I am saying that Judge Mlambo and I mean it with absolutely no disrespect and I really rule about my misconceptions about Judge Mlambo's role in this matter."*
Page 154	***Mr Du Toit*** *"By the way, Mr Brink, having called Mrs Vedalankar a liar and dishonest in concocting defenses, do you really think that you could possibly be appointed in an organization where she continues to be the chief executive officer?"---* ***Mr Brink*** *"It is my conclusion from reading her two letters to me, that they*

	were written by Brian Nair, consequently it is my relatively late conclusion, after the case began and consequently I believe that the CEO as Judge Mlambo was, the CEO's higher office and Gormy abused by Nair to convey lies to me. Sir I hold CEO Vedalankar clear in this matter."
Page 158	***Mr Du Toit*** *"But you have said that it was the chief executive officer who was involved in this plot"---* ***Mr Brink*** *"But I thought so; I thought so, because of her letters to me. But later I discovered I faulted and I am sure it will be confirmed, but she did not write those letters, so I was misled."*
Page 159	***Mr Brink*** *"In the early days for the better, before one discover that Judge Mlambo was innocent in this thing and I have since formed the conclusion that Vedalankar too. You see, I had her letters to me, full of lies. Judge Mlambo's report to the Minister, full of lies, what could I conclude, it was a nightmare, it was very shocking, so I had to draw what conclusion but that they are the authors, but now I know they are not the authors."---* ***Mr Du Toit*** *"Well let us clarify exactly what you are withdrawing now. You are saying firstly that Ms. Vedalankar not plot or struck your appointment, is that what you are saying?"---* ***Mr Brink*** *"This is my current conclusion in the fullness of the evidence."---* ***Mr Du Toit*** *"And you are saying that Judge Mlambo did not plot to obstruct your appointment"---*

	Mr Brink *"Correct"* ***Mr Du Toit*** *"That is right, okay. So she is out of the picture, she did not discriminate against you that is what you say now?"---* ***Mr Brink*** *"That is the look of it to me now, neither may well surprise us all and say, no, no, I neatly discussed it with Vedalankar and she agreed. He may tell us that, I do not know, but the look of it on the evidence before me, that I have assembled, the look of it now, that Vedalankar was not involved, not involved."*
Pages 172-173	***Mr Du Toit*** *"But you now say this falls away?"---* ***Mr Brink*** *"It does. I hold her clear, unless Mr Nair implicates her, but we will have to see, but I have no knowledge here."---* ***Mr Du Toit*** *"And then in paragraph 17, you again say that the chairperson of the respondent's board, Dunstan Mlambo, supported and was partied to the decisions took, to abort the applicant's recruitment and thereafter to camouflage the true reason for doing so, under the cover of a lying alibi"---* ***Mr Brink*** *"That is right, and that conclusion was founded on my receipt from the chairperson, the portfolio of Judge Mlambo's updated report to parliament, a pack of lies, including the manifestly untruthful alibi."---* ***Mr Du Toit*** *"And this falls away as well?"---*

Mr Brink *"Oh yes"---*

"Then"---

"Just about everything falls away in my first claim."

Mr Du Toit *"Well, let's just get it clear, because I think it is necessary both for your sake and for the sake of Judge Mlambo at least to get this absolutely clear"---*

Mr Brink *"Yes, yes"---*

Mr Du Toit *"And then in paragraph 18, we refer to the grounds, Mlambo and Vedalankar rejected was because you were politically undesirable and well, if there was no plot, then this must fall away as well."---*

Mr Brink *"Right. It falls away to the extent that they were not the actors, but Nair was."---*

Mr Du Toit *"I see, okay. And then in 19 Mlambo's and Vedalankar's decision to reject the applicant's appointment on prohibited ground was taken, communicated to Nair behind the scenes and off the record and accordingly no record exists. Now if there was no decision by them, then it could not have been communicated."--*

Mr Brink *"It is quite obvious."---*

Mr Du Toit *"Okay, so that falls away. I just want to make a note of these allegations that now are…Withdrawn?"---*

Mr Brink *"Withdrawn, yes.*

Mr Du Toit *"Then in paragraph 20 you have here at page 44, Mlambo*

	neither consulted nor informed the rest of the board of his decision jointly, Ms. Vedalankar's discriminate, does that also fall away?" ***Mr Brink*** *"Ja"*
Page 188	***Mr Du Toit*** *"Now why would Ms. Vedalankar who you have exonerated already from any participation and any unfair discrimination against you why would she tell you a lie?"---* ***Mr Brink*** *"Because she did not write the letter; I am pretty sure she did not write the letter. I could be surprised by this, but I do not think she wrote the letter; I think it was Nair who wrote the letter"*
Pages 205-206	***Mr Du Toit*** *"Then you go on in paragraph 32 at page 49, not only had you expand on this, you say, Nair having been instructed as it were by Vedalankar, informed by Vedalankar, he then deliberately does not do something, because he is now carrying out his CEO's instruction. He is astute not to note, because appreciating the decision to abort was unlawful, so in other words he is now part of the plot, construed by Ms. Vedalankar."---* ***Mr Brink*** *"This is my conclusion, because I am many miles away, I am on the other end of the world and I am peacefully developing about bits and*

	pieces that the American Right is taller than these things, bits and pieces. And the accumulation evidence, someone required quite recently as profoundly shifted my understanding of what actually happened in this matter. Now, sir, you can hammer away that my early statement declare but I tell you it was based on numerous fundamental misconceptions to which I had been led by Nair."
Page 213	***Mr Du Toit*** *"But she could not have joined Vedalankar's scheme, because you already accepted that there was no scheme by Vedalankar."---* ***Mr Brink*** *"Correct."--*
Page 214	***Mr Du Toit*** *"Paragraph 48 stands, paragraph 49 stands, 50 stands, 51 stands, save that is no longer Mlambo and Vedalankar's scheme, but Nair's"*
Page 215	*"And then the heading, page 57, the scheme, that is also wrong."---* ***Mr Brink*** *"Ja, it was wrong to the extent that Mlambo and Vedalankar are named the Nair scheme."*
Page 219-220	***Mr Du Toit*** *"Right, and in paragraph 90, or 89 you attribute lies to Ms. Vedalankar."---* ***Mr Brink*** *"Ja."* ***Mr Du Toit*** *"That must fall away?---* ***Mr Brink*** *"No you must reallocate the blame to Nair."*

Page 221	***Mr Du Toit*** *"In paragraph 99 on page 68, you describe to Judge Mlambo a desire to obstruct your efforts under the Promotional Access to Information Act. Do you stand by those contentions?"---* ***Mr Brink*** *"You know I do not."* --- ***Mr Du Toit*** *"You really are challenging, I asked you, are you still attributing falsity against Judge Mlambo?"---* ***Mr Brink*** *"I have said it a hundred times, that I am not doing so, I am not attributing."*
Page 223	***Mr Brink*** *"Really, I have no quarrel with Judge Mlambo, I think he was misled, he was given a bad picture and that is the start of this irritable e-mail on the..."*
Page 224	***Mr Du Toit*** *"Now, in paragraph 108, page 73, you have accused Judge Mlambo of a blatant lie."---* ***Mr Brink*** *"Ja, it is Nair's blatant lie, it is so easy to show and indeed it is going to be retracted."*
Page 227	***Mr Brink*** *"I do not, do you want me to repeat bluntly, I do not think Judge*

	Mlambo is a liar, and that is it, I used to I mean what else was there to conclude from the secret report?"
Page 228	***Mr Du Toit*** *"You slandered a senior judge in a most disgraceful way."---* ***Mr Brink*** *"I agree, I agree, M'Lord, I agree and I tell you it was inadvertent and I regret it."*
Page 231	***Mr Du Toit*** *"You make the allegation that Judge Mlambo made a false allegation concerning the knowledge of the executives; do you attribute falsity against Judge Mlambo?"* ***Mr Brink*** *"I do not. But the rest of the paragraph is absolutely sound, to the actual extent that it is Nair's false allegation via Judge Mlambo."*
Page 241	***Mr Brink*** *"Well, we got over and over, but you know I hold Judge Mlambo clear…"*
Page 242	***Mr Brink*** *"No. The financial cover story and the report were fake, but Judge Mlambo is not the author of that lie."*
Page 264	***Mr Du Toit*** *"Paragraph 265, 122 and I imagine you do not attribute falsity to Judge Mlambo."---* ***Mr Brink*** *"That is right"* --- ***Mr Du Toit*** *"Well, just to save us the agony of going through the rest, can we assume that for the rest you have assume I think, exonerated Judge Mlambo and Mrs Vedalankar from any accusation of dishonesty and*

	discrimination?"--- ***Mr Brink*** *"Yes"*
Page 269	***Mr Du Toit*** *"And you have attributed delinquency to persons involved in this matter."---* ***Mr Brink*** *"Correct. My scope was broaden, it was broader then than it is now. Because I thought Vedalankar was involved and so on."*

EXCERPTS FROM THE PETITION FOR LEAVE TO APPEAL AT LABOUR APPEAL COURT

Par 2	*"This is an extraordinarily serious matter with colossal implications extending way beyond my personal interest in its resolution. It concerns the personal and professional integrity of a sitting judge president, formerly of this court, and that of the most senior management executives of a major public entity. I speak of the perversion of separate Ministerial and Parliamentary enquiries by dint of multiple, objectively demonstrable lies, and different lies told to me, to the LASA Board, to the SAHRC, and to court(different lies told in the pleadings and interlocutory affidavits, and then at trial), and of the gross breakdown of proper corporate governance and the rule of law at LASA, all of which the trial judge looked past in his seemingly clear and definitive, but in fact deplorably inattentive, glib, crude and perfunctory judgement, riddled with the most basic legal and factual misdirection, omissions and non-sequiturs, and characterized by his failures over and over again to consider the radical contradictions and the ludicrously improbable, manifestly untruthful, and objectively contradicted evidence of LASA's single witness at trial, National Operations Executive Brian Nair"*
Par 3	*"I'll advert later in this affidavit to the capital misconduct and massive and pervasive corruption to which I allude here, as well as to the judge's own gravely prejudicial misconduct in the case that thwarted a full and proper ventilation of the issues that I looked to him and trusted him to try."*
Par 4	*"In his refusal the judge didn't treat the clear-cut new evidence surfaced after trial showing unequivocally that Nair had lied to him on oath in two respects. To the judge, Nair's categorically proven repeated mendacity in court made no difference to his assessment of the credibility of his evidence."*
Par 5	*"The judge elliptically conceded his fundamental legal misdirection, identified in my application, that in deciding the case he'd misallocated the final onus of proof, which he'd placed on me*

	instead of on LASA. He then sought to avoid the fatal ramifications of the radical error by two means:"
Par 6	*"The judge's response was to silently look away."*
Par 7	*"And second by asserting that even if I was right about the incidence of onus, irrespective of where it lay his decision wouldn't have been any different-notwithstanding that LASA relied on the mere say-so of its single witness Nair, unsupported by any records, and indeed contradicted by them, a witness the judge acknowledged I'd shown to have been 'not generous with the truth' on numerous scores. Instead of considering the implications of this for Nair's credibility as a witness, he took him at his word, mechanically reciting his evidence as gospel, without any endeavor to assay its veracity. It seems to have been inconceivable to the judge that such a high public officer could be a practiced, confident, spontaneously inventive, unctuous, bare-faced, abject liar."*
Par 8	*"In his refusal, the judge failed utterly to address and deal with the rest of my attack on his judgment in my application, in which I demonstrated all his basic errors, too many to recite here, including the huge prejudice he caused me by refusing to allow me to cross-examine LASA's officers I'd subpoenaed for the purpose, thus depriving me of some major artillery I'd lined up; and he swept the whole thing-all 59 pages and 323 paragraphs-off the table in a single dismissive paragraph."*
Par 22	*"Nonetheless, in view of Nair's unbelievably foolish dissimulation at trial-he was a pathetic liar-*

	contradicted by the documentary record and by LASA's pleaded case, that LASA's entry-level lower criminal court public defender posts were critical, and not its top professional echelon specialist Senior Litigator posts, I showed at trial and called the judge's attention in my heads to all the manifold evidence that Senior Litigator posts are indeed critical, and that the bottom-rung lower criminal court posts can't possibly be and aren't. The judge evidently didn't read that far."
Par 24	*"And what they unequivocally show is that she lied to me in October 2010 about the reason my appointment was aborted. That is, to camouflage the true reason, she'd fed me a false cover-story, as very smooth and convincing as it sounded…The lies then multiplied chaotically in all directions in the classic dynamic of a disintegrating cover-up."*
Par 25	*"At trial I mentioned my conclusions from the evidence I'd found of this that Nair had ghost-written Vedalankar's letters, and Board chairperson Mlambo JP's subsequent false reports to the Minister and to Parliament to pervert their enquiries into my complaints, and for this reason I held them both clear. But in his evidence, Nair denied any hand in Vedalankar's letters to me; and although in evidence he ultimately admitted writing Mlambo JP's reports, he could 'only assume the Judge personally wrote that' (having first insinuated it might have been Vedalankar and then again) i.e. that Mlambo JP had amplified the report for the Minister before sending it to Parliament, with its further lies added about LASA's compliance with my three PAIA requests, and the nature and scale of my claim I'd just referred to the CCMA for conciliation. (It's quite clear Nair lied to the judge about this, and that he, not Mlambo JP, amplified the report with these additional lies.) That is to say, after I'd told the Judge that I held them clear (more about this below), Nair went on to directly implicate Vedalankar and Mlambo JP in lying to me, to the Minister and to Parliament."*
Par 26	*"True to the Minister's assurance, the OSD money was indeed included in the mid-term budget in October 2010, as Vedalankar informed the Portfolio Committee on the 12th-but not me, from who*

	she concealed this hotly material fact in her letter to me six days later, the better to maintain her pretense that LASA was still too skint to hire me."
Par 28	*"In her second letter to me in January 2011, illegally refusing my second PAIA request testing her financial alibi for the abortion of my appointment, not only did Vedalankar conceal this payment from me, she positively lied to me, again and again, that LASA was still in a financial jam (And Vedalankar, Nair and other national management executives took home magnificent, unprecedented bonuses.)*
Par 29	*"In March 2011, responding to my third PAIA application, Vedalankar, Nair and Clark all confirmed the lying budgetary excuse on affidavit. That is, LASA's CEO, NOE, and HRE all swore the lie was true."*
Par 30	*"Even though it was already obviously false, the financial alibi was inadequate to cover and explain Nair's inaction in finalizing my appointment in the initial three-and-a-half month period between the dates he received my recommendation on 26 November 2009 and when the OSD uncertainty arose on 10 March 2010. So to patch the gap he concocted another story-later twice retracted by him on affidavit as an obvious error, and consequently nowhere pleaded or alleged in any interlocutory affidavit, then contradicted with a different story he told the judge. Who didn't think to note any of this dismal shambles in his judgment"*
Par 31	*"In his reports written for Mlambo JP to sign and submit to pervert the ministerial and*

	parliamentary enquiries I'd initiated, Nair now claimed that what initially held up the alleged next step in my recruitment-a so-called second round interview-was difficulty encountered in coordinating a date suitable for all members of this panel to meet. Another smooth and ostensibly convincing story. After I exposed and refuted it as an outright lie in my original statement of claim, Nair retracted it on oath as 'an error…palpably an error' that Mlambo JP had made. Except that Nair himself was the author of this brazen lie to the Minister and to Parliament; it was not Mlambo JP's 'error'.
Par 32	*"But Mlambo JP knew full well that this new story was false, because as a member of this so-called second round interview panel he'd never been contacted for a date. At trial Nair claimed, quite absurdly, that he never opened the recommendation and CV email attachments that he'd specially telephoned for, not until more than a year later, when he did so out of simple curiosity. (The judge found this perfectly credible, even though Nair had told a different story on affidavit before trial, which destructive contradiction I pressed in my heads. The judge didn't note this, and accepted and believed Nair's childishly obvious, self-contradicted new lie told in court, which had featured nowhere in any correspondence, report, pleading or affidavit before trial, all justifying LASA's failure to proceed with my appointment. This was one of the fundamental failures of the judgment.)*
Par 33	*"So, contrary to his lie told to the Minister and Parliament in Mlambo JP's name about this, there was no difficulty fixing a date for it because no attempt was ever made to do so…So Mlambo JP knew full well that the report, which Nair had written for him to sign and to give the Minister and the chairperson of the Portfolio Committee to put down my complaints and pervert their independent enquiries contained in a flagrant lie about why no steps were taken to finalise my recruitment in the first few months before the OSD uncertainty arose several months after my selection."*

Par 34	*"Mlambo JP also knew full well that the budgetary justification Vedalankar had fed me to cover the true reason my appointment had been aborted, which Nair repeated in the reports he drew for him, was another lie, because he'd chaired the meeting of the Board in July 2010 at which it approved executive management's proposal to trim costs by temporarily freezing recruitment to some lower criminal court posts only...Deceptively silent about it, Vedalankar repeatedly falsely reported LASA's Strategic Plan 2009/12 to have been implemented and completed as regards the employment of Senior Litigators in her CEO report for 2011/12 to the Minister and the National Assembly."*
Par 35	*"My discoveries about Nair's authorship led me to inform the judge on the first day that I held them clear, and that I held Nair solely responsible for the lies these documents contained."*
Par 36	*"In his chambers on the second day, when I told the judge I still had a lot more evidence to lead, having already blown the fake budgetary pretext to pieces on the facts set out in my Timeline, he warned me: 'I don't want to tell you how to run your case, but don't make the mistake of throwing your net so far out that you catch more than you can bring in.' These were his exact words, spoken off the record, but contemporaneously recorded that evening in emailed reports of the court day to my family and friends. I understood the judge was giving me an indication, as we lawyers say, and a severe indication at that, namely to limit the spray of my case, and keep it fixed on Nair alone, as I'd indicated I intended doing at commencement, and not present any further evidence implicating the big fish; for if I dared make the dangerous mistake of doing so,*

	this would be too much, and it would doom my prospects of succeeding in his court with my claim. It seemed clear to me that the judge wanted the evidence contained. He did not want me to lead more evidence beyond the smaller fry."
Par 38	*"After I'd discredited the budgetary pretext fed me for not appointing me, and then the initial delay pretext fed to the Minister and Parliament for not immediately proceeding with my appointment, Nair cooked up and fed the Board two brand-new, totally different stories to justify his failure to finalise my appointment at Pietermaritzburg, an internal candidate's promotion at Durban, and another internal candidate's transfer to Mthatha, namely 'recruitment challenges' encountered in filling the posts, and alleged uncertainty that the six incumbent Senior Litigators were up to professional scratch. Both lies. Waffling feebly, Nair was unable to support his first new story and radically changed his second, before which it was repeatedly exposed as a lie by LASA's records."*
Par 40	*"It was a risible new lie, sharply contradicting LASA's pleaded and sworn version before trial, unsupported by any record, not alleged in any affidavit or pleading, and contradicted by LASA's recruitment/vacancy statistics for June 2010. But Nair's new lie in evidence made no impression on the judge, as said, he didn't mention it."*
Par 41	*"The LAC is also certain to treat an important aspect of the case, entirely disregarded by the judge (notwithstanding his fine grasp of the specifics of public service appointment procedure displayed in his Baxter judgment), namely Nair's incompetent and illegal so-called second round interview scheme for Senior Litigator candidates-unauthorised by the Board's Recruitment code and inconsistent with its Approval Framework. Unlike the judge, the LAC is certain to remark on the disgraceful breakdown of lawful recruitment procedure at LASA, in blatant disregard of the Board's said regulatory instruments which precisely govern this, and on Mlambo JP's participation*

	in a grossly irregular, prejudicial, and unlawful recruitment practice."
Par 42	*"His lies proliferating in court as he was trying to shore up his collapsing story about why he never signed his approval (or disapproval) of my recommendation by the selection panel as the Approval Framework required of him, and as provided at the foot of the document (with its legal nonsense, at his instance, about a further interview), Nair claimed in court that he didn't have to-a lie repeatedly and squarely contradicted by LASA's pleadings and interlocutory affidavits. The judge didn't note this; again the LAC is sure to."*
Par 43	*"Unlike the judge who accepted and believed it, the LAC is also sure to find stupidly ridiculous and manifestly false Nair's evidence, building on his just-mentioned lie, but again explicitly contradicted by LASA's pleadings and interlocutory affidavits..."*
Par 44	*"The LAC is certain to find Nair's evidence to have been obviously untruthful just about whenever he opened his mouth...It failed to do so, because its various explanations given were obviously untrue. So what?"*
Par 47	*"I did not expect the judge to be nodding off during the afternoon sessions, and finally claiming perversely, but revealing to his negative animus, that I ought rather to have taken LASA's abortion of my appointment on 'review'. As if I shouldn't have come bothering him to deliver the justice I craved, and had laboured bitterly year after year before trial to achieve, in the face of every obstacle corruptly placed in my way, viciously defamed all the while, contemptuously*

	redoubled when I complained of it. In a matter of such enormous importance, and with so much on the line extending far beyond my personal interest in the case, and with so much fact to traverse and complex argument to present, including relevant, applicable international labour law jurisprudence mentioned in my opening address, I did not expect the judge to prescribe that our heads shouldn't exceed a manifestly insufficient 'fifteen to twenty pages' suggesting that he'd already made up his mind to toss my case. I did not expect that five months after I filed my replying argument the judge hadn't troubled himself to read our heads, and was hearing our oral argument without having prepared for it ten months after the evidence, and relying only on his fading and defective memory of it presented in the course of a nine-day trial concluded the best part of a year earlier. In giving judgment, I did not expect the judge to misstate my case, omitting critical facts and including irrelevant matter, and portray as maladroit and whimsical my precisely considered tactical and strategic decisions taken, wrongly forced by him on the record and improperly pressed by him off it. I did not expect the judge to sugar Nair's lies for his judgment, by stretching and exaggerating them to help them go down. And that besides getting the final onus wrong, he should also have placed on me an impossible, pivotal, evidential onus I very obviously didn't bear and couldn't possibly have discharged."
Par 48	*"Professional and personal networks and loyalties being what they are in the real world, I appreciated from the outset that I was up against very long odds, and that notwithstanding his oath of office it would be no easy thing for a judge to impeach the conduct of his own (then) court president, and now president of the biggest, most important high court in the country, and thereby trigger a gargantuan scandal. But the truth must be out, and justice needs doing fearlessly."*
Par 49	*"An unattended splinter, so easily removed, has led to a widespread gangrene at the top of a major public entity, generally perceived to be the jewel in the crown of the Justice cluster, and a model of good governance."*

Par 50	*"Having regard to the profusion of contradictory lies that have spewed out of LASA, including to the highest authorities, in the cover-up following the illegal abortion of my appointment, to get away with and escape accountability for it-successfully so far, like Nixon nearly did after Watergate-your lordships can expect absolutely any lie from LASA in its answering papers, any subterfuge to persuade you to shut down further enquiry into this matter by refusing this petition. Since in-house attorney Mtati acting on instruction can offer you no more than hearsay about the case, and hasn't stinted at committing the most grotesque, poisonous perjury on affidavit on Nair's instructions to prejudice me in the court's eyes before trial, and since the judge found Nair to have been untruthful under oath on any number of scores, I respectfully entreat your lordships to require CEO Vedalankar, and not the former discreditable and unreliable persons, to depose to any answering affidavit under LAC rule 4(6) in regard to why I should be denied leave to argue my case before three senior, experienced, and attentive judges of appeal...The prospect of being jailed may chill any inclination she might have to repeat under oath to your lordships the lies she told me."*

R35

EXCERPTS FROM THE URGENT APLICATION AT PIETERMARITZBURG HIGH COURT CASE 12977/15

"In sum, Waglay JP acted alone in rejecting my petition, prematurely before all the papers were in and the matter was ready for decision, and without designating three appeal judges to consider and decide my petition ..."

He then covered up his malicious obstruction of my right to appeal (if, under LAC rule 4(8), at least two designated two designated appeal judges thought I was in with a chance), firstly by ordering his registrar in Johannesburg to issue a counterfeit order he'd ghost-written, pretending that he, Davis and Sutherland JJA had considered and unanimously rejected my petition in Durban on 18 February 2015, and secondly by ghost-writing a letter for the said registrar to send me, repeating this lie and basically telling me to push off and stop asking dangerous questions threatening to blow the lid on his impeachable misconduct."

It isn't any mystery why Waglay JP intentionally violated my fundamental right to due process ... I landed the written evidence of stunningly dishonest improper influence that caused him to do so. And I have a photocopy of it worth a bar of gold".

BRINK'S COMMENTS ON MLAMBO JP'S RESPONSE TO HIS EIGHT GROSS MISCONDUCT COMPLAINTS

I, Anthony Brink, affirm:

1. I am the complainant in eight complaints of gross misconduct filed against Mlambo JP under section 14 of the Judicial Service Commission Act 9 of 1994 ('JSC Act'), which I submitted to the Judicial Service Commission ('JSC') in June and July 2017, and at the request of the Judicial Conduct Committee ('the Committee') again in November 2017 in a combined indexed and paginated bundle ('the bundle'). Invited by the Committee, the following are my comments on Mlambo JP's response to my complaints.

2. Mlambo JP's response is prodigiously dishonest as I'll show, and profoundly aggravates my complaints.

3. Adopting a basic offence-as-defence strategy, much of his response is aimed at gunning me down as the complainant, instead of meeting and answering my extraordinarily serious case. It does this by portraying me as an inherently unreliable witness against him, a perennially dissatisfied racist nutcase given to misfiring baseless, abusive complaints in all directions to every imaginable authority.

4. He entirely evades addressing the substance of my finely specified, particularised and documented charges; falsely characterises them as wanton defamation for which I should be sanctioned; and airily waves them away with bald and general denials.

5. To obfuscate the recorded facts and to distract from my specific charges, he makes prolific use of red herrings and other dishonest rhetorical devices.

6. To the Chief Justice, to whom his response is addressed as Committee chairperson, he brazenly repeats lies he told the Justice Minister and Portfolio Committee, with which I've charged him; and he tells a slew of new ones.

7. He mounts a show of feigned offence taken at my charges, to cast me, the gravely injured complainant, as the actual miscreant in the matter, and not him.

8. And riding on his high office, he does all this confident that the Committee will take him at his word and that his high-toned, indignant say-so as a senior judge will suffice to put down my complaints, avert the Committee's examination of them, and shut down its investigation of him.

Ad paragraph 1 of the response.

9. In point of fact, I filed eight individual, separate complaints against Mlambo JP with the Judicial Service Commission ('JSC'), each one charging an impeachable offence, not one 'complaint'.

Ad paragraph 2.

10. Contriving to discredit my complaints against him generally by discrediting me personally, Mlambo JP kicks off with the dog-whistle language of a prosecutor raising in court the recidivist history of an habitual criminal.

11. He falsely insinuates that my several complaints since 2010 made to progressively higher levels of authority about the pervasive systemic corruption; illegal gross financial irregularity involving many millions of rands; deliberate obstruction of critical service delivery for corrupt ends; illegal and unconstitutional suppression of duly requested public records and the concealment of this with false reporting to frustrate and defeat parliamentary oversight and thereby evade accountability; and the culture of mendacity, lawlessness, criminality and contempt for the Constitution that I've run into at Legal Aid South Africa ('LASA') have been both groundless and reprehensible.

12. That I've indeed complained 'in various courts' about all this is immaterial to the merits of my specific complaints against him to the JSC, and to the Committee's determination of them on their own terms and merits.

13. Likewise immaterial to my JSC complaints is the fact that I finally[1] went to 'Parliament'[2] about CEO and information officer Vidhu Vedalankar's persistent and repeated, illegal and unconstitutional refusals to allow me access to LASA records I'd duly requested under the Promotion of Access to Information Act 2 of 2000 ('PAIA'), and about the unauthorised, unrecorded, silent, illegal abortion of my appointment to LASA's top legal professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg,[3] after I was unanimously recommended for it by a duly constituted selection panel of LASA's top lawyers in the region, and then, when I began pressing for the finalisation of my appointment eight strangely silent months later, the illegal, unauthorised, unrecorded so-called freezing of LASA's three remaining vacant Senior Litigator posts under cover of a transparently bogus financial insufficiency excuse, in response to my first PAIA request in which I was thoroughly probing the unspecified 'various reasons' the abortion of my appointment was 'due to'. (My request was illegally ignored then repeatedly expressly refused.)

14. Likewise irrelevant is that I've repeatedly complained to and sought the assistance and intervention of such 'Chapter 9 institutions' as the South African Human Rights Commission ('SAHRC') and the Public Protector, on account of (a) the repeated and persistent, illegal and unconstitutional refusals of my PAIA

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[1] This is after Mlambo JP had rejected my first petition to him and the Board, then rudely rebuked my second.

[2] To be precise, I copied to the Minister and to the Justice Portfolio Committee my third petition to Mlambo JP and the Board on 25 February 2011, in which I appealed again for their intervention in Vedalankar's repeated illegal and unconstitutional refusals of my first two PAIA requests and illegal abortion of my appointment to the Pietermaritzburg Senior Litigator post under cover of the demonstrably false excuse eventually given me that LASA didn't have the budget to hire me. Unlike Mlambo JP, who ignored my third petition about the extraordinarily grave wrongdoing I was reporting to him, yet again, the Minister and the Portfolio Committee duly instituted separate and independent enquiries into the matter. I didn't know at the time that Mlambo JP was at the centre of the lawless corruption of which I was complaining, and only learned of it in April 2016, hence my naïve repeated appeals to him in November and December 2010 and February 2011 for his intervention to remedy it, canvassed in my Second to Fifth Complaints.

[3] There's a twin post serving the Durban High Court.

requests by such 'senior officials' as LASA's information officer Vedalankar and deputy information officers Brian Nair and Thembile Mtati; and (b) LASA's repeated and persistent false annual reporting under section 32 of PAIA to conceal this from the National Assembly so as to successfully frustrate and defeat its constitutional oversight responsibility over LASA, year after year.[4]

15. Likewise irrelevant is that I've complained to the Public Service Commission about Mlambo JP's unauthorised, ultra vires, illegal active interference as a ***non-executive*** member of LASA's Board of Directors in the conduct of LASA's recruitment operations – which, under LASA's internal regulations, are the exclusive preserve of executive management – and about his wholesale corruption of Senior Litigator recruitment procedure with his so-called second round interview scheme, in flagrant contravention of the said legal instruments precisely governing it to achieve fairness and transparency and to eliminate recruitment corruption.[5]

16. Likewise irrelevant is that I've complained about 'other judicial officials', namely:

(a) Cele J, judge of the Labour Court, in my petition to the Judge President of the Labour Appeal Court for leave to appeal his dismissal of my action claiming my appointment (wrongly founded on unfair discrimination, I much later discovered), inter alia about his disgraceful judicial indolence in not preparing

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[4] This unbelievable saga is closely detailed in my 'Special Report on Legal Aid SA: An aggravated case of repeated wilful non-compliance with the Promotion of Access to Information Act 2 of 2000 to illegally obstruct access to duly requested records, and repeated false annual and "confidential" reporting to conceal this from the National Assembly'. It describes the SAHRC's several unsuccessful interventions at my instance to get LASA to start complying with PAIA. LASA's persistent failure to do so, to date, is now before the Pietermaritzburg High Court, where I've three pending applications under section 78 of the Act to compel its compliance with PAIA requests illegally and unconstitutionally refused as a waste of time under section 45. It's accessible online at https://goo.gl/PveC96

[5] Declining jurisdiction, the PSC referred my complaint to the Public Protector, where it's been parked unresolved. On Chief Legal Executive Patrick Hundermark's advice, LASA continues suppressing duly requested records – including records it agreed to surrender under a settlement agreement it made at court – which I need for the completion of further complaints to the JSC about Mlambo JP's further breaches of his oath of office to protect and defend the Constitution, inter alia his brazen violation of the fundamental constitutional principle of legality in his illegal intrusion into recruitment operations at LASA, and involvement in *ethical* recruitment corruption. My claims to these determinedly suppressed public records are the subject of pending litigation under PAIA in the Magistrate's- and High Courts.

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himself for oral argument of the case – set down for three days, after a two-week trial many months earlier – by troubling himself to read and acquaint himself with my extensive written argument (so he admitted in chambers), which I'd filed long before, meticulously footnoted to LASA's contradictory pleadings and contradictory interlocutory affidavits, and the massive indexed and paginated documentary record I'd compiled and bundled for the case;

(b) Waglay JP, head of the Labour Appeal Court, in my still pending complaint to the JSC regarding his breach of Article 4 of the Code of Judicial Conduct;[6]

(c) Senior Magistrate Gerhard van Rooyen, stationed at Emlazi, Durban – specially appointed, as a formally qualified PAIA expert, to try my five applications to the Eshowe Magistrate's Court, launched in 2014–15 for orders compelling LASA's compliance with illegally and unconstitutionally refused PAIA requests made in 2013–14, and in 2016 to compel LASA's full and proper compliance with its settlement agreement after capitulating at court to my five applications – to the Magistrates Commission regarding, inter alia, his disgraceful judicial indolence in failing to prepare himself before coming to court to try my applications by (a) familiarizing himself with the provisions of the Act he was to apply (he volunteered to me on the first day that he hadn't done so, and this was repeatedly apparent at the hearings), and (b) by troubling himself to read the extensive application papers and then the further documents filed during the case, and thereby acquainting himself with the evidence on affidavit to be argued and the amended orders to be sought (that he hadn't bothered to do so, and was ignorantly winging it on the bench, was repeatedly apparent at the hearings).[7]

17. All these previously made complaints of mine to these various other high authorities are perfectly irrelevant to the merits of my instant complaints to the

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[6] The JSC Secretariat acknowledged receipt of it on 29 August 2017, but on 14 June 2018 conveyed that it had been mislaid and requested a copy. I emailed it on the same day and it was acknowledged again. The complaint is accessible online at goo.gl/39eYx1.

[7] The complaint can be accessed, along with notice of its dismissal on patently spurious grounds, misdirected by several obviously mistaken factual premises stated, online at goo.gl/ETHCpV.

JSC against Mlambo JP, and his dissimulation to the contrary, to distract from them and make them look bad, and maybe demented, is dishonestly misleading.

Ad 3.

18. Again, the clear purpose of this false and misleading declamation is to distract from my specific complaints against Mlambo JP to the JSC, none of which directly concern the silent, unrecorded, unauthorised, illegal decision to abort my appointment:

19. Having nothing to do with my 'non-appointment' at all, my First Complaint charges Mlambo JP with suborning perjury in regard to his totally fabricated claim – made via his instructed attorney on affidavit, to discredit me and thereby defeat my application for leave to subpoena him under section 25 of the Supreme Court Act – that after suing for my appointment, I rocked up at his chambers to hassle him about it, and that he was singularly unimpressed with my unprofessional misconduct in doing so (in truth, I've never met or even seen him and don't even know where the Johannesburg High Court is). My Second to Seventh Complaints charge him with complicity in, and with covering up, LASA information officer Vedalankar's repeated and persistent violation of my constitutional right to information, as the record reflects. My Eighth Complaint shows with reference to supporting documents that the cover-stories he told the Minister and the Portfolio Committee about why my appointment wasn't proceeded with were lies to successfully pervert their enquiries into it. Indeed, as described in that complaint, after I refuted and exposed his lies, one was retracted on affidavit, and another was dropped and substituted with completely different lies – and so forth, the whole pathetic, zigzagging, lying shambles detailed in my complaint.

20. If by my 'numerous complaints' Mlambo JP is referring to my several complaints to the other authorities mentioned in his second paragraph, they're all irrelevant to my complaints against him to the JSC. Should the Committee take a different view, I'll furnish it with copies of all the complaints I've made to these different authorities, one after another since 2010, to vouch that all of

them have been well-founded – with one error I made: my stated surmise and conviction founded on a careful conspectus of the then available evidence, which I held between early 2010 and mid-April 2016,[8] that my appointment had been blocked on account of unfair political discrimination.[9] Years after the trial and dismissal of my claim against LASA for my appointment, which I'd based on that completely wrong ground, I discovered that the actual reason was simply jobs for pals.

21. Certainly the fons et origo of my nearly decade-long conflict with LASA's corrupt governing and managing public officials is the illegal abortion of my recruitment to the top professional post in question.[10] But this abortion is not the subject of my complaints currently before the JSC, and Mlambo JP's claim that it's 'at the heart' of them is consequently irrelevant and misleading, by falsely implying that I'm asking the Committee to revisit a stale dispute settled years ago by court judgment, and that it's none of its business.

Ad 4.

22. Adopting precisely the offence-as-defence strategy adopted by Motata J in his criminal defence, condemned as impeachably dishonest by Jappie JP in his 'Report of the Judicial Conduct Tribunal: In Re: Judge NJ Motata' of 17 April 2018,[11] Mlambo JP begins his response by turning the tables and rounding on me

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[8] This is when I eventually forced out of LASA, by suing for it, the selection panel's full uncensored recommendation report, and first learned of Mlambo JP's long-time judicial collegial relationship with my rival applicant for the post.

[9] In his judgment (correctly) dismissing my unfair discrimination claim in the Durban Labour Court, Cele J had no difficulty finding that I'm acutely politically unpopular as I'd alleged, and he restated my case in this regard extensively. In paragraph 8.6 of his response, to cast me beyond the pale, and to prejudice the Committee against me, Mlambo JP himself smugly charges me with 'AIDS denialism', a deeply pejorative moral and political smear to delegitimize dissident from any aspect of the Western, media-driven propaganda-consensus in the subject. Such as that it's an excellent idea for African women to swallow exceptionally poisonous, teratogenic chemicals every day throughout their pregnancies. My original, internationally acclaimed research work in this regard is posted on my website www.tig.org.za.

[10] The matter is out of my hands now, but as far as I'm concerned, as I've said before, the satisfactory resolution of my claim to the post after eight years of bitter struggle, and the death of my partner on the way, will end my personal interest in the whole matter completely. I'm literally sick of it.

[11] Paragraph 18 of the Report notes: 'Mr Baird [the complainant] was the main focus of the Judge's defence. In the heads of argument presented to the trial court on the Judge's behalf, it was submitted that Mr Baird was biased, unreliable, dishonest and above all that he was a racist.'

to portray me as the offender in the case, to decoy from and discredit my precisely specified, particularised and documented complaints against him; and he persists with this aggressive personal counter-attack on me throughout it.

23. My First, Seventh and Eighth complaints charge Mlambo JP with criminal misconduct; my Second to Sixth with other capital misconduct – all committed in his capacity as chairperson of LASA's Board, but incompatible with his position as a judge sworn to uphold and defend the Constitution. It's idle therefore to fuss that my 'language' used 'in all the complaints' is 'very derogatory' and 'defamatory'[12] – except to improperly and disgracefully prejudice the Committee against me and to distract from the hard point of my charges. It's like Goliath moaning that David's stones are too hard.

24. The 'language' I've used in my complaints, both to the JSC and to the other authorities Mlambo JP mentions, in relation to 'senior officials of Legal Aid South Africa and other sitting judicial officers', and whether it has been justifiably sharp or not, obviously has zero relevance to the merits of my eight complaints against him.

25. Confronted by the Committee with his capital misconduct minutely detailed and vouched in my complaints against him, Mlambo JP feigns resentment at the fact that I should say such things, to falsely imply that my complaints are empty abuse.

26. Calculated to wreck my credibility and finish me off before the Committee completely, Mlambo JP resorts to the ultimate accusation in our multi-racial

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[12] The Committee will undoubtedly find highly cogent, as to its likely author, the fact that the anonymous, unsigned, undated, unstamped 'memorandum' (at page 22 of the bundle) that perverted my petition for leave to appeal the dismissal of my labour action, employed exactly the same low cunning trick to discredit me and my case on petition by attacking my allegedly objectionable language. It *begins* by charging that I've used 'vulgar and insulting language … throughout [my] affidavits. Such conduct is unacceptable for a practicing advocate.' To discredit me personally and thereby discredit my complaints to the JSC against him, Mlambo JP likewise *begins* his response to them by charging that 'the language used by Brink in all the complaints … has been … very derogatory, defamatory, and at times racist'. LASA's complaints against me to the Bar and Magistrates Commission likewise again *begins* by charging that 'the conduct of Advocate Brink is not befitting an officer of the Court more to act as a Magistrate. The language used is unprofessional, the manner he relates to colleagues and Judges require sanction.' (sic: imperfect English)

democracy after apartheid: he smears me as a 'racist' who 'at times' has repeatedly revealed himself to be one.

27. He implies that my complaints as a white man against him as a black man are animated by a basic racist animus that I harbour towards him and towards Africans generally.

28. He plays the exactly same get out of jail free card that Motata J did to try getting out of his legal jam.[13]

29. Not only is Mlambo JP's malicious, revolting lie about me to the Chief Justice entirely baseless, it's utterly false, as I'll presently show with reference to the incontestable facts on the ground.

30. The best and only evidence Mlambo JP provides for his charge that I'm a racist is (a) my textual analysis[14] to conclude that the author of the anonymous, unsigned, undated, unstamped, criminal 'memorandum' turned up in the Durban Labour Appeal Court file (case DA21/14) that perverted my petition for leave to appeal[15] was not a mother-tongue English speaker, and that he'd hastily dashed it off in some agitation to cut me off at the pass; and (b) my observation that Mlambo JP's costs order in former President Zuma's application to interdict the Public Protector's state capture report, to which I listened on national radio, contained similar minor grammatical imperfections. Mlambo JP quotes me in this regard in his paragraph 8.13.2;[16] and no honest reader can conclude from what I wrote there that I'm a racist.

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[13] See footnote 10 above.

[14] I'm the author of several very well reviewed, serious specialist non-fiction books (see all books and reviews at openbooks.tig.org.za), and I'm well experienced in editing, polishing and perfecting translations of technical, philosophical and political writing from Spanish, Italian, German and Russian into natural, mother-tongue-sounding English. As a former musician, now writer, I have a keen feeling for the music, tone and rhythm of written English, and the distinctive 'voices' of different writers. Reading Mlambo JP's response, for instance, I recognise instantly, from his other writing, the hand of the attorney who drafted it for him.

[15] See my still pending complaint against Waglay JP. The criminal 'memorandum' is annexure 'C' to it.

[16] See my similar textual analyses in my First Complaint against Mlambo JP, and in my complaint against Waglay JP at paragraph 36. And before this: Noting his recurrent, habitual fingerprint idiosyncratic syntactical errors in his writing, I employed the same exercise in the Labour Court to identify LASA National Operations Executive as the likely ghost-writer of CEO

31. Certainly my late[17] partner Fezisa,[18] an African woman born in Pondoland, with whom I shared a loving home for two-and-a-half years, didn't think I'm a racist. Nor do any of my family and friends, including my Zulu musician friends with whom I illegally shared my house during apartheid; nor my Indian attorney friend with whom I defiantly co-founded a multi-racial jazz club during the 'emergency' era; nor three past and sitting African and Indian judge presidents (at two of whose homes – the Africans' – I've been a guest) and any number of other judges, including in the Supreme Court of Appeal; nor my legal colleagues, including attorney comrades with whom I conducted lengthy political trials and appeals in the early nineties, including in the Supreme Court of Appeal, as an advocate acting pro bono or for picayune fees; nor my more recently made Xhosa and Zulu legal and other friends and colleagues in and around the courts in Butterworth, Eshowe and Ulundi. An Indian attorney said of me in my presence a few years ago (his exact words): 'Anthony was the most loved advocate at the Pietermaritzburg bar for his non-racist and progressive attitudes.' My entire life has been defined by my loathing of racist ideology, and it brought me into repeated conflict with the local and national apartheid security apparatus throughout my young adult life.

32. Mlambo JP's absolutely false, groundless, malicious accusation made to the Chief Justice that I'm a racist, to devastate my credibility and thereby discredit my complaints against him, massively aggravates them.

33. As said, Motata J employed exactly the same low-kicking, shamefully dishonest tactic – as Jappie JP and his Judicial Conduct Tribunal noted in their report finding such misconduct impeachable. And which identical foul charge

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Vedalankar's illegal and unconstitutional blanket refusal in October 2010 of my entire first PAIA request in August two months earlier, and the lies her letter told to justify it.

[17] Understandably convinced that the corruption I'm up against at LASA is too powerful to overcome, since it radiates from Mlambo JP, more especially since this corruption has metastasized into the judiciary – see my complaint against Waglay JP – and that our prospects together were consequently hopeless (LASA had got me fired as a magistrate without a hearing, by complaining to the Magistrates Commission that I'd outrageously criticized Mlambo JP before and after my labour action), she fell ill in despair and died two years ago this month.

[18] Pictures at goo.gl/eC2JPr and goo.gl/htCiL7.

levelled by Motata J at the complainant in his case, they found to be an abject lie. Like Mlambo JP's abject lie about me.

34. But Mlambo JP's lie that I'm a racist is highly material in the Committee's determination of the veracity of other disputed claims he makes in his response, identified in these comments, and of his general denials, because it provides the clearest evidence that, when in a corner, the Judge President of the Gauteng Division of the High Court of South Africa will lie freely, about anything, to anyone, even to the Chief Justice. Further multiple objectively demonstrable lies that he tells in his response will be refuted and exposed below.[19]

Ad 6.

35. Pretending to provide a 'SUMMARY OF THE COMPLAINTS', Mlambo JP quotes some of my complaints, but not the *evidence* I provide supporting them; naturally he doesn't 'summarise' the chapter and verse of all that. In truth, he provides no 'summary' at all. His object in reciting some of my extraordinarily serious charges without mentioning the supporting evidence I provide seems to be to make them appear outlandish, outrageous, and fit for summary dismissal.

Ad 7.

36. Mlambo JP evades responding to the evidence I present against him i by dissembling inanely that to answer it in any detail would be 'unjust to both myself and the Judicial Service (sic: Conduct) Committee', 'as doing so' would 'burden it with unnecessary and irrelevant information.'

37. Afforded an opportunity under the audi alteram partem rule to answer and refute my capital complaints,[20] all closely particularised and vouched by supporting documents, he declines to do so under a ludicrous pretext, varnished

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[19] In his response, Mlambo JP talks himself deeper and deeper into the mire, in an illustration of the adage after Watergate, 'The cover-up is always worse than the crime.'

[20] Neither the Magistrates Commission and Department of Justice, nor the KwaZulu-Natal Society of Advocates thought to afford me the same benefit of this elementary principle of natural justice before sacking me as a magistrate and deciding to strike me off as an advocate for criticizing Mlambo JP in my labour claim. (After chancing to hear about the Bar's decision, I got it reversed.)

with lofty-sounding talk of justice in the matter. The true reason he evades meeting my case against him is that it's unanswerable on all counts.

38. Giving away the disingenuity of his ridiculous excuse for not answering my charges, Mlambo JP then proceeds to 'burden' the Committee precisely 'with unnecessary and irrelevant information' in the form of a lengthy counter-offensive against me, as if I'm the accused, in the course of which he tells many lies, all easily demonstrated.

39. It obviously doesn't do in an enquiry like this to avoid dealing with detailed, documented misconduct allegations and to deny them generally, like counsel pleading minimally to an action. My comprehensively made case against him consequently stands unrefuted, and is fit for investigation and reporting on by a Tribunal appointed under section 16 of the JSC Act.

Ad 8.

40. Mlambo JP's real purpose in presenting 'the background to the complaints' is manifestly not 'for the convenience of the Committee' as he smoothly but falsely pretends, but to distract from my specific complaints, by providing a tendentious, deceptively incomplete, and, in all, a demonstrably untruthful history of my underlying dispute with LASA over the abortion of my appointment to the top professional post for which I was picked instead of his judicial friend. Ultimately his clear object is to represent me as an unreliable witness against him whose allegations against him have already been tried and dismissed. In fact they're different.

Ad 8.1.

41. Mlambo JP's allegations in this subparagraph epitomise the brazen dishonesty of his response generally, and his personal distance from the truth, which is to say the documented, objectively established, incontrovertible facts.

42. It's trivial error, and nothing turns on it, but an early pointer to his carelessness with the basic facts of the case, even as he's writing to the Chief

Justice, is his claim that I was interviewed at 'the Pietermaritzburg offices of Legal Aid SA'. Actually it was at LASA's regional HQ in Pinetown.

43. Much more to the point, Mlambo JP tells the Chief Justice the blatant lie that following my interview I was 'shortlisted for the second round of interviews as a candidate for the Senior Litigator post at the Pietermaritzburg offices of Legal Aid SA.'

44. There was no shortlist. The contrary truth of it, shown by the selection panel's recommendation report, is that I was picked by the selection panel as the best man for the job, in fulfilment of its mandate under LASA's Policies and Procedures on Recruitment ('Recruitment code') to interview the shortlisted candidates and 'identif[y] ... the most suitable candidate for appointment in a post.'

45. I wasn't 'shortlisted' with other candidates for another interview. Quite the contrary, the recommendation report records that the other applicants for the post, including and especially Mlambo JP's judicial friend Ngcamu, were disqualified and eliminated.[21]

46. Mlambo JP can't be referring to Bongani Mngadi, head of the High Court Unit at the Durban Justice Centre, who was also selected and recommended, because this was in relation to a different post: the simultaneously advertised Senior Litigator post at LASA's Durban office. And it became common cause at the second pre-trial conference before the trial of my labour claim that although the recommendation report didn't specify this, I was selected and recommended for the Pietermaritzburg post for which I'd applied and Mngadi for the Durban one for which he had.

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[21] The selection panel's full, unredacted, uncensored recommendation report was determinedly concealed from me for years. First requested under PAIA in August 2010, I was only able to see it in April 2016, years after the trial of my labour claim in mid-2013, after suing for it under section 78 of PAIA. Opposing me all the way to argument, LASA finally agreed at court to surrender it, and under the settlement agreement turned it over two months later. How LASA persistently suppressed the report to prevent me seeing it, and my repeated attempts to access it, ultimately successful, but too late, is closely detailed in my Special Report to the SAHRC.

47. Mlambo JP's lie that I was 'shortlisted' for another interview[22] is not just another factual slip: he talks about 'the second round of interviews' – 'interviews' *plural* – in relation to the Pietermaritzburg post, to imply that it wasn't only me who was to be re-interviewed for the post; one or more of the unsuccessful applicants for it were to be re-interviewed too.

48. Indeed, so utterly corrupt is Senior Litigator recruitment at LASA, thanks to Mlambo JP's corruption of it, that National Operations Executive Nair (LASA's 2IC) told the labour judge in his evidence in mid-2013 that Mlambo JP and his so-called second round interview panel are free to interview and appoint anyone they feel like, including a candidate rejected and eliminated by the selection panel.[23]

49. The reason Mlambo JP tells this lie – that I was shortlisted, implicitly with others, for a second interview for the Pietermaritzburg post, after I was *solely* selected by the selection panel from among the shortlisted applicants for it – is to fudge the unwelcome fact to him that in my application for the post I was the lucky boy recommended for it, and very irksomely to him not his judicial chum Ngcamu.

50. In other words, Mlambo JP persists with repeating the foolish lie told me by CEO Vedalankar in October 2010 – even as she illegally and unconstitutionally refused my PAIA request for the selection panel's recommendation report[24] flatly

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[22] To be conducted by him and some management executives – illegally on multiple scores in contravention of LASA's Recruitment code and Approval Framework.

[23] Thereby clumsily giving the game away: they'd intended appointing Ngcamu, after I'd concluded from the long silence after my interview that I'd not been selected, and walked away (indeed I was clumsily asked in cross-examination why I hadn't done so), which is precisely why *Ngcamu wasn't also sent a letter telling him the recruitment had been cancelled, like the other candidates were, both successful and unsuccessful.* Only, I boggled the plan by persistently pursuing my appointment, after HRE Clark backhandedly confirmed in April 2010 that I'd been recommended.

[24] Under SAHRC pressure, it was released to me in January 2011, but heavily redacted with a black Koki marker pen to conceal two critically material facts, namely Mlambo JP's long-time judicial relationship with my rival applicant for the post, and the fact that he'd been disqualified and eliminated by the selection panel. The report showed I'd been selected and recommended for the post and no one else. (Bongani Mngadi, an internal candidate, was selected and recommended for the simultaneously advertised twin post at Durban.) After the failure of my ill-founded labour action I requested the full, unredacted recommendation report under PAIA. It was illegally refused, and as said, my application for an order to compel its surrender was resisted all the way to the point of argument, when at court LASA capitulated, and agreed to

refuting and exposing it[25] – that (per Vedalankar) I was 'recommended together with other candidates'.

51. To sum up: I wasn't 'shortlisted' by the selection panel for 'the second round of interviews' for the Pietermaritzburg post, as Mlambo JP dishonestly alleges to the Chief Justice; I was the only candidate recommended for the post. (Internal candidate Bongani Mngadi was recommended for the simultaneously advertised *Durban* post.) No other candidates were included on any shortlist. Quite the contrary, of the four of us, the two other shortlisted candidates interviewed for the Pietermaritzburg and Durban posts were both disqualified and eliminated.[26]

52. Beyond the scope of these comments is Mlambo JP's illegal procedural corruption of Senior Litigator recruitment at LASA, and his illegal intrusion into and interference with such operations as a ***non-executive*** director of LASA's Board, in breach of LASA's internal regulations – its Recruitment code and its Approval Framework,[27] which give him no power whatsoever to interview, vet and approve or overrule a selection panel's recommendation as to the best candidate it has interviewed and identified for a vacant Senior Litigator post. These binding legal instruments make no provision for so-called second round interviews by him or by anyone else. To put it bluntly, Mlambo JP has no say in Senior Litigator recruitment at all. (Under his leadership of the continent's biggest law firm, legal anarchy reigns.) Mlambo JP's violation of the rule of law in this regard, as a judge sworn to uphold it, will be the subject of a separate, independent complaint, once I've forced out of LASA by court order the duly requested, formally promised records I need to complete it,[28] which it continues

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hand it over – nearly five years after I'd originally asked for it. Furnished in April 2016 (page 75 of the bundle), it revealed Mlambo JP's long judicial collegial relationship with Ngcamu AJ (as he used to be). Mlambo JP's extraordinary, hitherto inexplicable misconduct detailed in my eight complaints suddenly made sense.

[25] Under SAHRC pressure, the recommendation report was released to me heavily redacted three months later in January 2011, and it showed that the recommended candidates for the Pietermaritzburg and Durban posts, for which we'd respectively applied, were me and Bongani Mngadi and no one else. The redacted report is at page 101 of the bundle.

[26] This is recorded in the full, unredacted recommendation report finally crow-barred out of LASA through legal action in April 2016: see page 75 of the bundle.

[27] See bundle, page 7, paragraphs 27–30, and page 20, paragraph 39.

[28] The illegally and unconstitutionally suppressed records are the subject of two pending PAIA applications, namely:

withholding in breach of its settlement agreement it made with me at the Eshowe Magistrate's Court on 11 February 2016 to hand them over, and generally in contempt of its constitutional information transparency obligations in our open democracy under section 32(1)(a) of the Constitution and section 11 of PAIA.

53. Contrary to Mlambo JP's false allegation here, not 'one of the complaints' I made to the JSC charge him with 'alleged involvement in the appointment of Mr Ngcamu'. First off, Ngcamu wasn't appointed as a Senior Litigator. Second, my eight complaints charge Mlambo JP with gross misconduct in relation to *the cover-up that* ***followed*** *the abortion of my appointment*, not with his 'alleged involvement in' it, after learning to his irritation that his judicial friend had been rejected by the selection panel, having assumed that as a former long-time acting judge he'd be a shoo-in, even though he lacked right of appearance in the High Court and had never litigated a case on his feet there, much less in Bloemfontein or Braamfontein.

Ad 8.2.

54. To the Chief Justice, Mlambo JP tells the lies that LASA 'subsequently abandoned the filling of the remaining vacant senior litigator posts due to budgetary constraints and Brink was informed of the decision.' Mlambo JP's identical lies told the Minister and the Portfolio Committee in his 'confidential' (secret, behind my back) reports 'Re: Advocate Anthony Brink' in March and June 2011 to pervert their enquiries – i.e. '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

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(a) my pending application in the Magistrate's Court to compel full and proper compliance with the settlement agreement – the latter long delayed by LASA's application to block it by applying to have me declared a vexatious litigant, and then by the Magistrates Commission's tardiness in responding to a PAIA request for records vouching the appointed magistrate's qualification under section 91A of PAIA to try the case, thrown into doubt by the SAHRC's section 84 report for 2015–17. (See request and response online at goo.gl/ak8MmL.) The case will be set down in the coming weeks. And,
(b) my application to the Pietermaritzburg High Court under case number 11187/16 – to be set down together with two subsequently brought PAIA applications in that court (14224/17 and 5239/18) for other records, once all the affidavits have been filed in the most recent case, launched in May 2018.

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decision' – are precisely the subject of my Eighth Complaint, in which I expose and refute them in light of LASA's own records.[29]

55. What further aggravates these lies that Mlambo JP told the Minister, the Portfolio Committee, and now the Chief Justice, is the deep cunning and criminally ingenious fraud involved in them, because there are grains of truth buried in each of them. Only, as the Jewish proverb goes: 'A half-truth is whole lie.'

56. There are three deceitful half-truths in Mlambo JP's whole lie that 'Legal Aid SA subsequently abandoned the filling of the remaining vacant senior litigator posts due to budgetary constraints and Brink was informed of the decision.' As discussed in fine detail in my Eighth Complaint:

57. '[T]he filling of the remaining vacant senior litigator posts' was indeed 'abandoned' but not by *'Legal Aid SA'* as Mlambo JP untruthfully alleges. Had *Legal Aid SA* taken such a decision, there'd be a record of it, but NOE Nair repeatedly confirmed on affidavit and again in the Labour Court there's none, which means no decision to this effect was taken by any competent authority at LASA. So it wasn't *Legal Aid SA* that 'abandoned' its substantially complete recruitments for the Pietermaritzburg, Durban and Mthatha Senior Litigator posts after three suitable candidates had been selected and recommended for each of the three posts, after all the advertising and interviewing, all the time and money spent on the recruitments; and it wasn't *Legal Aid SA* that decided to permanently freeze 'the filling of the remaining vacant senior litigator posts', all budgeted by LASA and funded via the Department by the Treasury. The substantially complete recruitments were aborted off the record, irregularly and unlawfully *by unauthorised person(s)*, and in an unapproved unlawful deviation from LASA's Strategic Plan 2009–12, presented both to the Minister and the Portfolio Committee. And in illegal contravention of the Public Finance Management Act, as I complained, and as the Constitutional Court confirmed earlier this year in Zungu v Premier of the Province of KwaZulu-Natal and

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[29] Bundle, pages 198–228, paragraphs 42–150.

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Others [2018] ZACC 1 (22 January 2018), observing in paragraphs 8 and 9 of its judgment that to allow a budgeted, funded post to be 'left vacant' constitutes a 'breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position ... vacant.' Exactly as I've been saying.

58. As for the 'budgetary constraints' alleged by Mlambo JP, LASA did indeed experience some *transient financial uncertainty* in regard to when it would receive from the Department its *extra budget* for staff salary increases under the OSD scheme for legal professionals in the public service, which was promised and paid to LASA during the year, like the year before. But LASA's own records show this uncertainty had zero bearing on Senior Litigator recruitment, and it didn't even warrant a passing mention in LASA's annual report. As discussed in my Eighth Complaint, NOE Nair later told the Board totally different stories (also lies, exposed by PAIA requests testing and refuting them) regarding why LASA's remaining three Senior Litigator posts hadn't been filled.[30]

59. Mlambo JP's allegation that 'Brink was informed of the decision' (taken off the record, by unauthorised persons, irregularly and unlawfully) is true on its face but false in substance, which is to say it's another lie Mlambo JP has told the Chief Justice. In truth and in fact, as emerged from a blundering question put to me at the trial of my labour claim, discussed at page 197, paragraph 41.7 of the bundle, I was deliberately kept *uninformed*, hoping I'd conclude from the deliberate silence that I'd been unsuccessful at the interviews and walk away. It was only in August 2010, *more than eight silent months after my successful interview* in November 2009, and only when I pressed CEO Vedalankar in July 2010 to see to the finalisation of my appointment, that I was now told that 'we' had decided not to finalise the Senior Litigator recruitments, no reasons given me. After I filed a searching PAIA request in August 2010[31] to investigate this

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[30] The November 2011 Board meeting, chaired by Mlambo JP according to the minute, merely 'noted' Nair's radically different lies from the lies he, Mlambo JP, had told the Minister and the Portfolio Committee in the lying report to them that Nair had drafted for him a few months earlier (see further below). According to the minute, Mlambo JP didn't ask Nair, Why have you changed our story? Why are you coming along with all these different stories now? Is it because Brink has blown our financial one? (Nair's November 2011 Report to Board containing his new lies was leaked to me by a sympathetic insider.)

[31] Mlambo JP mentions it in his paragraph 8.3.

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story, and called in the SAHRC's PAIA Unit for support when it was ignored, I was then fed the financial excuse by Vedalankar as she now refused my entire request expressly.[32]

Ad 8.3.

60. This is correct. As said, my first PAIA request was initially ignored before being expressly refused in October 2010 and again, for completely different reasons, in January 2011.[33]

Ad 8.4.

61. Both of Mlambo JP's sentences in this paragraph are dishonestly misleading:

62. He omits to mention that my request was initially illegally ignored, a deemed refusal under section 27 and that I had to call in the SAHRC to assist me under its section 83(3)(c) powers. And that it was then expressly refused in toto, right after Chief Legal Executive Patrick Hundermark had given the director of the SAHRC's PAIA Unit his assurance that my request would be duly responded to.

63. In my first petition to Mlambo JP and the Board in November 2010, I showed incontrovertibly that the refusal of my request was illegal and unconstitutional, being based on grounds advanced that were not contemplated and permitted by PAIA (later abandoned, see below), and, a whole lot worse, were justified by a faked dictum claimed to be quoted from a reported judgment, inverting what the judge actually said – which squarely supported my claim to sight of the records I was requesting.

64. Being insupportable, the reasons advanced in October 2000 for refusing my first PAIA request were later dropped and replaced with others when I called for the SAHRC's intervention a second time – the second, substituted reasons also eventually abandoned, after protracted dilatory resistance, as I pursued the illegally suppressed documents determinedly through round after round of document discovery procedure in the Labour Court.

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[32] Mlambo JP mentions it in his paragraph 8.4.
[33] What few records were given me in January 2011 were not to comply with my request but 'To demonstrate' Vedalankar's several contentions, mostly false.

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65. At all times, Mlambo JP has fully appreciated from the information I placed before him in my repeated petitions for his intervention that Vedalankar's total refusal of my first PAIA request was illegal, unconstitutional and indefensible. Yet he dishonestly implies to the Chief Justice that the refusal was just fine.

Ad 8.5.

66. The dishonesty of Mlambo JP's ostensibly neutral matter-of-fact statement here is manifold.

67. *First*, as described in my Second Complaint, Mlambo JP's letter dismissing my complaints about Vedalankar's total, illegal and unconstitutional refusal of my first PAIA request and the manifestly irregular abortion of my appointment under a transparently false financial excuse – my complaints on both scores made out in fine detail, and presenting the clear evidence supporting them – was, it's common cause, prepared on Vedalankar's own office computer. This proves that Mlambo JP conspired with the very subject of my complaint to forge a response to it, and to email it to him, for him to email to me a fortnight later.[34]

68. *Second*, Mlambo JP doesn't mention that he corruptly dismissed my 59-page petition in two sentences, claiming untruthfully that he'd considered my complaints to him and found them meritless, while in truth well appreciating that both my extensively stated complaints were sound, for all the reasons reiterated in my Second and Eighth Complaints.

69. *Third*, Mlambo JP falsely implies that his response to my complaints, closely detailed and supported in my petition, was in order, and that he rightly rejected them. But neither the Minister not the chairperson of the Portfolio Committee thought so, because when I repeated them in my *third* petition to Mlambo JP and the Board in February 2011, and copied it to those highest authorities, they were so concerned that they separately and independently called on Mlambo JP to please explain. (His perversion of their enquiries with lies is the subject of my Sixth, Seventh and Eighth Complaints.) That my first three PAIA requests in 2010 and 2011 were illegally and unconstitutionally refused is not a matter of

[34] This is the subject of my Second Complaint.

any intelligent dispute. Indeed, at a special remedial training workshop on PAIA held for them at my instance by the SAHRC in November 2011, LASA's head office lawyers repeatedly admitted that as far as applying PAIA went, they'd no idea what they were doing. It's because the suppression of the records I'd requested under PAIA was indefensible that they were later surrendered under unremitting legal pressure.

70. *Fourth*, Mlambo JP knew full well that my appointment to the Pietermaritzburg Senior Litigator post hadn't been aborted for any financial reason, and that the Board had never approved such an alleged major decision – which is why, it's common cause, there's no record of any such decision and approval of such major deviation from LASA's Strategic- and Business Plans, as would have been required by the Approval Framework. LASA's Senior Litigator posts, both filled and vacant have at all material times been budgeted and funded, and Mlambo JP is full well aware of this.

Ad 8.6.

71. This is right, only I was barking up the wrong tree completely. The abortion of my appointment turned out much later to have had nothing to do with any specific antipathy towards me, as I'd wrongly apprehended and pleaded, just with preference in Johannesburg for my rival.

Ad 8.7.

72. Indeed I brought an application for leave to subpoena Mlambo JP, but contrary to his false claim here, I never withdrew it '[j]ust before the hearing of the matter' or at any other time. I didn't pursue it for the reason stated in my First Complaint, and quietly dropped it.

Ad 8.8.

73. In truth and in fact, contrary to Mlambo JP's false claim about this, my 'statement of claim before court', on which I went to trial, was my amended statement of claim, and (a) it didn't mention Mlambo JP at all, or (b) raise as

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issues for decision by the labour judge any of my 'complaints forming part of the current enquiry.'

74. Considered in light of their extraordinarily serious misconduct, none of my original statement of claim comprised 'defamatory statements against [Mlambo JP] and the CEO of Legal Aid SA.' They certainly lied about the reason my recruitment was aborted, as I pleaded – but not to cover unfair discrimination; rather to cover everyday recruitment corruption in the form of cronyism. The plan went awry when I began knocking, and then pounding on the door.

Ad 8.8.1.

75. That's indeed what I very wrongly surmised and pleaded, deliberately kept ignorant of *the KEY material fact* of Mlambo JP's long judicial relationship with my rival applicant for the post, Ngcamu, his repeated appointee as an acting judge of the Labour Court. As I've described, this hotly relevant information was illegally concealed from me with a Koki pen until years after the trial, when I finally forced it to the surface by suing for the full, uncensored recommendation report submitted by the selection panel that interviewed us.

Ad 8.8.2.

76. The justification eventually fed me, eight months after my successful interview, in response to my PAIA request for all material documents, even as they were all illegally and unconstitutionally refused, was that LASA's 'baseline budget' had been unexpectedly cut 'due to the recession', and that LASA had accordingly aborted its recruitments of Senior Litigators for its Pietermaritzburg, Durban and Mthatha posts for this reason: a nice tight cover-story. Mlambo JP repeated this lie to the Minister and to the Portfolio Committee,[35] and he does so again to the Chief Justice in his response. In truth and in fact, LASA's nine Senior Litigator posts, six filled and three vacant, have always been and remain budgeted and funded posts. There was no reduction of LASA's baseline budget in 2010/11; to the contrary, it increased substantially

[35] See Eighth Complaint.

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over the previous year. LASA even enjoyed a substantial budget surplus that year, and the next. I deal with all this in my Eighth Complaint.

77. The 'financial justification' for the abortion of my appointment was indeed 'fake', as even a child can see from LASA's own records.

Ad 8.8.3.

78. He sure did, and I prove it in my Sixth to Eighth Complaints.

Ad 8.9.

79. In truth and in fact, *it was right at the outset of the hearing* before evidence, even before my opening address. During the hearing of LASA's frantic, failed application to quash my subpoenas of its CEO, NOE and HRE – whom I dragged very unwillingly into court for cross-examination, under oath on penalty of being jailed for perjury, on all the lies they'd told me, along with a Board member who, informed about them, had just sat on his hands – I told the judge I held Mlambo JP and Vedalankar clear in the case; and I indeed, as Mlambo JP states, I repeated this under cross-examination by LASA's counsel.

80. Part 2 of the Endnote to my Sixth Complaint (pages 128–9 of the bundle) explains fully and precisely what led me to make this mistake, and describes two stunning discoveries I made on the eve of trial that caused me to turn my legal guns away from them. It further explains what led me to change my mind again within a week or so (seeing Nair performing so feebly in the witness stand) and revert to indicting Mlambo JP's misconduct in the matter in my petition for leave to appeal.

81. By failing to mention my change of mind again, Mlambo JP creates the false impression that I long ago dropped my empty charges against him and then vexatiously revived them many years later by spuriously complaining about him to the JSC. And that my charges are unworthy of serious consideration accordingly.

82. This is mix of true and false. At the hearing I indeed 'withdrew' my *originally pleaded* allegations against Mlambo JP – but *for the purpose of the action*. The trial record shows that right from the start the case, and throughout it, the expression I consistently used in relation to Mlambo JP was 'hold clear'; 'I hold him clear'. That is, I was no longer pressing for a finding against him.

83. Even before my amazing discoveries on the eve of trial that misled me to think Nair and not Mlambo JP was my real opponent in blocking my appointment, my amended particulars of claim, drawn by a silk friend of mine, pleaded the barest facta probabanda, without mentioning Mlambo JP at all. So my change of course, my change of strategy, caused by my unsettling discoveries, didn't require further amendment of my stated claim for trial.

84. It's like this: Trial lawyers understand that a litigant's objective is to win his case. To achieve this, the honest litigant need not prove all the true facts on all the available evidence – only enough to tip the balance of probabilities.

85. Indeed, to go beyond what's necessary may be counter-productive. In his chambers, the trial judge revealed he was sharp to this elementary principle of trial strategy when he warned me ominously – after I'd presented the essential history of the case comprising the core facts enumerated in my Timeline, and mentioned that I had a whole lot more evidence still to give – 'Don't make the mistake of throwing your net so far out that you catch more than you can bring in' (his exact words), by which I understood him to mean what he'd unequivocally implied: Lead enough evidence to win and stop there; don't go after fish too big to land, or you'll capsize your boat and lose.

86. The principle is well illustrated by a war crimes trial held by the victor, charging an officer from the defeated enemy with participation in a sensational atrocity alleged to have been committed during a total war. The officer's interest is keeping his neck intact, not to establish all the true facts for the history books, such as that the atrocity charged is sheer war propaganda and nothing more. To outrageously dispute the fact of the atrocity, treated by the tribunal as an

indisputable given, and the very basis of the trial, is to inflame the tribunal and guarantee a conviction. So the officer doesn't plead all the true facts within his knowledge. He just pleads enough to get off, that he wasn't there, that he was occupied with something else, or similar. Albert Speer's success at Nuremberg is the best known of this kind of *pragmatic limited defence.* Conversely, at trial, upon a last-minute reassessment of the lie of the land, I engaged in a *pragmatic limited offensive.*

87. My discovery a fortnight before trial (from its PDF 'Author' properties) that NOE Nair had ghost-written Mlambo JP's 'Confidential Report Re Adv Anthony Brink' to the Minister and to the chairperson of the Portfolio Committee hit me like a wrecking-ball, and caused me to lower my sights from Mlambo JP to Nair. I detail this in my Third and Fourth Complaints.

88. At that stage, the fact of Mlambo JP's long judicial relationship with my rival for the post was unknown to me, because LASA had assiduously concealed it. In my JSC complaints, and above, I've detail how LASA hid this pivotal information from me between 2010 and 2016.[36]

89. My next discovery just before trial – from his parvenu broken syntax in habitually commencing his written (and at trial spoken) sentences with, 'Noting that, [etc]' (which characteristic clumsy tic he admitted and owned at trial) – was that Nair had ghost-written Vedalankar's first letter to me, advancing the unbelievably stupid lying budgetary insufficiency excuse for cancelling my recruitment to the top post, among other obvious lies.

90. These new discoveries, that Nair was doing the lying writing – of Vedalankar's letter, of Mlambo JP's secret report – led me to conclude that he was my principal enemy at LASA responsible for knifing me behind the scenes, so I decided to turn my guns on him, and told the judge so at the very start.

91. This didn't change the documented facts of Mlambo JP's impeachable misconduct – charged, with supporting documents, in my several complaints to the JSC. But I estimated, on the evidence suddenly to hand of Nair's lying

[36] See footnote 24.

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ghost-writing of the major documents that it was no longer necessary to pitch my case for trial at Mlambo JP and ask the court to find against him. I reckoned this shift of focus made it easier on the trial judge, and therefore easier for me to carry my case. It didn't in the result, because I still lost – and correctly so, I now accept, in that the reason my appointment was blocked had nothing to do with unfair discrimination against me, as pleaded and contended at trial and on petition, and everything to do with Mlambo JP wanting his former judicial brother in the post instead of me.[37]

Ad 8.11.

92. Correct, and although the judge made a multitude of basic reversible errors,[38] he was quite right in the practical result to dismiss my unfair discrimination claim, because, as I discovered years after the case through further litigation against LASA under section 78 of PAIA, the reason my appointment was aborted had nothing to do with unfair discrimination. In plain terms, it's not that in Johannesburg they disliked me in particular; they just wanted the other guy in.

Ad 8.12.

93. I stand by every word of my petition – except to the extent that I still believed, when I delivered it, that I'd been the victim of unfair discrimination. Having succeeded long after the trial and judgment in forcing out of LASA the selection panel's full uncensored recommendation report revealing Mlambo JP's connection with my rival for the post, I'm satisfied that the abortion of my appointment had nothing to do with unfair discrimination, and that, calamitously misled by the unconstitutional, indeed criminal,[39] suppression of

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[37] In my answering affidavit in Pietermaritzburg High Court case 12124/16, namely LASA's failed application to kick me out of court as an alleged vexatious litigant, I describe Mlambo JP's history of irregular job fixing, above and beyond his total disregard for LASA's governing instruments regulating recruitment at LASA: its Recruitment code and Approval Framework.
[38] These mistakes are identified in my lengthy application for leave to appeal comprising 323 paragraphs, the most important of which mistakes are reiterated in my 50-paragraph petition for leave to appeal, which the Labour Court rules specifically required be much shorter.
[39] Section 90(1)(a) of PAIA proscribes the alteration of a record to deny a right to information, and renders it a criminal offence.

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the just-mentioned information, my cause of action at trial and on appeal was completely wrong.

94. Labour Appeal Court Judge President Waglay found nothing objectionable about my petition, or he'd have stung me with costs. He made no such order.

95. As regards my 'vitriolic attitude and cumulative conduct', I'm locked in mortal combat with a profoundly corrupt public entity, so I make no apologies for having an 'attitude' towards its officers and taking them to task in uncompromising terms: In my experience, plain and direct speech works best when exposing humbug and dishonesty; fancy, elliptical lawyer-talk is usually calculated to obscure it.

96. As described in my First Complaint against Mlambo JP and in my complaint against Waglay JP, my petition for leave to appeal failed because it was perverted through improper influence, the real evidence of which I put up with both complaints. So it's useless for Mlambo JP to trumpet that my petition failed. We both know it did, and we both know why it did.

Ad 8.13.

97. It was a semi-urgent application, derailed by unanticipated difficulty achieving service of the papers. The principal complaint I made in it, namely that Waglay JP had summarily and prematurely dismissed my petition on account of improper influence exercised on him, is charged in my separate complaint to the JSC against him.[40]

Ad 8.14.

98. Sure I don't have a spare million and half[41] to pay LASA costs (in both cases mistakenly awarded),[42] but this hardly bears on the merits of my gross

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[40] Depending on the outcome, more complaints against Waglay JP may follow.
[41] LASA hasn't taxed its bill for my interdict case, so the 'total amount' that Mlambo JP claims I'm 'indebted to' LASA for is wrong. It's not all 'taxed costs' that he states.
[42] So the Constitutional Court pointed out as a matter of general principal in regard to my labour claim in paragraphs 23 and 24 of its judgment in *Zungu* cited above: 'The correct approach in labour matters in terms of the LRA is that the losing party is not as a norm ordered to pay the successful party's costs. ... The rule of practice that costs follow the result does not apply in

misconduct complaints against Mlambo JP. In stating this irrelevant fact in his response to my complaints, his purpose seems to be to discredit them by discrediting me as a bum not worth an audience.

Ad 8.15

99. Indeed I intend reagitating my claim to my appointment to the still vacant, still budgeted, still funded post, and the Pietermaritzburg High Court sees no legal impediment to my doing so:

100. At the hearing on 27 October 2017 of LASA's failed application to knock me down as a vexatious litigant, Vahed J reiterated to LASA's counsel with implicit approval my intention stated in paragraph 92 of my answering affidavit to apply to the Labour Court for (a) rescission of its judgment dismissing my unfair discrimination claim, on the ground that it was fraudulently misdirected by the 'pack of lies' Nair told it (Vahed J's own description of Nair's patently obvious perjuries, demonstrated with supporting records in my said answering affidavit), and (b) the substitution of its dismissal order with one of absolution from the instance, so that I might press my claim to my appointment to the post for which I was recommended, on fresh pleadings, having regard inter alia to pivotal documentary evidence as to the true reason my recruitment was quietly cancelled off the record – sedulously suppressed and concealed from me before trial, and surfaced under legal pressure nearly three years later: the full uncensored recommendation report disclosing Mlambo JP's long judicial relationship with my rival applicant for the post.

101. Mlambo JP's allegations that I 'now seek.. to abuse the PAIA Act [sic], Court processes and even the JSC complaint mechanism in my misguided pursuit to this end' (my pursuit of my appointment) have already been considered by the Pietermaritzburg High Court and found to be a load of

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Labour Court matters.' And so Vahed J pointed out to LASA's counsel at the hearing of its failed application to have me declared me a vexatious litigant. Seeing as the merits of my application to interdict the taxation of LASA's bill of cost in my labour case weren't treated, and my application wasn't entertained only for want of urgency in the judge's opinion, it should have been struck from the roll, Vahed J observed, not dismissed, and without an order for costs being sought and made against me.

rubbish. Unlike Mlambo JP, Vahed J doesn't think my announced intention to return to the Labour Court is 'misguided' at all. Knowing civil procedure, he well understands our ancient settled law that fraud on a court and newly uncovered documents can found an application for rescission of a judgment made after the trial of an action.

102. In view of LASA's gloating in its replying affidavit in its just-mentioned vexatious application that the Bar had resolved to apply for my strike-off as an advocate (the first I heard of it), I put up a supplementary affidavit, annexing (a) the record of the Bar's reversal of its decision, and (b) copies of my eight complaints against Mlambo JP to the JSC as my complete answer to LASA's charge that I'd unprofessionally impugned his integrity as a judge. LASA formally applied to have my supplementary affidavit struck out, and it failed.

103. After spending a full week, Vahed J said, reading all the papers (mine were exceptionally long and finely detailed), he didn't come to the conclusion that my apprising him of all the unpleasant material facts was an 'abuse ... of Court processes'. He didn't suggest I'd abused 'the JSC complaint mechanism' in filing eight gross misconduct complaints against Mlambo JP with the JSC, and in placing them before him to illustrate the scale and the level of the corruption at LASA that I'm up against.

104. My repeated use of PAIA to access public records (section 18) and to apply to court to compel their surrender when illegally and unconstitutionally refused (section 78), and my announced intention to return to the Labour Court for my appointment to the post in question, were central to LASA's case to bar my way as a vexatious litigant.

105. During his debate of the case with LASA's counsel, however, and before dismissing LASA's case, Vahed J pertinently considered (a) the legal propriety of my repeated use of PAIA to access records and my repeated resort to court to compel access to them, and (b) my intention to return to the Labour Court in pursuit of my appointment.

106. Vahed J didn't think my repeated use of PAIA to access LASA's records, and my repeated necessary applications to court to compel them, was an 'abuse' of 'PAIA' and 'Court processes', nor that my intention to return to the Labour Court to claim my appointment was an 'abuse' of 'Court processes', as LASA had claimed in as many words in its vexatious application, and as Mlambo JP persists in claiming in his response, in those exact words, contradicting Vahed J's considered judgment in the matter.

107. Vahed J well understands that (a) my reliance on PAIA as my basic tool to expose the full extent of the corruption at LASA that I'm onto, and (b) my intention to apply for rescission of judgment in my labour case and leave to prosecute my claim to the post I was picked for on fresh pleadings and with new evidence, is legally sound.

Ad 9.

108. Mlambo JP protests too much. His opening denial of involvement in recruitment corruption is a red herring, but revealing. None of my eight complaints specifically charge him with recruitment corruption, as is clear from a glance at his own 'SUMMARY' OF THE COMPLAINTS' in his paragraph 6. Mentioned in paragraph 12 of my Eighth Complaint (page 184 of the bundle), however, his direct involvement in procedural and ethical recruitment corruption will be specifically charged in future, separate complaints – which, as I also mention, are being held up by LASA's persistent ongoing illegal and unconstitutional suppression of records needed for the complaints, duly requested under PAIA, and formally promised me in a settlement of five court applications I brought to disgorge them, but still being determinedly withheld from me. Litigation to compel LASA to hand them over is pending.

109. Mlambo JP's second red herring, served with a plethora of irrelevant detail contrived to obfuscate and distract, is his claim to have been 'advised by officials of Legal Aid SA [that] when the recruitment process commenced for the filling of the Senior Litigator positions in Pietermaritzburg and Durban, Mr Ngcamu was not in the employ of Legal Aid.' So what? We both know this perfectly well, and

I've never suggested otherwise. The selection panel's recommendation report records that, like me, Ngcamu was an external candidate. This is noise contrived to confound and misdirect the Committee.

110. A third red herring is Mlambo JP's statement that 'the Senior Litigator [recruitment] process began long before Mr Ngcamu joined Legal Aid SA'. So what? We both know this perfectly well. This is more noise to the same rotten end.

111. His fourth red herring is his statement that 'the process of recruitment [to fill LASA's long vacant, thrice advertised Senior Litigator posts at Pietermaritzburg and Durban] was stalled before he joined the organisation' – by being appointed to a succession of other posts.[43] So what? We both know this, and it has zero bearing on my complaints, all of which concern his gross misconduct ***after*** 'the process of recruitment was stalled' illegally, off the record, without any decision duly taken by any authorized person(s), and in contravention of the PFMA, as the Constitutional Court pointed out in *Zungu*.

112. It's disingenuous of Mlambo JP to state that 'Mr Ngcamu' – his former brother in the Labour Court, repeatedly favoured with acting appointments by him over about six years – 'was apparently interviewed' for the KwaZulu-Natal Senior Litigator posts, pretending not to know this for a hard fact, and trying to scuttle away from it, only to give his game away and betray his full knowledge of it in his concluding sentence: 'Furthermore, Mr Ngcamu was not even recommended for the second round of interviews during the Provincial selection process' (treated below). Mlambo JP knows full well that his former brother on the labour bench applied, was interviewed, and was bounced by the selection panel.

113. Mlambo JP's fifth red herring is his irrelevant, anxious disclaimer: 'I did not form part of [the selection] panel.' Again, so what? We both know this, and I've never suggested otherwise. This is yet more distracting and misleading noise.

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[43] Per Mlambo JP's paragraph 9.

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114. He concludes with a sixth red herring, as if he's again refuting a false claim, implication or assumption: 'Furthermore, Mr Ngcamu was not even recommended for the second round of interviews during the Provincial selection process.' Yet again, so what? We both know this perfectly well, and I've never suggested otherwise. (Under the Recruitment code there's no such thing as a Provincial selection panel; this is Mlambo JP's invention.) Here though, Mlambo JP contradicts the blatant lie that CEO Vedalankar told me on 18 October 2010: 'You were recommended together with other candidates.' (Except he implied the same in lying that I was shortlisted for the second round interviews for the Pietermaritzburg post.) The truth of it is I wasn't, as the selection panel's recommendation report clearly records; I was recommended for the post alone, and nobody else. (Mngadi was recommended for a different post.) So I saw from the heavily censored report given me on 28 January 2011, after calling in the PAIA Unit of the SAHRC for the second time following Vedalankar's strangely furtive mute then express refusals in September and October 2010 to let me see it.

115. Mlambo JP's very correct statement that Ngcamu wasn't recommended is true on its face, but deceptive and misleading in light of the unstated corrupt factual context. To Mlambo JP and the national management executives on his so-called second round interview panel, the fact that Ngcamu was rejected didn't matter a bit. Without joking, without blinking, and apparently without feeling moronic saying this, NOE Nair told the labour judge that Mlambo JP and his so-called second round interview panel were free to re-interview any of the originally shortlisted applicants they liked, and weren't limited to interviewing and vetting the recommended candidate; they were free to interview and consider a rejected candidate for appointment.[44]

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[44] Indeed, according to information given me by the chairperson of the selection panel that interviewed applicants for the Senior Litigator post at Mahikeng, a rejected candidate wound up being appointed, and not the candidate that he and his selection panel recommended. Duly requested under PAIA, LASA is determinedly illegally suppressing the selection panel's recommendation for the post, claiming under section 45 of PAIA that my request for it is a waste of its time. I've sued for it out of the Pietermaritzburg High Court, and the opposed but unanswered application is pending, and will be set down imminently together with two subsequently launched PAIA applications, once all the papers are in. In contempt for the

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116. Such is the extent of the lawless corruption of Senior Litigator recruitment at LASA, illegally controlled by Mlambo JP, ultra vires, and without any authority vested in him by LASA's relevant regulatory instruments: its Recruitment code and Approval Framework.

117. To sum up: Mlambo JP begins by pleading not guilty to a count not yet charged: the original sin, the illegal, unauthorised, unrecorded, silent backroom abortion of my appointment to the top job for which I was duly selected and recommended; and in pleading his defence to it he over-eggs his pudding. All my complaints concern *the cover-up* after *the abortion of my appointment*, not the abortion itself, which cover-up by him entailed his collusion in and conniving at Vedalankar's refusals to comply with my PAIA requests probing it, telling me patent lie after lie in her letters justifying this; and his lies to the Minister, to the Portfolio Committee, and to the Labour Court about me and my complaints.

Ad 10.

118. Speaking to my First Complaint of subornation of perjury, supported by material excerpts of the affidavit containing it, Mlambo JP doesn't deal with the particulars of my complaint. He doesn't dispute that the affidavit I put up was made and filed on his behalf and on his instructions as alleged in it. He doesn't suggest that unbeknown to him his attorney just went off and made up the colourful story the affidavit tells: that I travelled across the country to remonstrate with him at his chambers about my case and that he was unimpressed by this. He just leaves it all in the air.

119. As said, it's untrue that I 'withdrew the subpoena against' him, because none had been issued so there wasn't any to withdraw. After he ignored my request for leave to subpoena him, and I then brought my application for leave to do so, I didn't pursue it for the reason stated in my First Complaint.

Constitution and the law on public information transparency in our open democracy, these rogues, advised by CLE Hundermark, are determinedly concealing the documentary evidence of this endemic recruitment corruption at LASA.

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120. Why I decided to hold Mlambo JP clear at the trial of my labour case is explained above. As said, the phrase I used repeatedly was 'hold clear', which any lawyer knows has a different meaning from 'exonerate', which was LASA's counsel's and now Mlambo JP's word, not mine.

121. In his letter to the Chief Justice, denying my charges, Mlambo JP brazenly persists with his major lie – radically contradicted by NOE Nair's very different lies told to the Board – that 'the reason for not proceeding with the second round of interviews was budget related'. After I refuted it in 2011, Nair changed the story, abandoned this financial lie, and replaced it with new, different lies to account for the abortion of my appointment, namely 'recruitment challenges' and doubtful professional performance by LASA's six incumbent Senior Litigators, on account of which they were to be urgently audited by a special panel led by 'possibly a retired judge' (all pure invention). How the original financial lie, revived and pleaded for trial, was told to the labour judge along with the new, different lies – as if the more contradictory lies told in court the merrier – is thoroughly treated in my Eighth Complaint.

122. Mlambo JP doesn't repeat to the Chief Justice the first part of his lying excuse for not proceeding with the recruitment process, which he told the Minister and the Portfolio Committee, namely difficulty encountered in coordinating a date on which he and various management executives would all be available to interview me again. And the reason he doesn't repeat to the Chief Justice this blatant lie told to mislead the Minister, this criminal lie he told to mislead the Portfolio Committee, is that the lie was twice retracted on affidavit as 'an error', 'palpably an error', after I exposed and refuted it before trial. (I deal with this in my Eighth Complaint.)

123. By stating to the Chief Justice, 'the report to the Justice Portfolio Committee confirmed that the reason for not proceeding with the second round of interviews was budget related which I still maintain', Mlambo JP compounds his criminal lie[45] to the Portfolio Committee infinitely.

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[45] It's comprehensively treated and refuted in my Eighth Complaint.

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124. Indeed, 'The report to the Minister also explains the reasons why the second round of interviews was not proceeded with which related to budgetary constraints.' I've already dealt with Mlambo JP's lie to the Minister, also to the Portfolio Committee, and repeated to the Chief Justice, that my appointment was aborted for on account of 'budgetary constraints.'

125. Mlambo JP repeats to the Chief Justice his lie to the Minister[46] that 'there is nothing illegal and unconstitutional in all the refusals to records in accordance with PAIA.' In light of the facts set out and vouched in my Second to Fifth Complaints, the statement is absurd, and cannot have been made in good faith by anyone with a smidgeon of legal knowledge, let alone by a senior judge. It follows that this assertion by Mlambo JP is a lie.

126. To the extent that Mlambo JP is also referring to my PAIA requests made after 2013 (my Second to Sixth Complaints concern my PAIA requests made in 2010–11 only), LASA consistently refused them on the grounds that they were a waste of its time (section 45) because related to my labour claim (section 7). When I sued in the Magistrate's Court[47] to compel compliance with the requests, LASA opposed me all the way to court. Just as I was about to move my applications, however, LASA dropped these stories and agreed to comply with my requests at last, after years of delay, implicitly conceding that my requests weren't 'frivolous and vexatious' and unreasonably time-consuming to respond to, as previously falsely alleged – or this would have been argued. As for section 7, it doesn't even afford a ground for refusing a request, not being among the 'Grounds for Refusal of Access to Records' allowed by sections 34 and 45. Yet both these section 7 and 45 justifications have been revived to block my access to further records I've requested in my corruption investigation, requiring that I

[46] It was criminally repeated, with amplification, to the Portfolio Committee.
[47] As provided by the definition of 'court' in section 1 of PAIA.

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bring three High Court applications to compel compliance with my requests for them.[48]

127. Seeing as when push came to shove in the Magistrate's Court LASA timorously abandoned[49] its waste-of-time and relating-to-litigation excuses for denying me access to its duly requested records, rather than arguing it, its same excuses for blocking my access to subsequently requested records (sought for the serious purposes stated in every case) can hardly be 'in accordance with PAIA', and the Judge President of the Gauteng High Court's claim to the Chief Justice, 'I submit that there is nothing illegal and unconstitutional in all the refusals to records' (sic), is dumbfounding and reflects his gross dishonesty or gross judicial incompetence or both.

128. Mlambo JP's statement to the Chief Justice, 'According to the information at my disposal, all the records requested by Brink and as far as legally permissible by the Act, were duly provided to him', is an outright lie. In truth and in fact, from 'the information at [his] disposal' contained in my three petitions addressed to him and the Board, in which I implored his and the Board's intervention, but which he dismissed and finally ignored in the scandalous manner described in my Second to Fifth Complaints, he well appreciated that Vedalankar[50] had repeatedly blatantly illegally and unconstitutionally refused my requests, even forging and uttering a fake dictum from a reported judgment claimed to support her refusal – with the first set of spurious justifications for suppressing the records I'd requested abandoned and replaced by other obviously spurious ones, themselves later abandoned under unrelenting discovery pressure in the run-up to trial of my labour claim.

129. I wasn't writing about this to a shunter on the railways, I was writing to a senior judge with at least a slightly better than lay understanding of constitutional information law in our open democracy after the secretive,

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[48] Immediately after filing these comments, I'll be replying to LASA's just-delivered answering affidavit in my most recent application, and then applying forthwith for date on the opposed roll to argue the three cases together.

[49] On CLE Hundermark's telephoned instructions.

[50] On CLE Hundermark's advice.

fundamentally corrupt apartheid administration, and therefore, one must assume, readily able to comprehend what I was telling him and appreciate the enormity of the constitutional violations I was reporting to him in my repeated petitions.

130. The simple truth of it is that Mlambo JP didn't want me nosing about with PAIA, investigating the illegal abortion of my appointment and the true reason for it, and this is why – as detailed and vouched in my Second to Fifth Complaints – he went along with Vedalankar's illegal and unconstitutional obstruction of my access to the records I'd duly requested, to which records he appreciated full well as a senior judge I was constitutionally entitled. And this is why he tersely then rudely rebuked my first two petitions to him and ignored my third.

131. It's correct that I currently have 'various applications ... subject to determination by the Courts', but these have nothing whatsoever to do with my eight complaints to the JSC, most of which concern Mlambo JP's collusion in and connivance at Vedalankar's and then Nair's manifestly illegal and unconstitutional refusals of my first three PAIA requests in August and December 2010 and March 2011, and his lying reports to the Minister and the Portfolio Committee to pervert the enquiries they instituted into this.

132. None of my complaints against Mlambo JP to the JSC concern the consistent blanket refusals of my several PAIA requests made years later, after the trial of my labour claim in mid-2013 – nearly all refused on the basis alleged under section 45 that they were an obvious waste of LASA's time – and none of my complaints concern my indeed pending several applications to compel compliance with them.

133. Due to his documented collusion in, connivance at, and false reporting about the illegal and unconstitutional refusals of my first three PAIA requests in 2010–11, I didn't waste my time appealing for LASA Board chairperson Mlambo JP's intervention in the continuing illegal and unconstitutional refusals of my PAIA requests made after the trial of my labour claim in 2013 and

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thereafter. (He would have told me to get lost again.) So I've no evidence that he supported the latter refusals and I'm not complaining to the JSC that he did. Even though it's plain from his paragraph 11 that he supports these more recent illegal and unconstitutional refusals of my requests on the basis that they're just a waste of time, despite my serious purposes in making my requests stated every time.

Ad 12.

134. Mlambo JP's opening counter-charge in his 'CONCLUSION', to discredit me and thereby my complaints, that I'm 'susceptible to make allegations without factual substantiation' is contradicted and exposed as a flagrant lie by the minutely detailed 'factual substantiation' and supporting documents I provide for my 'allegations' contained in my eight complaints against him.

135. His charge that I do 'not spare anyone holding a different view to [mine], as can be demonstrated with my attacks on [him], later Cele J and thereafter with Waglay JP as well as various senior officials of Legal Aid SA' is irrelevant noise. The merits of my separate complaints about all their particular misconduct – not their 'views'[51] – is irrelevant to a determination of the particular gross misconduct charges that I've levelled at Mlambo JP before the JSC.

136. Besides being baseless, Mlambo JP's accusation that I've been 'openly disrespectful and downright malicious to [him] in particular' is transparently calculated to distract from the hard specifics of my complaints against him.[52]

137. His claim that I've 'used [the] complaint[s], PAIA and Parliamentary Portfolio processes to harass [him] and other officials over the years', which he bumps up by claiming to 'hold' this as his 'firm view', is a risible and obvious lie. My Second to Seventh Complaints concern my first three PAIA requests only,

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[51] Such as Cele J's mistaken 'view', to my immense prejudice, that the applicant bears the overall final onus in an unfair discrimination claim, not the accused respondent; and that a party may not cross-examine witnesses he's subpoenaed with the very object of taxing them under oath on the lies they've told him in correspondence, to show the court, in light of contradicting records, what liars they are.

[52] Too long at LASA, and running it like their personal fiefdom, Mlambo JP 'and other officials' aren't used to be held to account in our open democracy under the rule of law, and clearly don't like it. Further complaints about jobs for pals will follow, once I have the records I've sued for.

and it's not seriously contestable by anyone with any nous that they were illegally, unconstitutionally and dishonestly refused.

138. In referring to Mlambo JP's 'handing down of the Public Protector Judgement' (sic), I specifically disavowed any intention 'to be rude', and no reason exists to doubt my sincerity, so his allegation that I meant to 'insult' him is a lie.

139. His claim that I'm 'perpetuating' this 'conduct' in allegedly 'insult[ing]' him by making my 'complaint[s] to the Judicial Conduct Committee against [him]' is a similar obvious lie.

140. His claim that I 'retracted' my 'allegations against [him]' is only partially true, and then again only for the limited purpose of narrowing the lis at the trial of my 'failed Labour Court matter' in the particular circumstances discussed at length above and in my complaints to which I refer. My amended statement of claim filed months before the trial didn't mention Mlambo JP and his misconduct at all; and on my amended – even original – pleadings, his misconduct in relation to the repeated and persistent illegal and unconstitutional refusals of my early PAIA requests in violation of my fundamental right to information (Second to Fifth Complaints), and the cover-up of this that followed (Sixth and Seventh Complaints), weren't issues for decision by the Labour Court, which had no interest in adjudicating LASA executive management's repeated PAIA violations and Mlambo JP's support for them in this, all being beyond its jurisdiction.

141. My complaint about Mlambo JP's subornation of perjury (my First Complaint) was certainly not withdrawn at any stage; to the contrary, during my cross-examination of Nair (LASA's single witness at trial) I bitterly protested the depraved lie Mlambo JP told about me going up to harass him at his chambers, but he said he said he knew nothing about it. Which I accept.

142. Mlambo JP conspicuously fails to mention that I promptly revived my 'withdrawn' complaints against him in my petition for leave to appeal to the Labour Appeal Court. His lack of candour in presenting all the material facts creates the false impression, as intended, that my complaints against him were

long ago withdrawn in the Labour Court in mid-2013 and remained so for the next four years until I capriciously revived and filed the same baseless complaints against him at the JSC in mid-2017.

143. The reason Mlambo JP has 'an unblemished record' is that he's not yet been impeached on the capital charges I make in my first eight complaints against him. Unfortunately I can't toot the same horn: discussed below, my own 'unblemished record' as an advocate admitted thirty-five years ago has been thoroughly trashed.

144. As to Mlambo JP's imprecation that I be 'censured in the strongest terms' for making my complaints against him, I record that I've already been severely punished for having had the temerity to complain of his gross misconduct in my original statement of claim in the Labour Court and in my petition for leave to appeal to the Labour Appeal Court. Claiming to the KwaZulu-Natal Society of Advocates and to the Magistrates Commission in November 2016 that 'the conduct of Advocate Brink is not befitting an officer of the Court more to act as a Magistrate. The language used is unprofessional, the manner he relates to colleagues and Judges require sanction', LASA – undoubtedly with Mlambo JP's knowledge and approval – got me summarily thrown off the bench as a magistrate and professionally disgraced as an advocate in the manner described in the Introduction to the bundle.

145. Blacklisted by the Justice Department, as I discovered in mid-2017, I'm currently unable to get acting appointments, despite the need for my services on relief in the Zululand region, so the Pietermaritzburg Chief Magistrate told me.

146. And I'm convinced that LASA's complaint to the Magistrates Commission and to the Bar cost me a permanent appointment to a civil magistrate post for which I was shortlisted and interviewed in Pretoria in July 2017. The very first question I was asked was whether there were any professional misconduct complaints against me, and I was bound to confess them. After which, it didn't help much that 'You have a very impressive CV', as the chairperson of the selection panel warmly remarked to me.

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147. Were I to put my CV about to attorneys in Zululand where I'm now based, one call to the KwaZulu-Natal Society of Advocates or to any of my advocate colleagues to find out more about me, and I'd be finished. Despite my having copied to the Society my eight complaints against Mlambo JP in June and July 2017, a full year later it's still to finally determine LASA's complaint against me that I outrageously and unprofessionally impeached his integrity as a judge. So I'm out of practice and sans an income until this mess is cleaned up.

148. In every dimension of my life, the extreme personal cost to me and to those closest to me – my late partner, my two sons – of taking Mlambo JP on has been incalculable. (Had I foreseen the road ahead in 2010, I'd have just left it, and let LASA fester in its corruption like any number of other corrupt public entities gone bad in the Zuma era.) In short, I've been more than 'censured in the strongest terms'; I've been professionally paralysed and economically strangled. Exactly as vindictively intended.

149. By posturing that he does 'not deserve to be treated in this fashion by anyone including Mr Brink', and by demanding that I be strung up for reporting his impeachable misconduct, Mlambo JP perversely inverts the reality of the matter. In the language of the Supreme Court of Appeal in paragraph 58 of its judgment in Gauteng Gambling Board and Another v MEC for Economic Development, Gauteng (620/2012) [2013] ZASCA 67; 2013 (5) SA 24 (SCA); [2013] 3 All SA 370 (SCA) (27 May 2013), he's 'attempted to turn turpitude into rectitude', has 'appeared indignant and played the victim', and has demonstrated a 'flagrant disregard of constitutional norms'.

150. Wherefore I persist with my complaints.

Signed at Eshowe on 28 June 2018.

ANTHONY BRINK

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Signed before me at Eshowe on 28 June 2018 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirmed its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name: MAHLENGIKOSI ROBERT MAHLA

Address: SAPS ESHOWE 73-79 MAIN STREET

Capacity: WARRANT OFFICER

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
2018 -06- 28
ESHOWE
KWAZULU-NATAL

AB 672

FIRST COMPLAINT AGAINST WAGLAY 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, admitted to practice on 12 April 1983. I reside 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 brought under section 14 of the Judicial Service Commission Act 9 of 1994 against Basheer Waglay JP, head of the Labour and Labour Appeal Court ('LAC'), hereinafter 'the respondent'.

3. The respondent was appointed Judge President of the LAC in February 2013. Before this, he'd been Deputy Judge President of the court under Dunstan Mlambo JP – the latter appointed to the LAC in November 1997, and since 2002 chairperson of Legal Aid South Africa ('LASA').

4. I charge the respondent with failure to maintain 'Judicial Independence', as required of him by Article 4 of the Code of Judicial Conduct ('the Code'), and with contravening his judicial oath to 'administer justice to all persons alike without ... favour or prejudice, in accordance with the Constitution and the law', thereby committing an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act.

5. Article 4 of the Code prescribes (my ellipses for relevance):

> A judge must –
>
> a) uphold the independence and integrity of the judiciary ... ;

(b) maintain an independence of mind in the performance of judicial duties;

(c) take all reasonable steps to ensure that no person or organ of state interferes with the functioning of the courts; ...

6. My complaint arises from the perversion of my petition to the respondent for leave to appeal against a Labour Court judgment in LASA's favour, by dint of an anonymous, undated, unsigned, unstamped 'Memorandum' ('the memorandum') drawn and passed to him by an apparently well-connected, top-level LASA officer, especially motivated to torpedo my petition, in which he aggressively denigrated me and lied about the issues before the trial court, the evidence at trial and my case on petition, with the object of defeating the ends of justice by prejudicing the respondent against me and against my case for leave to appeal to ensure it failed.

7. With which prejudice, having been improperly influenced by the memorandum, and in contravention of Article 4 of the Code, the respondent summarily dismissed my petition in the grossly irregular circumstances described and vouched below.

8. Annexed hereto are:

8.1. a copy of the memorandum, marked 'A';

8.2. an inventory of the petition file (DA21/14) in the Labour Appeal Court registry at Durban, dated 2 April 2015 and stamped on the same day by a registry clerk, recording the presence of the memorandum in the file, marked 'B'; and,

8.3. a copy of my petition, marked 'C.';

9. On 10 December 2014, in strict compliance with rule 4(1)–(5) of the Labour Appeal Court Rules ('LAC rules'), I filed my petition for leave to appeal against the dismissal of my action brought against LASA in the Durban Labour Court, in which I'd claimed an order instating me to its top professional position in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg, for which I'd been unanimously recommended by a duly constituted selection panel in November 2009.

10. I'd based my claim on unfair political discrimination, which on a careful conspectus of the information then known to me seemed the most probable reason my recruitment had been aborted, considering the shambles of internally contradictory, objectively contradicted, risibly false, radically different excuses that LASA's officers had advanced for not proceeding with my appointment (canvassed in my petition). (In December 2015, several months after my petition was dismissed, I obtained LASA's budget applications to the Department of Justice and Correctional Services for Senior Litigator salaries for the five years 2010/11 to 2014/15, which further categorically exposed and refuted LASA's main lying budgetary insufficiency excuse for not finalizing my appointment – which lie, repeated in the memorandum, both the trial judge and the respondent accepted. I accessed these financial records via a request made to the said Department under the Promotion of Access to Information Act 2 of 2000 ('PAIA'), after LASA had illegally refused a similar request in May 2015, contemptuously violating my fundamental right to information in its ongoing cover-up of the real reason for the off-the-record abortion of my recruitment.)

11. The Labour Court had dismissed my claim on 18 September 2014 – correctly, it turned out, albeit for very wrong reasons. A year-and-a-half later I discovered that the reason my appointment had been blocked had nothing to

do with my acute political unpopularity (accepted by the trial judge and canvassed at length in his judgment) and everything to do with jobs for pals. The selection panel's complete, uncensored recommendation report, which I finally succeeded in clawing out of LASA at legal gunpoint in April 2016, after a long and bitter struggle for it over many years, revealed that my rival for the post, also shortlisted and interviewed for it, had been LASA Board chairperson Mlambo JP's judicial colleague for '±6 years' in the Labour Court, Mzochitwayo Ngcamu AJ (as he used to be).

12. It bears mentioning here, for reasons later to become apparent, that the potently relevant fact of Mlambo JP's long professional relationship with my competitor for the post had been determinedly and illegally concealed from me without any justification contemplated and allowed by Chapter 4, 'Grounds for Refusal of Access to Records', in Part 2 of PAIA, under which Act I'd requested the minute of the selection panel's recommendation in August 2010. My request for it was ignored and thereby mutely illegally refused in September 2010. It was expressly illegally refused in October 2010. In January 2011, under further pressure from the PAIA Unit of the South African Human Rights Commission I was given a copy of the selection panel's recommendation report, but heavily redacted, with this hotly relevant information carefully blacked out with a Koki pen to conceal it, unjustifiably under PAIA and therefore unlawfully. (I had no idea at that stage what was being hidden from me.) In February 2015, my renewed PAIA request in November 2014, after the dismissal of my labour claim, for the complete, uncensored recommendation report was obstructed with an incompetent and illegal charge for fees for background reading. In May 2015, the document was illegally refused again on the factually and legally idle basis that my request for it 'relates to' and was 'ancillary' to my past labour litigation and

was 'malicious and seeks to divert the resources of Legal Aid South Africa'. In December 2015, my application to court in November 2015 to compel the surrender of the record, among others, was opposed without good grounds, followed by a lengthy, meritless, filibustering answering affidavit full of spurious defences. Finally on 11 February 2016, LASA capitulated in court just before the commencement of argument, abandoned all its manifestly vacant defences, and at last agreed to surrender the complete unmutilated recommendation report document, five-and-a-half years after I'd first tried exercising my fundamental right to it, and had experienced this basic civil right to information persistently spat upon (with Mlambo JP's connivance; separate complaints to follow) as LASA determinedly hid from me the key information recorded in the document that my rival Ngcamu had been LASA Board chairperson Mlambo JP's judicial colleague for '±6 years' before he applied for the post.

13. LAC rule 4(6) permitted LASA to 'deliver an answering affidavit within 10 days of delivery of a copy of the petition.' In breach of this rule, it delivered its answering affidavit out of time on 22 January 2015. An excerpt of the first and last pages of this affidavit vouching this is annexed marked 'D'.

14. Generally indulgent about time limits in my litigation against LASA, I took exception on this occasion, for several reasons immaterial to detail here, to LASA's insouciant breach of the LAC rules and failure to file in time, and by notice delivered on 27 January 2015 objected to its late delivery of its answering affidavit. A copy is annexed marked 'E'.

15. LASA responded by bringing an application for condonation as contemplated by LAC rule 12(1): 'The Court may, for sufficient cause shown, excuse the parties from compliance with any of these rules.' LASA's notice of application, without its supporting affidavit, is annexed marked 'F'.

16. On being served with LASA's condonation application on 13 February 2015, I immediately set to the task of answering it, and in particular showing with reference to the cold print of contradicting records refuting them that LASA's two excuses advanced to the respondent for the late filing of its answering affidavit were no 'sufficient cause' for it, because they were both perjured.

17. Five days later on 18 February 2015, while still drafting my answering affidavit and before I'd completed and delivered it, I received an order of court by telefax notifying the dismissal of my petition. A copy is annexed marked 'G'.

18. According to the face of the order, the three judges of appeal who'd 'read the petition and considered the matter', and unanimously resolved to dismiss it, were Waglay JP and Davis and Sutherland JJA.

19. Since:

    19.1. my petition had been irregularly determined prematurely:

        19.1.1. before I'd been able to answer LASA's application for condonation and prove its excuses were lies (in keeping with the culture of casual mendacity in its governing ranks);

        19.1.2. before LASA's case for condonation had been tried; and therefore,

        19.1.3. before LASA's opposing affidavit was properly before court for consideration;

    19.2. I'd ascertained from a search of the law reports that, unlike in my special case, the respondent ordinarily took condonation applications seriously, and closely analysed and determined them with exemplary

care, as illustrated by his finely detailed judgment in Eberspächer v NUM (JA21/2007) [2008] ZALAC 11; [2009] 1 BLLR 44 (LAC); (2009) 30 ILJ 880 (LAC) (19 September 2008) (online at https://goo.gl/hgr7xc); and,

19.3. my petition identified a multitude of reversible, fundamental, critical procedural and evidential errors made by the trial judge at trial and in his judgment given more than a year later – all of which were eminently fit for argument on appeal on any objective, thoughtful and fair assessment,

I suspected foul play in the disposal of my petition; doubted that it had been properly read by the respondent, and read at all by the other appeal judges named in the order; and resolved to investigate.

20. I was an acting magistrate in Eshowe at the time, so I requested my retired accountant friend Christopher Rawlins in Durban to go over to court to examine the petition file and report its contents to me. Which on 1 April 2015 he did.

21. That same evening, Rawlins telephoned me to report that he'd:

21.1. found no record in the court file to show that Davis and Sutherland JJA had considered and decided my petition; in fact he found no signature on any document by any of the judges named in the order;

21.2. discovered the memorandum in the petition file, and had requested a registry clerk make him a photocopy; and had,

21.3. made an inventory of the contents of the petition file.

22. As I requested of him, Rawlins then scanned and emailed me the memorandum and his handwritten inventory.

23. Stunned by his discoveries, and particularly by the criminal depravity of the memorandum, I asked Rawlins to type his inventory and return to court to have the registrar check the contents of the petition file against it, item by item, and certify that it was true and complete. Rawlins did this the next day, and then scanned and emailed me his typed inventory, which a registry clerk had certified, after verifying it, by applying the court stamp.

24. I don't anticipate any dispute about the existence of the memorandum in the court file, because at my request Rawlins went back to court in August 2016 to examine the file again, and found the memorandum still there – only, now it had been moved to the top of the documents in the file.

25. Which shows that between Rawlins' inspections of the file in April 2015, and after I'd mentioned the existence of this criminal evidence in other litigation against LASA, somebody had drawn the file from the registry, gone through it in search of the memorandum, picked it out, looked it over, and then replaced it, but at the top of the pile, out of its original order in the file in which Rawlins had found it in April 2015.

26. Rawlins' affidavit confirming all this will be put up with this complaint.

27. To read the memorandum, magisterially condemning me and my petition, is to understand why the respondent concluded I was a personal and professional reprobate whose petition was fit only for the rubbish bin, and why he summarily dismissed it accordingly:

    27.1. It begins with a horrifying barrage of lying defamatory smears, to the effect that I'm a contemptible, base, stupid, irrationally stubborn and

deranged person who's unfit to be an advocate, so as to wreck my credibility and distract from the merits of my petition before the respondent read it.

27.2. It lies about 'What [was] common cause' at trial, namely that 'the position for which his [sic: he] applied for [sic] was frozen due to budgetary constraints', when in truth and in fact, this was LASA's defence version which at all times had been centrally in dispute. After which misrepresentation, the memorandum ambiguously concedes, in as many words, that what had just been falsely asserted as 'common cause' was centrally in issue: 'there is a dispute about the veracity of the decision to stop the process of appointment'. Indeed so, especially as LASA had repeatedly admitted before and at trial that no record whatsoever exists to show any such decision was ever duly taken – with its major adverse repercussions for specialist legal professional service delivery by LASA (a special repeatedly stated concern of the National Assembly), and its financial implications counted in millions of rands.

27.3. And it repeatedly lies that my petition:

27.3.1. 'does not say in what respect the labour Court erred' and 'does not say in what respect the court *a quo* erred in dismissing his claim', in other words disclosed no grounds for an appeal, whereas in truth and in fact, as is clear to any objective and judicious reader giving it an honest reading, it enumerated a host of clear, strong grounds; and,

27.3.2. contained no more than unfounded 'judgemental comments about the credibility of [LASA's] employees', whereas in truth

and in fact, as is clear to any objective and judicious reader giving it an honest reading, my petition precisely showed – with reference to LASA's pleadings, interlocutory affidavits and records; to the trial record; and to categorical documentary proof of brazen perjury on two collateral points, elicited from LASA via PAIA after trial – that the evidence of LASA's single witness, National Operations Executive Brian Nair, on whose oral evidence the judge relied, to the exclusion of the documentary record contradicting it, was perjured on all material scores.

28. Since the memorandum is not only anonymous, undated and unsigned, but also unstamped, it evidently didn't cross the registrar's front desk before being placed in the file like any other court process.

29. Unless the registrar or one of his clerks was complicit in the corruption, perhaps knowing the author of the memorandum, and agreed to do him the favour by irregularly slipping the memorandum into the court file without stamping it, the fact that the memorandum is unstamped means that someone at LASA with the motive, the power, the influence and the connections bypassed the registrar and his clerks and delivered the memorandum directly to the respondent. Who then, fortunately for me, forgot to remove it.

30. I request that the Judicial Service Commission investigate who authored the memorandum and gave it to the respondent with the criminal intention of interfering in his decision of my petition, by poisoning him against me and my case and thereby defeating the ends of justice. The respondent will undoubtedly be able to identify him.

Note: Page 11 of the signed and attested complaint was inadvertently missed during the scanning. So to complete the scanned copy, page 11 from the final PDF before it was signed has been inserted here.

31. In its enquiry the Commission may find relevant the fact that of all the multifarious LASA records to which I sought access under PAIA in my persistent and thorough investigation of the true reason my recruitment had been aborted (revealed only after the trial), the only record mentioned obliquely in the memorandum is the minute of LASA's Board meeting of 31 August 2010, chaired by Mlambo JP: 'There is a dispute about the veracity of the decision to stop the process of the appointment for which the petitioner had requested [the] recording of the board meeting.'

32. LASA's own records, annexed and marked up for clarity, expose and refute the outright lie told the respondent in the memorandum that 'the position [I'd] applied for was frozen due to budgetary constraints' and the lying insinuation that the Board had taken a 'decision to stop the process of [my] appointment' to the critical, top-deck Senior Litigator post for this reason.

33. The minute of the Board meeting in question shows very differently, namely that the Board approved (annexure 'H') LASA executive management's proposal to temporarily freeze recruitment only to some entry-level, lower criminal court public defender posts until the Department had paid over LASA's outstanding OSD Phase 1 allocation for legal staff salary increases (annexure 'J') – a stunt, LASA's witness Nair credibly explained at trial, contrived to spur the Department into paying, which it did, in short order: the additional funds were provided for in the National Medium Term Budget in October 2010 (annexure 'K') and paid in December 2010 (annexure 'L').

34. The fact that the respondent confidently acted and relied on the memorandum to summarily dismiss my petition before all the papers were in shows that he knew and trusted its author.

35. It's inconceivable that the respondent delegated a junior law clerk to read and decide my petition for him, and that the memorandum merely records the junior law clerk's advice to him to dismiss it, because apart from being extraordinarily dishonest and hostile to me, which a junior law clerk would have had no motive to be, it's an impeachable contravention of Article 9(c)(ii) of the Code to 'shift the responsibility to ... decide a matter to another judge', let alone to a junior law clerk. And LAC rule 4(7) entitled me to the evaluation and decision of my petition by three senior, experienced judges of appeal: 'A petition must be considered by three judges of the court designated by the Judge President.' And not by a junior law clerk.

36. A second fact the Commission may find relevant in its enquiry as to the author of the criminal memorandum that perverted my petition is the high-toned attack it makes, yet again, in Mlambo JP's familiar routine, on my personal and professional integrity: 'The petitioner's vulgar and insulting language is prevalent throughout his affidavits. Such conduct is unacceptable for a practising advocate. His vulgarity has clouded his mind [etc]'.

37. The language of my petition doesn't support this low charge, and indeed there are two clear indications that the respondent didn't agree with it:

    37.1.1. Section 162(2) of the Labour Relations Act 66 of 1995 provides (my ellipses for relevance):

> When deciding whether or not to order the payment of costs, the Labour Court may take into account –
> (a) ...
> (h) the conduct of the parties –
> (i) in proceeding with ... the matter before the Court; and

(ii) during the proceedings before the Court.

But in dismissing my petition, and evidently finding no fault with my conduct in the way I worded it, the respondent made no order as to costs against me.

37.1.2. Article 16 of the Code imposes a peremptory obligation on a judge 'with clear and reliable evidence of serious professional conduct ... on the part of a legal practitioner [to] inform the relevant professional body ... of such misconduct' (my ellipses). Note 10 to the Code's Preamble provides that the failure of a judge to report such misconduct itself constitutes 'misconduct which will lead to disciplinary action'. But the respondent evidently found no misconduct by me in the manner in which I framed my petition, because he didn't report me to my 'relevant professional body' for any.

38. The trial judge found no fault with my interlocutory affidavits either. I pertinently asked him during the argument of my labour case whether he was minded to criticise my conduct and prosecution of my claim in any way, seeing as LASA had consistently claimed it damnable and sought punitive costs against me, in order that I might defend myself. He waved me away, and made no such finding in his judgment. Which shows he saw nothing remiss about the language of my affidavits, or pleadings, much less that it amounted to misconduct warranting a report to my 'relevant professional body'. And which means that, like the respondent, he also found my affidavits entirely proper – contrary to the lie told by the author of the memorandum that my 'vulgar and insulting language is prevalent throughout his affidavits. Such conduct is unacceptable for a practising advocate.'

39. In my First Complaint against Mlambo JP, I document several previous instances of his similar, baseless, low-kicking, ad hominem attacks on my personal and professional integrity.

40. Judges call such a consistent pattern of distinct, characteristic conduct 'similar fact evidence' to establish the identity of criminal perpetrators.

Signed at Mtunzini on 15 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 15 June 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

Name: Photomile Nene

Address: 01 Clarke avenue, Mtunzini

Capacity: Constable

SOUTH AFRICAN POLICE
COMMUNITY SERVICE CENTRE
2017 -06- 15
MTUNZINI
KWAZULU-NATAL

DA21/14

ANTHONY ROBIN BRINK **Petitioner**

and

LEGAL AID SOUTH AFRICA **Respondent**

MEMORANDUM

The petitioner's vulgar and insulting language is prevalent throughout his affidavits. Such conduct is unacceptable for a practising advocate. His vulgarity has clouded his mind so that his application does not say in what respect the Labour Court erred in rejecting his claim.

What is common cause is that the petitioner applied and was shortlisted for the position of senior litigator Pietermaritzburg. He was recommended for a second round interview but the position for which his applied for was frozen due to budgetary constraints. He was only made aware of that decision after numerous telephone calls and correspondence. There is a dispute about the veracity of the decision to stop the process of the appointment for which the petitioner had requested recording of the board meeting in terms of the Promotion of Access to Information Act 2 of 2000.

Notwithstanding the above dispute, the petitioner does not say in what respect the court *a quo* erred in dismissing his claim. All is said in his affidavit is his judgmental comments about the credibility of employees of the respondent.

R37

CONTENTS OF CASE FILE DA21/14

1) Blank Petitions Control Sheet with notification of case number on 10 Dec 14 attached

2) Brown cover page 3/3/2 headed Held in Durban–in the Labour Court of SA, petition set down for 18 Feb 2015, judges Waglay, Davis and Sutherland, order petition refused. Attached fax sheet of 2 page decision sent 15-13 on 18 Feb 2015

3) Letter of 27 Feb 2015 from C.Phophi to A.Brink

4) Petition refusal order stamped 18 Feb 2015 , Juta Street, Phophi, LAC

5) Respondent's notice of objection to late hearsay affidavit signed by T.Mtati 11 Feb 2015

6) Service affidavit:objection to opposing affidavit dated 12 Feb 2015 signed A.Brink 2 Feb 2015

7) Affidavit in support of proof of service Rule 4(2)(b) by Akhona Lucas Nobetsu filed Juta Street 17 Feb 2015 confirming that on 13 Feb 2015 he served a condonation application and notice of objection on the petitioner

8) Undated, unsigned memorandum regarding petitioner's vulgar and insulting language, brief summary of the dispute with conclusion that the petitioner does not say in what respect the court a quo erred in dismissing his claim as his affidavit is only his judgemental comments about the credibility of employees of the respondent.

9) Respondent's notice of objection to the petitioner's affidavit filed in support of a notice of objection dated 2 Feb 2015, filed Juta Street 11 Feb 2015 signed by T.Mtati 11 Feb 2015

10) Objection to opposing affidavit filed Juta Street 4 Feb 2015 signed A.Brink at Eshowe 27 Jan 2015 sworn Eshowe 1 Feb 2015

11) Bound red cover Petition for leave to appeal original filed Juta Street 9 Dec 2015 signed A.Brink at Eshowe 7 Dec 2014 with attached refusal of application for leave to appeal by Cele J in chambers 27 Nov 2014 with Appearances- for the applicant:in person, for the respondent Mokeoena and Machaba, the Judgement by Cele J, application for leave to appeal signed Eshowe 3 Oct 2014 and Heads signed at Pietermaritzburg 16 Sep 2013.

12) Affidavit of service of answering affidavit to the supporting affidavit in the petition for leave to appeal filed Juta Street 23 Jan 2015 sworn by Sekgota, attaching email of 22 Jan 2015 to Ngcamu, copying Mehta, Vilakazi and Brink.

13) Notice of objection to respondent's opposing affidavit signed Brink at Eshowe 27 Jan 2015

14) Notice of intention to oppose petition for leave to appeal filed Liberty House 21 Jan 2015 dated at Durban January 2015 with attached affidavit filed Durban 21 Jan 2015 signed by Sekgota confirming he sent email to Brink on 20 Jan 2015 at 3-42pm followed by a telephone call, sworn and signed at Braamfontein on 21 Oct 2014.

15) Notice of filing of respondent's opposing affidavit at Juta Street on 23 Jan 2015 with 33 page affidavit signed and sworn by Mtati on 22 Jan 2015.

AB P.T.P TPN

R37
B

16) Respondent's notice of motion : application for condonation filed Juta Street 5 Feb 2015 signed Pp Mtati Johannesburg 5 Feb 2015 attaching 8 page founding affidavit sworn by Mtati 4 Feb 2015, attaching email from Mtati to Machaba copying Sekgota on 15 Jan 2015 saying he had not received a copy of the petition and a confirmatory affidavit, application for condonation sworn by Sekgota at Johannesburg on 4 Feb 2015.

17) Affidavit of service of notice of intention to oppose the petition for leave to appeal, two copies, filed Durban 28 Jan 2015 sworn by Sekgota 21 October 2014 attaching email to Brink 20 Jan 2015

18) Notice of filing of respondent's opposing affidavit at Durban on 28 Jan 2015 sworn by Mtati 22 Jan 2015

19) Letter from A.Brink to James Kamanga, Durban Labour Court, re petition case number.

20) Service affidavit sworn by Brink at Eshowe on 10 Dec 2014

21) Notice of intention to oppose petition for leave to appeal filed Durban 21 Jan 2015 with affidavit of service by Sekgota sworn at Braamfontein on 21 October 2014.

Contents listed by C.F.M. Rawlins 2 April 2015 C F M Rawlins.

ARBEIDSHOF
PRIVAATSAK X54570
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IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

In re: Case D529/11

In the matter between

ANTHONY ROBIN BRINK — Petitioner

and

LEGAL AID SOUTH AFRICA — Respondent

PETITION FOR LEAVE TO APPEAL AND TO LEAD NEW EVIDENCE ON APPEAL

To: Judge President Basheer Waglay, Labour and Labour Appeal Courts of South Africa, and to the judges designated to consider this petition.

And to: Legal Aid South Africa
c/o Durban Justice Centre
332 Anton Lembede Street
Durban
(Mr Ngcamu)

The petitioner, Anthony Robin Brink, applies for an order granting him leave (i) to appeal to the Labour Appeal Court against the dismissal of his unfair discrimination claim with costs by Cele J in the Durban Labour Court on 18 September 2014, his application for leave to appeal and to present further new evidence on appeal having been refused on 27 November 2014, and (ii) to present further new evidence on appeal.

The petitioner's supporting affidavit under rule 4(1) of the Labour Appeal Court Rules is annexed hereto.

Signed at Eshowe on 7 December 2013

ANTHONY ROBIN BRINK
APPLICANT
1 Boast Street, Eshowe, KwaZulu-Natal
Telefax: 086 672 0776

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

In re: Case D529/11

In the matter between

ANTHONY ROBIN BRINK — Petitioner

and

LEGAL AID SOUTH AFRICA — Respondent

SUPPORTING AFFIDAVIT

I, Anthony Robin Brink, affirm:

1. I am an adult male, 55, an advocate of the High Court of South Africa of three decades standing, currently resident at 1 Boast Street, Eshowe, KwaZulu-Natal, where I'm based as an acting magistrate on short-term renewable contracts pending the correct decision of this most important case; and I am your petitioner. This affidavit sets out my case for your leave to appeal, and present further new evidence on appeal, in the form prescribed by LAC rule 4(1). To comply with the stricture imposed by rule 4(3), I've limited it to just 50 paragraphs, so it can't be and isn't exhaustive. For concision, I'll refer to the respondent as 'LASA'; to my main heads of argument as 'my heads'; to the judgment in the case as 'the judgment'; to my application for leave to appeal as 'my application'; and to the judgment refusing it as 'the refusal'. These documents will be bundled with this petition. My considered specific approach in preparing this affidavit has been dictated by the wider public dimensions of the case to be mentioned.

2. As I'll show, this is an extraordinarily serious matter with colossal implications extending way beyond my personal interest in its just resolution. It concerns the personal and professional integrity of a sitting judge president, formerly of this court, and that of the most senior management executives of a major public entity. I speak of the perversion of separate Ministerial and Parliamentary enquiries by dint of multiple, objectively demonstrable lies, and different lies told variously to me, to the LASA Board, to the SAHRC, and to court (different lies told in the pleadings and interlocutory affidavits, and

then at trial), and of the gross breakdown of proper corporate governance and the rule of law at LASA, all of which the trial judge looked past in his seemingly clear and definitive, but in fact deplorably inattentive, glib, crude, and perfunctory judgment, riddled with the most basic legal and factual misdirections, omissions and non-sequiturs, and characterised by his failures over and over again to consider the radical contradictions and the ludicrously improbable, manifestly untruthful, and objectively contradicted evidence of LASA's single witness at trial, National Operations Executive Brian Nair.

3. I'll advert later in this affidavit to the capital misconduct and massive and pervasive corruption to which I allude here, as well as to the judge's own gravely prejudicial misconduct in the case that thwarted a full and proper ventilation of the issues that I looked to him and trusted him to try.

4. In his refusal the judge didn't treat the clear-cut new evidence surfaced after trial showing unequivocally that Nair had lied to him on oath in two respects.[1] To the judge, Nair's categorically proven repeated mendacity in court made no difference to his assessment of the credibility of his evidence. Your lordships can hardly agree.

5. The judge elliptically conceded[2] his fundamental legal misdirection, identified in my application,[3] that in deciding the case he'd misallocated the final onus of proof, which he'd placed on me[4] instead of on LASA. He then sought to avoid the fatal ramifications of this radical error by two means:

6. First by stating that the Employment Equity Amendment Act, which reversed the onus of proof in unfair discrimination claims by legislation, was only proclaimed in August 2014, after the trial and argument of the case, and didn't have retrospective effect – failing to note that the amendment merely codified the international jurisprudence on the point, supported by the International Labour Organisation and therefore prescriptive and binding on him.[5] That is, the onus was reversed and lay on LASA, even before the amendment of the Employment Equity Act. I treated this crucial, foundational aspect

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[1] Application for leave to lead further evidence (Part One of the application). I'm confident that several pending PAIA requests that I filed after the case, testing novel, surprising claims Nair made at trial – unanticipated by the correspondence, reports, pleadings and interlocutory affidavits, and at odds with them – will yield further cold print evidence of Nair's prolific perjuries at trial, and of his successful fraud on the judge I'll seek leave to lead this new evidence on appeal, once it's to hand.

[2] Refusal, paragraph 5.

[3] Application, paragraphs 191–211.

[4] Judgment, paragraphs 65 and 67.

[5] EEA, section 3, law and case bundle, pages 16–17.

extensively in my application, quoting the authorities chapter and verse.[6] The judge's response was to silently look away.

7. And second by asserting that even if I was right about the incidence of onus, irrespective of where it lay his decision wouldn't have been any different – notwithstanding that LASA relied entirely on the mere say-so of its single witness Nair, unsupported by any records, and indeed contradicted by them, a witness the judge acknowledged I'd shown to have been 'not generous with the truth'[7] on numerous scores.[8] Instead of considering the implications of this for Nair's credibility as a witness, he took him at his word,[9] mechanically reciting his evidence as gospel, without any endeavour to assay its veracity. It seems to have been inconceivable to the judge that such a high public officer could be a practised, confident, spontaneously inventive, unctuous, bare-faced, abject liar.

8. In his refusal, the judge failed utterly to address and deal with the rest of my attack on his judgment in my application, in which I demonstrated all his basic errors, too many to recite here, including the huge prejudice he caused me by refusing to allow me to cross-examine LASA's officers I'd subpoenaed for the purpose,[10] thus depriving me of some major artillery I'd lined up; and he swept the whole thing – all 59 pages and 323 paragraphs – off the table in a single dismissive paragraph.[11]

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[6] Application, paragraphs 204–11.

[7] Judgment, paragraph 67. I'm currently preparing perjury charges for the criminal prosecution of Nair and other officers for their numerous lies told under oath in this matter to date, and collecting further evidence for this purpose using PAIA. Predictably, nearly all my first three PAIA requests filed after trial were illegally refused on legally spurious grounds, and three applications I've brought to compel are currently pending. I'm awaiting responses to four subsequently filed further requests. I've just discovered from the SAHRC that LASA has once again failed to report its refusals in its 2013/14 report as required by section 32 of the Act, and has concealed its reliance on entirely irrelevant and incompetent sections of it. Despite having been previously censured by the SARHC and taken to task by the Portfolio Committee for this (record, page 472, lines 4–25 to page 477, lines 1–7), it's now the third time that LASA has falsely and deceptively reported to the SAHRC for the misinformation of the National Assembly in turn, to conceal its illegal refusal of my PAIA requests to suppress documentary evidence of corruption in executive management.

[8] Ibid.

[9] Judgment, paragraph 69, last sentence for instance. (By the way, contrary to the judge's misdirected and irrelevant finding here, it was not my case that Nair knew of my background other than from my CV, and later my letter to Vedalankar in July 2010 detailing it further – the first he pretended not to have read until more than a year after receiving it (record, page 416, lines 19–25 to page 417 lines 1–2), and the second he pretended to have stopped reading at precisely the point it began dilating on my political background (record, page 460, lines 3–25 to page 461, lines 1–5); but this latter lie is exposed by his different story to the Minister and to Parliament in the reports to them that he wrote for Mlambo JP to sign and submit to them, which he later repeated even more precisely on affidavit: heads, paragraphs 153–7.)

[10] Application, paragraphs 317–322.

[11] Refusal, paragraph 5.

Pietermaritzburg one.[65] In court Nair told a completely different story, namely that despite his repeated attempts to persuade her, Vedalankar refused to approve the creation of the post at Mthatha,[66] where it was reportedly sorely needed,[67] after the entire LSTC had unanimously resolved to create it and to transfer the budget from Kimberly, where there was reportedly no need for it,[68] and after the new Mthatha post had been advertised, interviewed for, and a candidate selected for it. It was a risible new lie, sharply contradicting LASA's pleaded and sworn version before trial, unsupported by any record,[69] not alleged in any affidavit or pleading,[70] and contradicted by LASA's recruitment/vacancy statistics for June 2010.[71] But Nair's new lie in evidence made no impression on the judge; as said, he didn't mention it.

41. The LAC is also certain to treat an important aspect of the case, entirely disregarded by the judge[72] (notwithstanding his fine grasp of the specifics of public service appointment procedure displayed in his Baxter judgment),[73] namely Nair's incompetent and illegal so-called second round interview scheme for Senior Litigator candidates – unauthorised by the Board's Recruitment code and inconsistent with its Approval Framework.[74] Unlike the judge, the LAC is certain to remark on the disgraceful breakdown of lawful recruitment procedure at LASA, in blatant disregard of the Board's said regulatory instruments which precisely govern this, and on Mlambo JP's participation in a grossly irregular, prejudicial, and unlawful recruitment practice.[75]

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[65] Heads, paragraphs 188–193.

[66] Record, page 365, lines 10–25 to page 366, lines 1–9.

[67] Record, page 401, lines 7–12.

[68] Record, page 363, lines 8–25 to page 364, lines 1–9 and page 402, lines 3–9.

[69] Record, page 436, lines 8–19 and page 490, lines 6–24.

[70] Record, page 490, line 25 to page 491, lines 1–8.

[71] Record, page 399, lines 9–21.

[72] Judgment, paragraphs 73–4.

[73] Law and case bundle, pages 94–7.

[74] Heads, paragraphs 90–8.

[75] The LAC is also likely to remark on the shocking irregularity of Mlambo JP allowing Vedalankar, the very subject of my complaint to him and the Board about her illegal refusal to comply with my first PAIA request and the indications that her budgetary pretext was false, to fake a letter from him on her own computer while he was abroad, dismissing my 59-page petition in a single sentence, with an scanned image of his signature pasted below it (with his consent, LASA pleaded). Looking the other way as I protested and showed my fundamental rights were being violated. Then, when I petitioned the Board again, insultingly showing me the road and telling the rest of the Board to ignore my further communications. Then defaming me to the chairperson of the Portfolio Committee, in his letter covering his lying report, when I petitioned the Board for the third time, now copying the Minister and Parliament.

42. His lies proliferating in court as he was trying to shore up his collapsing story about why he never signed his approval (or disapproval) of my recommendation by the selection panel as the Approval Framework required of him, and as provided at the foot of the document (with its legal nonsense, at his instance, about a further interview), Nair claimed in court that he didn't have to – a lie repeatedly and squarely contradicted by LASA's pleadings and interlocutory affidavits.[76] The judge didn't note this; again the LAC is sure to.

43. Unlike the judge who accepted and believed it, the LAC is also sure to find stupidly ridiculous and manifestly false Nair's evidence, building on his just-mentioned lie, but again explicitly contradicted by LASA's pleadings and interlocutory affidavits,[77] that all candidates interviewed by the selection panel were eligible for interviews by his so-called second round interview panel, including those rejected and eliminated by the selection panel, and that a candidate rejected by the selection panel could properly have been appointed instead of me[78] – stultifying the whole purpose of the selection process by the selection panel comprised of LASA's most senior lawyers in the region: to identify the most suitable candidate for appointment, as the Recruitment code puts it.[79]

44. The LAC is certain to find Nair's evidence to have been obviously untruthful just about whenever he opened his mouth. On a proper allocation of the final burden of persuasion to LASA, therefore, the LAC is certain to find that LASA failed to justify its abortion of my appointment to the Pietermaritzburg Senior Litigator post for which I'd been unanimously recommended. It failed to do so, because its various explanations given were obviously untrue. So what?

45. Pioneered by the U.S. Supreme Court, there's a finely developed body of international labour jurisprudence, supported by the ILO, and therefore binding on our labour tribunals, regarding what inference may properly be drawn where it's been shown that an employer has lied (or its explanation is not worthy of credence) about its reason given for not hiring a job applicant belonging to a constitutionally protected class (racial, political, etc). Copying and pasting from my heads, the judge very ably set this law out in his

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[76] Record, page 502, line 25 to page 503, lines 1–25; heads, paragraphs 146–7.

[77] Heads, paragraph 148.

[78] My manuscript note of Nair's evidence on which I relied for the above-mentioned paragraph of my heads was off; Nair alleged that all candidates were eligible for his so-called second round interviews, not that all would necessarily be interviewed again: record, page 349, lines 7–15 and 21–3; page 350, lines 10–11; page 407, lines 13–17; page 408, line 25 to page 409, lines 1–25 to page 410, lines 1–2 and 10–12; and page 450, lines 7–10.

[79] Heads, paragraphs 90–8.

judgment.[80] Doing the same, he also accurately set out the facts I presented placing me in such a class.[81] He didn't demur at my evidence that in applying for the post I'd been vulnerable to unfair political discrimination.

46. But instead of applying the law that he'd enunciated, and proceeding to draw the due inference indicated by the evidence – the known facts and the exposed and obvious lies – the judge dismissed my claim to have been unfairly discriminated against on political grounds as 'mere speculation'.[82] As if I'd not set up a plausible, prima facie case for it – all I was required to do under international and local unfair discrimination law – answered with one lie after another. Yet during oral argument, the judge took my point and taxed LASA's counsel with it: that an employer's mental prejudice against a job applicant is rarely announced, precisely because it's unconstitutional and therefore gravely illegal, and must therefore invariably be inferred from a conspectus of all the available evidence, weighed with the probabilities.[83] Besides the pivotal evidence I presented that the various justifications advanced for not appointing me were false and pretextual, the judge entirely failed to consider all the other evidence indicating unfair discrimination reviewed in my heads.[84]

47. To conclude: in bringing my claim against LASA I was aware I was breaking three basic rules: never sue a corporation, never represent yourself, and never sue from principle. But I thought the principle extremely important in our post-apartheid order – that a job applicant should not be prejudiced by his political activism, driven by his moral and social conscience, no matter how opprobrious his cause is generally perceived to be – and that my case was so clear that any attentive judge would grasp it. I did not expect the judge to

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[80] Judgment, paragraph 66.

[81] Judgment, paragraphs 30–41.

[82] Refusal, paragraph 5.

[84] I should disclose that documents that came to hand after the trial, considered with others I already had, point at possible corruption in the selection process; in that although I'd been formally, unanimously 'identified' in the recommendation as 'the most suitable candidate for appointment', as the Recruitment code puts it, it may have been intended to appoint a rejected candidate instead: a former Labour Court judge. And this is why my appointment was quietly iced, until I walked away, making way for his appointment in my place. (Recruitment corruption at LASA is commonplace. the previous recruitment for the same post had also been irregularly aborted off the record after the due selection of a suitable candidate by the selection panel; and I've uncovered corruption in other recruitments I've looked at, including the Mthatha Senior Litigator one, a sham for the books.) I'm investigating this possibility with a pending PAIA request, but I'm not optimistic that the records it will elicit will be decisive. So I'm not charging that the selection process was corrupt, and that my appointment wasn't proceeded with for the reason that the said rejected candidate had been favoured for appointment behind the scenes instead of me, because the evidence I have suggesting this is currently too light. If this changes, the LAC will certainly be told.

[84] Heads, paragraphs 246–7.

be nodding off during the afternoon sessions,[85] and finally claiming perversely, but revealingly as to his negative animus, that I ought rather to have taken LASA's abortion of my appointment 'on review'.[86] As if I shouldn't have come bothering him to deliver the justice I craved, and had laboured bitterly year after year before trial to achieve, in the face of every obstacle corruptly placed in my way,[87] viciously defamed all the while, contemptuously redoubled when I complained of it.[88] In a matter of such enormous importance, and with so much on the line extending far beyond my personal interest in the case, and with so much fact to traverse and complex argument to present, including relevant, applicable international labour jurisprudence mentioned in my opening address, I did not expect the judge to prescribe that our heads shouldn't exceed a manifestly insufficient 'fifteen to twenty pages',[89] suggesting that he'd already made up his mind to toss my case. I did not expect that five months after I filed my replying argument,[90] the judge hadn't even troubled himself to read our heads,[91] and was hearing our oral

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[85] I have an audio recording of the trial on DVD, capturing my repeated unnatural pauses as I waited, horrified, for the judge to reopen his eyes and come to. He was literally half-asleep at times. I dared not risk offending him by asking him to take a coffee break to wake up.

[86] Judgment, paragraph 74. I had no cause of action for any review, and duly referred my complaint to the CCMA and then the Labour Court in compliance with the procedural prescripts of the EEA.

[87] Heads, paragraph 256.

[88] Heads, paragraphs 260–5; record, page 485, lines 4–23. Reckless of their professional obligations as officers of court, LASA's counsel themselves put the boot in, wantonly lying to the judge in their answering heads that my precisely accurate CV was 'grossly inflated', which is to say I'm a liar guilty of CV fraud. (Mokoena SC, who argued the case in court, came into the matter after all heads had been filed, and did not draw the answering heads; and he's consequently innocent of this final defamation of me by LASA's counsel, calculated to defeat the ends of justice by prejudicing the judge against me with more lies to make me appear dishonest and therefore an unreliable witness.)

[89] At the end of the trial, the judge asked for heads of argument comprising four sections, 'background, evidence, analysis and conclusion', i.e. in the form of a draft judgment, so he could 'copy and paste from them', 'to expedite judgment production': a fine idea. But he stipulated not more than 15–20 pages: a hopelessly inadequate, improper and prejudicial limitation imposed on me after such a long and important trial with so much oral and documentary evidence and local and international unfair discrimination jurisprudence to canvass and discuss. Unpicking and refuting LASA's many outright lies and tricky half-truths and cataloguing all the contradictions was an immense job, as will be apparent from a look at my heads. After drawing them, as finely detailed as necessary, comprehensively and meticulously referenced to the documentary record, pleadings, affidavits, to the evidence (my notes), and to my law and case bundle, I prepared an unreferenced summary of 20-pages as directed; but I emphasized both in its head-note and at the oral argument that it was no substitute for my heads. From his several mistakes in the judgment identified in my application in regard to several simple facts dealt with in my heads, it seems the judge didn't read them through.

[90] On or about 6 December 2013 (date of signature).

[91] In his chambers before oral argument on 28 May 2014, the judge said jocosely: 'I think you can assume I'm literate and will read your heads.' The oral argument was set down for three days, 28–30 May, but on the basis just quoted the judge asked us to merely outline our main points; and in the result the oral argument wasn't

argument without having prepared for it[92] ten months after the evidence, and relying only on his fading and defective memory of it[93] presented in the course of a nine-day trial concluded the best part of a year earlier. In giving judgment, I did not expect the judge to misstate my case, omitting critical facts and including irrelevant matter, [94] and portray as maladroit and whimsical my precisely considered tactical and strategic decisions taken,[95] wrongly forced by him on the record[96] and improperly pressed by him off it.[97] I did not expect the judge to sugar Nair's lies for his judgment, by stretching and exaggerating them to help them go down.[98] And that besides getting the final onus wrong, he should also have placed on me an impossible, pivotal, evidential onus I very obviously didn't bear and couldn't possibly have discharged.[99] And finally after the trial trucking with LASA without my knowledge in unfavourably disposing of my plea for his directive that it hand over the extra copy of the trial record transcript it had printed for me.[100]

48. As said in the beginning, the stakes in this case are massive, and the implications vast. Professional and personal networks and loyalties being what they are in the real world, I appreciated from the outset that I was up against very long odds, and that notwithstanding his oath of office it would be no easy thing for a judge to impeach the conduct of his own (then) court president, and now president of the biggest, most

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long. I repeatedly emphasized during argument that my case was made in my heads, drawn in the form of a draft judgment, as he'd unambiguously implied after the trial he'd wanted. And that my barest sketch of it in oral argument was no substitute. Besides proof of pretext, the further evidence I relied to generate the inference that I was unfairly discriminated against, canvassed in paragraphs 246 –7 of my heads, wasn't recited in the judgment. Its paragraph 46 sets out a wrong, crude mishmash instead.

[92] At the end of the trial, the judge asked us to file written argument, saying that once it was in, he would want to ask us questions. I understood him to mean he'd read our heads, and question us on them. This didn't happen at all.

[93] As evidenced by the judge's many basic factual mistakes, identified in my application

[94] Judgment, paragraph 46. Besides proof of pretext, the further evidence I relied to generate the inference that I was unfairly discriminated against, canvassed in paragraphs 246 –7 of my heads, wasn't recited in the judgment; its paragraph 46 sets out a wrong, crude mishmash instead.

[95] Judgment, paragraphs 29 and 68.

[96] His refusal to allow me to cross-examine Vedalankar, Clark and Board member du Rand, stated during the debate of LASA's failed applications on the first day to quash my subpoenas of them. On why I ultimately elected not to call Vedalankar, Clark and du Rand, and settled for affidavits by the latter two in lieu of their oral evidence, see heads, paragraphs 103–4.

[97] His veiled warning in chambers not to go after the big fish (paragraph 36 above).

[98] Application, paragraphs 269–72 and 262–7.

[99] Application, paragraphs 273–82; judgment, paragraph 67.

[100] Per Mtati's wrongly dated letter in October 2014, received on the 13th: 'Cele J, through his office, suggested that the Respondent accommodate the Applicant by providing him with the electronic copy of the record which the Respondent did.'

important high court in the country, and thereby trigger a gargantuan scandal. But the truth must out, and justice needs doing fearlessly.

49. The Judicial Services Commission's response to my complaint about Mlambo JP's perversion of Ministerial and Parliamentary enquiries into my complaints was that it was no concern of theirs, on the technical basis that it didn't involve judicial misconduct per se. My complaints to the Public Service Commission were passed on to the Public Protector, but in view of the then approaching trial my file was closed; and with the dismissal of my claim, there's small chance of it being reopened. These official doors having closed on me for setting matters to rights, your lordships' correct decision of this petition is tremendously important for the ventilation of the truth, and for law and justice in our country. An unattended[101] splinter, so easily removed,[102] has led to widespread gangrene at the top of a major public entity, generally perceived to be the jewel in the crown of the Justice cluster, and a model of good governance. The matter has reached a pivotal moment.

50. Having regard to the profusion of contradictory lies that have spewed out of LASA, including to the highest authorities, in the cover-up following the illegal abortion of my appointment, to get away with and escape accountability for it – successfully so far, like Nixon nearly did after Watergate – your lordships can expect absolutely any lie from LASA in its answering papers, any subterfuge to persuade you to shut down further enquiry into this matter by refusing this petition. Since in-house attorney Mtati acting on instructions[103] can offer you no more than hearsay about the case,[104] and hasn't stinted at committing the most grotesque, poisonous perjury on affidavit on Nair's instructions to prejudice me in the court's eyes before trial;[105] and since the judge found Nair to have

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[101] I petitioned the Board five times in all, plus individual members, plus the Board secretary, all to no avail.

[102] I repeatedly pleaded for a timely, conciliatory resolution before the thing escalated unnecessarily.

[103] Record, page 390, lines 16–21; heads, paragraph 135. When conversing amicably at court before the delivery of judgment, I urged Mtati to seek a personal exit strategy in view of the several false interlocutory affidavits he'd made on Nair's instructions, replete with lies, he shrugged: 'I'm only an agent.'

[104] Record, page 390, lines 6–11. Mtati was appointed Corporate Services Executive in LASA's national office as from 1 July 2010. It's common cause he wasn't party to any decision-making about the abortion of my appointment, and has no direct knowledge of it.

[105] Heads, paragraph 268. Mtati: 'The most disturbing, reprehensible, unprofessional and brazen act of disrespect came recently when the Applicant left the KZN province and attended unannounced and without warning at the office of [Mlambo JP] at the South Gauteng High Court. [He] did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is represented this amounts to professional misconduct.' This lying defamation of me was the pure invention of a deeply cunning criminal mind, contrived to poison the court against me, in a bid to defeat the ends of justice (see further: application, paragraph 312) which foul lie Nair supported with a confirmatory affidavit, surfaced after trial, only to meekly retreat from it

been untruthful under oath on any number of scores,[106] I respectfully entreat your lordships to require CEO Vedalankar, and not the former discreditable and unreliable persons, to depose to any answering affidavit under LAC rule 4(6) in regard to why I should be denied leave to argue my case before three senior, experienced, and attentive judges of appeal. At the centre of the case is the truth or otherwise of the budgetary insufficiency justification[107] for the abortion of my appointment to LASA's most senior professional position in KwaZulu-Natal, and it was Vedalankar who twice advanced it to me in her letters.[108] The prospect of being jailed for perjury may chill any inclination she might have to repeat under oath to your lordships the lies she told me. Like a helicopter, the unwelcome truth must eventually land, somewhere; and if you'll allow it, the proper place for it will be the Labour Appeal Court.

Dated at Eshowe on 7 December 2014.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on 7 December 2014 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he affirms its contents to be true to the best of his knowledge and belief.

SOUTH AFRICAN POLICE SERVICE
STATION
07 12
ESHOWE
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATHS

Name: Tobulani Dansa

Address: Eshowe SAPS

Capacity: Policeman Lt 0643427-1

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in court when I disputed it, pointing out that I'd never seen or met Mlambo JP, had never set foot in the South Gauteng High Court, and didn't even know where it was: record, page 485, lines 20–25 to page 486, lines 1–17.

[106] Judgment, paragraph 67.

[107] Heads, paragraph 5.

[108] In her letters of 18 October 2010 and 28 January 2011 (trial document bundle, pages 101–7 and 210–58). Vedalankar is also well placed to deal with Nair's new story in evidence blaming her for aborting the Mthatha Senior Litigator recruitment, diametrically contradicting the reason she gave me in her letters and later confirmed on affidavit. She can also deal with Nair's denial in court that he was responsible for authoring her letters to me (writing or instructing), and his claim that he had no hand in them, despite all indications to the contrary. And that she or Mlambo JP, not him (Nair), added the further new lies inserted into the report to the Minister before it was submitted in 'updated' form to the chairperson of the Portfolio Committee some months later. The look of it is that Nair used Vedalankar in his cover-up. The time's arrived for a division, and the isolation of the rogue(s)

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IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

Case Number DA21/14

In the matter between:-

ANTHONY ROBIN BRINK Petitioner

and

LEGAL AID SOUTH AFRICA Respondent

RESPONDENT'S ANSWERING AFFIDAVIT TO THE APPLICANT'S PETITION

I, the undersigned,

THEMBILE VUYO MTATI

do hereby make oath and state that:-

1. 1.1 I am an adult male person employed a Corporate Services Executive in the employ of the Respondent with my principal address at 29 De Beer Street, Braamfontein, Johannesburg.

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102.3. The Respondent also disapproves of the condescending manner and blackmail which characterizes this application and the Judges of this court.

CONCLUSION

103. I submit that the Petitioner has failed to demonstrate the material aspect upon which this honourable court could upset the decision of the court *a quo*.

104. Accordingly, the Respondent prays that the above court dismiss this Petition with costs.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit that was signed and sworn to, before me, at Johannesburg on this the 22nd January 2015. The regulations contained in the Government Notice No. 1258 dated 21st July 1972 (as amended) and Government Notice No. 1648 dated 19th August 1977 (as amended) having been complied with.

COMMISSIONER OF OATHS

ZANELE CHAUKE
COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA
7th FLOOR BRAAMFONTEIN CENTRE
23 JORISSEN STREET
TELEPHONE (011) 403-2755

R37

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

Case no: DA21/14

In re case no: D529/11

In the matter between

ANTHONY ROBIN BRINK — Petitioner

and

LEGAL AID SOUTH AFRICA — Respondent

NOTICE OF OBJECTION TO RESPONDENT'S OPPOSING AFFIDAVIT

To: Judge President Basheer Waglay, Labour and Labour Appeal Courts of South Africa, and to the judges designated to consider the petition.

And to: Legal Aid South Africa
c/o Durban Justice Centre
332 Anton Lembede Street
Durban
(Mr Ngcamu)

The petitioner, Anthony Robin Brink, hereby notes his objection to the respondent's opposing affidavit on the grounds that:

- it is out of time and non-compliant with Labour Appeal Court rule 4(6);
- comprises hearsay on all material points, unconfirmed and uncorroborated by the respondent's National Operations Executive and Chief Executive Officer directly involved in and having personal knowledge of the case;
- repeatedly contradicts the respondent's own case at trial, and in its pleadings, interlocutory affidavits, reports and correspondence;
- contains novel false claims not made at trial and in the respondent's pleadings, interlocutory affidavits, reports and correspondence;

- conflates unrelated and irrelevant facts and issues in a new manner at odds with the respondent's case at trial;
- is dishonest, misleading, and shot through with demonstrable perjury;
- employs red herrings to distract from the documented, objective facts inconsistent with and destructive of the defence version, which hard facts summarised in the petition the respondent entirely avoids answering;
- falsely disputes the trial court's finding that the respondent's single witness was shown to be repeatedly mendacious in his evidence; and further falsely disputes the petitioner's exact quotation of the judge's language in making this finding; and,
- repeatedly resorts to meretricious displays of high-toned indignation, baseless attacks on the petitioner's personal and professional integrity, obloquy, and derision to prejudice the court against the petitioner and to distract from the merits of his case and the gravity of his contentions, particularly apropos the misconduct, on the record, of the respondent's Board chairperson Mlambo JP in the matter,

– all intended to pervert the just decision of the petition on an appraisal of the objectively established facts, and all precisely identified in the petitioner's supporting affidavit to follow.

Signed at Eshowe on 27 January 2015

ANTHONY ROBIN BRINK
PETITIONER
1 Boast Street, Eshowe, KwaZulu-Natal
Telefax: 086 672 0776

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IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

L.A.C CASE NO: DA21/2014

LABOUR COURT CASE NO: D529/11

In the matter between:

ANTHONY ROBIN BRINK Petitioner

and

LEGAL AID SOUTH AFRICA Respondent

RESPONDENT'S NOTICE OF MOTION:

APPLICATION FOR CONDONATION

(I.T.O RULE 12 OF THE RULES OF THE LABOUR APPEAL COURT)

BE PLEASED TO TAKE NOTICE THAT the Respondent will, either at the hearing of the Petitioner's petition, or on a date to be determined by the Registrar of this honourable Court, make an application for an order in the following terms:

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1. that the late filing of an Answering affidavit by the Respondent be and is hereby condoned;

2 that the period of ten (10) days provided for in rule 4 (6) of the Rules of this honourable Court be and is hereby extended to a date after the filing of the Respondent' answering affidavit;

3. that any party who opposes this application be and is hereby ordered to pay the costs of this application; and

4. further and/or alternative relief.

KINDLY ENROLL THE MATTER ACCORDINGLY

DATED AT JOHANNESBURG ON THIS THE 5th DAY OF FEBRUARY 2015

pp

LEGAL AID OF SOUTH AFRICA

Respondent's Attorneys

29 De Beer Street

Braamfontein

Johannesburg

Per Mr T. Mtati

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TO: **THE REGISTRAR OF THE LABOUR APPEAL COURT**

JOHANNESBURG

AND TO: **Mr A R BRINK**

Petitioner

The Flat,

1 Boast Street

Eshowe

Kwazulu Natal

Received o.b.o Petitioner

_____

Time and Date

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LABOUR APPEAL COURT OF SOUTH AFRICA
DURBAN

Case no.: DA21/14

Honourable Justices Waglay JP; Davis and Sutherland JJA

ORDERED on 18 February 2015

In the matter between

ANTHONY ROBIN BRINK PETITIONER

and

LEGAL AID SOUTH AFRICA RESPONDENT

ORDER

Having read the petition and considered the matter, the Court made the following order in this matter:

The petition for leave to appeal is refused with no order as to costs.

Reasons for refusing the petition:

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1. This court does not give reasons for its order refusing a petition for leave to appeal. This is in line with international practice and does not offend any constitutional principle.

2. The refusal of a petition for leave to appeal signifies that this court is of the view that the intended appeal has no reasonable prospects of success and that there is no compelling reason why it should be heard. This court therefore, in general terms, concurs in the reasoning of the judgment of the Labour Court.

3. Where a costs order is made against the petitioner, it is made to signify that the petition is devoid of any merit whatsoever.

BY THE COURT

E. PHOPHI

REGISTRAR

1/P N

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	ACTIONS/DECISIONS	Responsible Person	Due date
1.	**WELCOME AND APOLOGIES**		
1.1	The Chairperson declared the meeting open and welcomed all present.		
1.2	The following apologies were noted • Ms S Monaledi • Mr V Jarana		
2.	**REGISTER OF INTERESTS** The Register of Interests was circulated and duly noted by all members present.		
3.	**MINUTES**		
3.1	**Minutes of the previous meeting** The minutes of the previous meeting held on 29 May 2010 were adopted.		
3.2	**Matters Arising Schedule** The Matters Arising Schedule was noted.		
4.	**MATTERS FOR APPROVAL** **ALL COMMITTEES**		
4.1	**Draft Annual Report 2009/10 including Annual Financial Statements** The Board approved the Draft Annual Report 2009/10 subject to the following amendments: • p16 that the designation of the person be placed next to their names in the same format as the name, • That the qualification (CA(SA)) be added to Ms Luthuli's credentials; • p78 under Mr Ramdas' name; 'City of Johannesburg; • P 76 that Judge Mlambo and Mr Makume's details be updated to reflect their new positions; The Board commended management on a comprehensive Annual Report that made good reading.	BS	31.08.10
4.2	**MTEF 2011/14 CONSOLIDATED** The Board approved the recommendations as contained in clause 8 of the document: *8.1 The Board approve the MTEF for the period ending 2011/12-2013/14.*	CFO	30.09.10
	8.2 The Board approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of Annexure I.	CEO	01.11.10

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Legal Aid South Africa

ANNEXURE I

REPORT TO BOARD

16 July 2010

Impact of OSD funding shortfall on budget 2010/11

1. Background

1.1. The 2010/11 budget includes the outstanding OSD funding of R53.8million. This amount constitutes:

OSD Phase	Amount	Status
OSD Phase 1	R23.8 million	Implemented
OSD Phase 2	R30million	Not yet implemented
OSD Phase 2 back payment	R42million	Not yet implemented

1.2. On the 14 July 2010 Legal Aid SA COO met with both DoJ DDG, Mr Vuso Shabalala , as well as Adv Pieter du Rand, Legal Aid SA board member in order to clarify the position of DoJ regarding the outstanding OSD funding of R53.8 million for the 2010/11 budget period, as well as its effect to the MTEF baseline.

1.3. DoJ has indicated that they do not have funds to cover for the R53.8 million OSD shortfall. The Executive Authority has however in a meeting with the Legal Aid SA Board Chairperson expressed his wish to have Legal Aid SA service delivery maintained and that DoJ should make funds available to cover the OSD shortfall through the mid-year budget adjustments in September/October 2010.

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2. **2010/11 Budget period**

2.1. In the event DoJ is unable to secure funds to cover the OSD Phase 1 shortfall, Legal Aid SA will have a deficit of R23.8 million in the 2010/11 Budget. Salaries for 2010/11 are budgeted at 97% with recruitment currently being at about 94%.

2.2. In order to mitigate the probable deficit, the following measures are proposed:

a) Court coverage is currently approximately 90% at Distric Courts and 100% at Regional Courts. For the remaining of the 2010/11 budget period, District Courts will be progressively reduced to no lower than 80% coverage whilst Regional Courts will be progressively reduced to no lower than 90% coverage. About R16 million will be saved from this measure, though its effect will be a reduction in the number of days that we are able to cover District Courts and Regional Courts. This has a direct negative impact on service delivery. Any further reduction on filled legal practitioner positions will result in a further percentage reduction in court coverage
b) The recruitment process will be reviewed, centralizing the decision on filling of posts at Executive level, with due regard to the need to prioritise critical positions;
c) Any savings derived during the financial year be reserved to cover part of the anticipated OSD shortfall.

2.3. In the event DoJ is unable to secure the OSD Phase 2 funding, the result will be that,

a) a potential labour unrest within Legal Aid SA will increase;
b) Legal Aid SA legal practitioners will be paid less than their counterparts in DoJ (who have already implemented OSD Phase 2), and those in NPA (in the event NPA finalise payments of OSD Phase 2).

3. **MTEF 2011/12 onwards**

Should DoJ not secure OSD funding in full, Legal Aid SA will have to revise its MTEF 2011/12 onwards. With the current macro increase on budget allocation received from National Treasury, Legal Aid SA salaries will continue to impact negatively on the Operational and Capital budget unless posts are either frozen or abolished. This will have a significant negative impact on service delivery and good progress Legal Aid SA has already achieved in providing legal representation to many indigent persons in the country.

4. Recommendation

To provide for the anticipated OSD shortfall funding of R23.8 million, it is recommended that:

I. Savings from the 2010/11 financial year be used to fund the OSD shortfall;
II. District Court coverage be approximately no lower than 80% coverage, while Regional Court coverage is reduced to no lower than 90% coverage, for the remaining part of the 2010/11 budget period. This will derive a saving of about R16million to cover the shortfall.

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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Medium Term Budget Policy Statement

2010

Speech

Pravin Gordhan

Minister of Finance

27 October 2010

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I am pleased to be able to table a comprehensive *Adjusted Estimates of National Expenditure* to accompany the *Adjustments Appropriation Bill* and – for the first time – a *Division of Revenue Amendment Bill*, for the consideration of the House. I cannot deal with all the adjustments in detail, but let me highlight the main points.

In total, the adjusted expenditure level is R2.5 billion lower than the February budget estimate, which included an unallocated contingency reserve of R6 billion. Contributing to this decrease is a lower provision for state debt costs due to the current strength of the rand and the decrease in interest rates, and savings declared by departments amounting to almost R2 billion.

The main additional allocations in the Adjustments Appropriation are as follows:

1. R1.8 billion in roll-overs arising from commitments related to unspent balances in 2009/10;
2. R6.2 billion to cover higher remuneration costs;
3. R396 million for various self-funding department-specific activities;
4. R2.2 billion in unforeseeable and unavoidable expenditure adjustments recommended by the Treasury Committee this year, including
    a) R769 million to cover property rates due to municipalities on behalf of provinces, funded through the *devolution of property rate funds grant*,
    b) R320 million for occupation-specific dispensation salary adjustments in the Department of Justice and Constitutional Development, the National Prosecuting Authority and Legal Aid South Africa,

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PAYMENT MADE BY : NAT: DEPT JUSTICE & CONST DEV
(BASD28) DISBURSEMENT NO : 000325484
OFFICE : NAT: DEPT JUSTICE & CONST DEV
PAYMENT DATE : 15/12/2010
CONTACT PERSON : HELP DESK
PAYMENT METHOD : CREDIT TRANSFER
CONTACT TEL NO : 0860 800 904 OR 012 309 9001

PAYEE NAME : LEGAL AID BOARD
BANK NAME : FIRSTRAND BANK LIMITED
PAYMENT ADDRESS : PRIVATE BAG X76
BANK BRANCH : BRAAMFONTEIN 054
BRAAMFONTEIN
BRANCH NUMBER : 251905

ACCOUNT TYPE : CURRENT ACCOUNT

ACCOUNT NO : 62224831471
2017
DISBURSEMENT STATUS : PAID

MICR NUMBER : 0

SUPPLIER CONTACT DETAILS : LEGAL AID BOARD TELEPHONE NUMBER:

SOURCE DOC PAYMENT TYPE NUMBER	SOURCE DOCUMENT NUMBER PAYMENT DESCRIPTION	PURCHASE ORDER NUMBER	AMOUNT
SUNDRY 00541218	LAB/DECEMBER 2010 LEGAL AID BOARD	NOT APPLIC	R 89453000.00

TOTAL : R 89453000.00

**** END OF REPORT

DBBS07BS ****

ZMN

HPN

CONFIRMATORY AFFIDAVIT

IN RE: FIRST COMPLAINT AGAINST WAGLAY JP

UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT

I, Christopher Frank Milman Rawlins, make oath and say:

1. I am a retired accountant residing at 23 Norfolk Road, Berea, Durban.

2. I have read Anthony Brink's First Complaint against Waglay JP, signed and attested on 15 June 2017, and scanned and emailed to me on the same day, and I confirm that the allegations he makes regarding my knowledge of and involvement in the matters to which he has deposed are all true.

3. Annexure 'A' to the Complaint is indeed the anonymous, unsigned, undated and unstamped 'memorandum' that I found in the DA21/14 petition case file at the Durban Labour and Labour Appeal Court on 1 April 2015, which a registry clerk photocopied for me; and annexure 'B' is indeed the inventory I made of the contents of the case file, including the said memorandum, which I had a registry clerk verify on 2 April 2015 before applying the court stamp to certify it, as described in paragraphs 20–24 of the Complaint. And indeed, the memorandum was still in the court file when I looked again in August 2016.

Signed at Durban on 16 June 2017.

CHRISTOPHER FRANK MILMAN RAWLINS

Signed before me at Durban on 16 June 2017 by the deponent who acknowledged that he knows and understands the contents of this affidavit, stated that he has

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no objection to taking the Oath, confirmed that he considers it binding on his conscience, and swore that the contents of this affidavit are true.

21/04/15-2
M. MHUZWAYO

COMMISSIONER OF OATHS

Name: MHLABUNZIMA KHUZWAYO

Address: 82 BOTANIC GARDENS Rd

Capacity: SAC

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
2015 -04- 16
BEREA
KWAZULU-NATAL

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

188, 14th Road, Noordwyk, Midrand, 1685
Private Bag X10, Marshalltown, 2107
Tel: +27 10 493 2500 (Switchboard)
E-mail: info@ judiciary.org.za
www.judiciary.org.za

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JUDICIAL CONDUCT COMMITTEE

Enq: Lynette Bios

Tel: (010) 493 2500(switchboard)

Fax: 086 640 9601

Mr. A Brink

25 Balcomb Avenue

Zini River Estate

Mtunzini

Per email: anthonybrink.sa@gmail.com

Our Ref: JSC/533/17

Dear Mr. Brink

RE: FURTHER COMPLAINTS AGAINST JUDGE PRESIDENT MLAMBO OF THE GAUTENG DIVISION OF THE HIGH COURT AND JUDGE PRESIDENT WAGLAY

The Judicial Service Commission (JSC) hereby acknowledges receipt of your complaints.

Your complaints will be forwarded to the Judicial Conduct Committee for consideration.

The Secretariat will notify you of the outcome of your complaint in due course.

Yours sincerely,

L BIOS

Secretariat for the Judicial Service Commission

Date: 29/08/2017

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

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JUDICIAL CONDUCT COMMITTEE

Enq: Lynette Bios

Tel: (010) 493 2500(switchboard)

Fax: 086 640 9601

Advocate A Brink

25 Balcomb Avenue

Zini River Estate

Mtunzini

Per email: anthonybrink.sa@gmail.com

Our Ref: JSC/533/17

Dear Advocate Brink

RE: COMPLAINT AGAINST JUDGE PRESIDENT WAGLAY OF THE LABOUR AND LABOUR APPEAL COURTS

Kindly find the attached response from Judge President Waglay.

The Secretariat requests you to submit your comments (if any) by the close of business on 09 July 2018.

Yours sincerely,

L BIOS

Secretariat for the Judicial Service Commission

Date: 28/06/2018

The office of the Honorable Mr. Justice Basheer Waglay

Judge President of the Labour Appeal Court and the Labour Court Of South Africa

and Judge of the High Court of South Africa (Western Cape)

Email Address: bwaglay@justice.gov.za Mobile +27 082 494 2593

Johannesburg: Ms Hali 011 3595736 Cape Town: Ms Allie 021 424 9035

The Chairperson

Judicial Conduct Committee

RE: Complaint; Adv. Brink.

1. I refer to the letter addressed to me by the secretary of the Judicial Service Commission, Ms L Bios, regarding the complaint filed by Adv. Brink.

2. Adv. Brink's complaint is four fold;
   i. That Judges President Mlambo, Davis and I and Judge of Appeal Sutherland conspired against him in that Judge President Davis, Sutherland JA and I refused his petition after taking into account superfluous documents particularly an unsigned and unfiled affidavit;

ii. That we did not properly consider his petition because we did not give him a proper opportunity to oppose the condonation which was sought by the Respondent for filling their opposition out of time;

iii. That in any event we did not consider his petition as some junior clerk made the decision and not us as the panel; and finally,

iv. That there was a conspiracy managed by Mlambo JP who sought to and eventually appointed his "colleague" one Ngcamu to the post which the complainant should have been appointed.

3. All of the above is patent nonsense.

4. The petition was considered by Davis JP, (or JA as he is in the Labour Appeal Court) Sutherland JA and me. We did not consider the condonation application of the respondent as we concluded that the petition was without merit and we unanimously decided to refuse his petition. I may add that the Registrar of Labour Appeal Court (LAC) collects the petitions, makes copies of only the relevant documents, collates them and places them in three individual files and has them delivered to the three judges who are allocated the petitions. The files only contain relevant documents properly filed. All petitions are considered on the same day in the boardroom, after appropriate debate. Once the decision is made it is communicated to the Registrar who then informs the parties.

5. In this matter the complainant's petition was properly considered and refused and he was informed about it.

6. The complainant talks about documents he found in the Labour Court file. That has nothing to do with the Labour Appeal Court (LAC). The LAC has its own files, retained by its registrar Mr Phophi who is based in Johannesburg.

7. Finally, although it does not need to be said, I say it anyway. Mlambo JP has no role to play in the decisions of the LAC. Although I understand that the complainant has also filed a complaint against Mlambo JP in connection with this matter and intends to do so against Davis JP and Sutherland JA. I doubt that either of them will have anything further to add on this matter.

Yours faithfully

Basheer Waglay JP

BRINK'S COMMENTS ON WAGLAY JP'S RESPONSE TO HIS GROSS MISCONDUCT COMPLAINT

I, Anthony Brink, affirm:

1. I am the complainant in a complaint of gross misconduct filed with Judicial Service Commission ('JSC') in July 2017 against Waglay JP under section 14 of the Judicial Service Commission Act 9 of 1994 ('JSC Act'), and acknowledged by the Secretariat the following month. At its request on 14 June 2018, I resubmitted a copy of my complaint on the same day. The following are my invited comments on Waglay JP's response to my complaint.

2. To discredit my complaint, Waglay JP begins by falsely distilling it, and then ridiculing his caricature of it.

3. He makes allegations that are objectively demonstrably false in several instances and highly dubious in others.

4. In and among his variously clearly untrue and doubtful allegations, he weaves soothing bromides about how things are ordinarily done in his Labour Appeal Court ('LAC') – in doing so, obfuscating the incontrovertible, obvious, gross procedural irregularity in his disposal of my petition for leave to appeal the dismissal of my labour action[1] that tipped me to investigate it by having my LAC case file examined.

5. Throughout his response, in different ways, Waglay JP feigns unfamiliarity with the smoking gun in the case: the real evidence of the 'memorandum'[2] in my LAC file, which clearly perverted his disposal of my petition, having regard to the surrounding countryside of peculiar facts canvassed in my complaint.

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[1] As mentioned in paragraphs 10 and 11 of my complaint, I established years after the trial of my action in the Labour Court that it had been correctly dismissed – in the practical result, if not on the law and on the evidence before the trial judge. His most basic reversible legal and factual errors are identified in my petition: annexure 'C' to the complaint.

[2] Complaint, annexure 'A'.

6. Criticised in summary above, Waglay JP's disingenuous and deceptive response to misdirect the Judicial Conduct Committee ('Committee') in its determination of my extraordinarily serious[3] complaint against him will be finely analysed and laid bare below. In a word, his response is shockingly dishonest.

Ad paragraph 2 of the response.

7. Waglay JP tees off by claiming my complaint comprises 'four' legs, which he enumerates in four subparagraphs – only, wrongly and misleadingly on every score, as is plain from the black-and-white of my complaint.

Ad paragraph 2, subparagraphs i–iv.

Ad i.

8. It's absolutely false to claim, as Waglay JP does, that I allege in my complaint a four-part 'conspiracy'[4] between Mlambo JP, himself, and Davis and Sutherland JJA.

9. Apropos of the latter two appeal judges, my complaint records that there's no record in the appeal court file that they considered and decided my petition.[5] For this and other reasons discussed below, I'm sure they've no knowledge of the case, much less 'conspired against [me]' over it.

10. Apropos of Mlambo JP: I might begin by quoting Vahed J of the KwaZulu-Natal division of the High Court in his just delivered[6] reasons for dismissing Legal Aid South Africa's abortive application to interdict[7] my use of

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[3] Albeit indeed extraordinarily serious, involving, as it does, perversion of the judicial process through improper interference of a judge, my complaint is not extraordinary, in that it's neither the first of its kind made to the Judicial Service Commission, nor first of its kind made against a Judge President. The Judicial Conduct Committee is currently seized with another such complaint, also involving a Judge President, John Hlophe JP, head of the Cape High Court, but with the distinction that he's the active rather than the passive accused in the enquiry.
[4] He says 'conspired' in this subparagraph, 'conspiracy' in his subparagraph iv.
[5] Complaint, paragraph 21. It's unimaginable in the constitutional era that a judge can take a judicial decision with colossal repercussions – in casu involving the integrity of a judge president and many millions of rands – and that he should make no public record of it.
[6] On 25 June 2018.
[7] By seeking to have me banned as a vexatious litigant for repeatedly applying to court to compel compliance with duly made requests for access to LASA's records. At court, just before argument, LASA conceded my first five applications, which I'd set down together. It then tried derailing my sixth application to enforce full and proper compliance with its total surrender treaty, and my

the Promotion of Access to Information Act 2 of 2000 ('PAIA') in my continuing investigation of high-level corruption in the organisation ('LASA'): I'm a 'trained lawyer and an advocate'.[8] Words are my tools of trade,[9] and I use them with meticulous care – particularly when engaging with power, for as I'm keenly aware, one deficiency on the frontline, one misstep on the high-wire, and it's all over.

11. In neither my complaint against Waglay JP nor in any of my eight complaints against Mlambo JP do I formally charge the latter with authoring the memorandum that perverted Waglay JP's decision of my petition, and none of these several complaints currently pending before the Committee require it to make a finding that he did.

12. As I've made clear, however, I'm quite sure Mlambo JP authored the memorandum and passed it to his long-time erstwhile colleague in the Labour- and Labour Appeal Courts,[10] having regard to the stack of evidence to which I refer in paragraphs 36, 39 and 40 of my complaint, and I'm all the more certain now from the most recent potently cogent addition to the pile, namely his opening ad hominem attack on me and on my 'language' in his response to my eight complaints against him[11] – almost identical to the opening ad hominem

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seventh application to compel compliance with a final PAIA request it had agreed to respond to, by applying to have me banned as a vexatious litigant. At the hearing, Vahed J gave the application short shrift, and didn't even call on me to argue against it.

[8] Reasons for judgment delivered on 25 June 2018 in Pietermaritzburg High Court case 12124/16 heard and dismissed on 27 October 2018, paragraph 6. I'm also an experienced magistrate of the district, civil, and regional benches, my longest unbroken service having been as full-time civil trial magistrate for several years, with a sterling record on appeal. The quality of my civil judgments was raised appreciatively by judges in chambers when I went to meet them on joining the Bar.

[9] My legal writing has repeatedly been commended from the bench, including by the Chief Justice. During argument of an urgent application I drew pro bono for Professor Sam Mhlongo for an amicus curiae hearing in the seminal nevirapine case, Chaskalson CJ pertinently commended my papers, so Khoza SC informed me afterwards (I was tied up in the Eastern Cape as a regional magistrate at the time, so he argued the case for me). I'm the author of several well reviewed books in recondite technical, philosophical and ideological subjects, online with reviews by inter alia high-ranking scientists and leading investigative journalists at www.openbooks.tig.org.za.

[10] Complaint, paragraph 3.

[11] I canvass it in my comments on Mlambo JP's response, and in an annotation to the copy of my complaint I provided the JSC on 14 June 2018, at the foot of page 12, flagged under paragraph 36 on that page.

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attack on me and on my 'language' made in the memorandum. In both instances the method used to discredit me, and my case with it, is exactly the same.

13. If I'm right about this and it was indeed LASA chairperson Mlambo JP who slipped Waglay JP the memorandum that perverted the decision of my petition,[12] as the evidence suggests to me on the compelling probabilities,[13] this hardly evinces a conspiracy in the popular contemporary negative sense, which Waglay JP plainly intends, of unfounded, deluded and ridiculous, rather than the neutral legal sense of two or more minds covertly applied to a nefarious purpose.

14. Nor do I allege, as Waglay JP falsely claims, that he and the two other appeal judges he names 'refused my petition after taking into account superfluous documents particularly an unsigned and unfiled affidavit.' Waglay JP's statement here is materially misleading to the Committee on four counts:

15. *First*, as just said above, my complaint neither alleges nor implies any conspiracy between the four judges whom Waglay JP names, himself included.

16. *Second*, Waglay JP misleadingly exaggerates the documentation at the core of my complaint by speaking of 'superfluous documents', whereas he's well aware, not least because it's annexed to my complaint,[14] that it's a single document, the memorandum, that threw the case, and nothing else.

17. *Third*, by calling it 'superfluous', Waglay JP falsely implies that the memorandum had no bearing on the outcome of my petition. And the necessary corollary of this false implication is that due process was followed in treating my petition like any other; only, on his own version discussed below, it wasn't.

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[12] Besides the consistency of Mlambo JP's attacks on me, referred to in paragraphs 36, 39 and 40 of my the complaint, there's also the fact, mentioned in paragraph 6 of my complaint, that it must have been a 'well-connected, top-level LASA officer, especially motivated to torpedo my petition' who got the memorandum to Waglay JP under the counter, bypassing the registrar – someone Waglay JP 'knew and trusted', as noted in paragraph 34 of the complaint.

[13] It's also telling that in his response to my complaints Mlambo JP doesn't say he's mortified to learn that someone at LASA acted to corrupt the judicial process by getting at the Judge President with the memorandum dishonestly urging the dismissal of my petition; and that he's going to investigate and find out who in his organisation did such a wicked thing.

[14] Annexure 'A' to the complaint.

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18. *Fourth*, Waglay JP falsely and misleadingly mischaracterises the document on two scores, by referring to it as 'an unsigned ... affidavit'. As is apparent on its face, the memorandum bears no resemblance to an 'unsigned ... affidavit' in any respect: it's anonymous; no author's named in it; and there's no provision for signature and attestation by a commissioner of oaths. Quite the contrary, the document is unambiguously styled 'MEMORANDUM' between tramlines under the appeal case header stating the parties and the appeal case number.

19. Waglay JP knows full well that I'm not complaining that he took into account 'an unsigned ... affidavit' in rejecting my petition. By misdescribing and mischaracterising the memorandum in these weasel words, his intention appears to be to distract from the gravity of his judicial misconduct by suggesting that at worst he erroneously entertained no more than a technically defective legal process.

20. In the same way, Waglay JP also dissembles unfamiliarity with the memorandum, as if he's not seen it before. Oddly, he doesn't exactly say so; he doesn't say that the memorandum is complete news to him. He doesn't say he's horrified to learn about it from my complaint, and that as head of the LAC he'll be conducting a thorough investigation to find out how it came to be in the file. Instead, caught dead to rights, he pretends it's not there:

21. *Fifth*, Waglay JP falsely alleges that the memorandum is 'unfiled'.[15] Quite the contrary, as Rawlins found and the registrar's clerk confirmed,[16] it was unquestionably filed – in the real sense that it's physically in the court file. And unless this criminal evidence has since been removed and destroyed, it's still there.[17]

22. By calling for the file, the Committee can see this for itself – like someone else anxiously did, after I'd incidentally mentioned the memorandum in my

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[15] Later in his response, Waglay JP repeats the falsehood in a variant discussed in paragraphs 65–6 below.
[16] Complaint, paragraphs 20–3, and annexure 'B', bearing the registrar's stamp.
[17] It was still in the file in August 2016, more than a year after Rawlins discovered it in April 2015: see paragraph 24 of the complaint, and Rawlins's confirmatory affidavit.

PAIA litigation against LASA in the Magistrate's Court.[18] Re-examining the file at my request in August 2016, Rawlins found that someone had retrieved the file from the registry subsequent to his original examination of it in April 2015, had searched the file for the memorandum and found it, and, presumably after examining it, had returned it to the file, only now at the top of the papers, out of the original order[19] in which Rawlins had found it.[20]

23. Certainly, though, the memorandum wasn't properly filed in the ordinary course, as is plain from the fact that it doesn't bear the registrar's stamp.[21] And the obvious reason it didn't cross the registrar's counter for filing in the usual manner, getting stamped on the way, is that it was surreptitiously delivered to Waglay JP with the criminal purpose of defeating the ends of justice by improperly influencing him to throw my case.[22]

Ad ii.

24. Waglay JP seriously misdirects the Committee in claiming I complained to the JSC that I was denied 'a proper opportunity to oppose [LASA's] condonation [application]', which LASA brought after I notified my objection[23] to its nonchalant late filing of its affidavit opposing my petition, in non-compliance with the LAC rules,[24] which I'd myself slaved to comply with in petitioning in time.

25. Waglay JP's violation of due process in this regard is not my complaint to the JSC at all, which is that he dismissed my petition on account of the improper

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[18] Complaint, paragraphs 24–5.
[19] It was the eighth document in the LAC file when Rawlins called for and inspected it in April 2015. See certified inventory, annexure 'B' to the complaint.
[20] Complaint, paragraphs 20–23. Waglay JP hasn't in his response suggested that Rawlins planted the memorandum; and it's to be hoped that no one at some future time makes the serious mistake of suggesting he's an unprincipled crook. To the contrary, a devout practising Catholic, he's our country's first conscientious objector, who paid a heavy price for his personal integrity by going into decades of bitter political exile rather than complying with an apartheid military call-up in the early 60s. See his biography at goo.gl/QjAjiF.
[21] Complaint, annexure 'A'.
[22] The charge facing Hlophe JP on different facts.
[23] Complaint, annexure 'E'.
[24] Complaint, paragraphs 13–14.

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influence exercised on him by the memorandum. His misrepresentation of my actual complaint is clearly intended to distract from it.

26. The reason I didn't complain to the JSC that I was denied 'a proper opportunity to oppose [LASA's] condonation [application]' is that the JSC has no jurisdiction to deal with the objective fact that in his alacrity to throw out my petition Waglay JP denied me due process (a) by preventing me from opposing LASA's application for condonation, and (b) by disposing of the case on a consideration of my petition and LASA's opposing affidavit in the appeal case file (if he considered them at all) before the latter affidavit was properly before court upon the grant of an order condoning its delivery out of time.

27. Waglay JP's gross procedural irregularity here would have been a matter for the Supreme Court of Appeal to treat on review.[25]

28. As stated in my complaint,[26] I'd objected[27] to the fact that LASA hadn't bothered complying with the time limit for filing its affidavit opposing my punctually filed petition, and I'd required it to apply for condonation, which it did.[28]

29. Waglay JP says I complained that I was not given 'a proper opportunity to oppose the condonation [application]'. This is itself misleading, because never mind 'a proper opportunity', he denied me any opportunity at all – in a glaring procedural irregularity that was the first indication to me of something seriously remiss in the disposal of my petition. But this is not my complaint to the JSC, because, as said, it's none of its business.

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[25] The reason I didn't take the matter on review by the Supreme Court of Appeal is that I'd begun wondering about the correctness of my original cause of action in my labour claim, and was further investigating it with record requests made under PAIA. After prolonged illegal and unconstitutional resistance, and litigation brought to compel compliance with my requests, I finally forced out of LASA the complete, uncensored recommendation report by the selection panel, which confirmed I'd been barking up the wrong tree in my pleadings and at trial in the Labour Court. I discuss this in paragraphs 10–12 of my complaint. The course I've chosen is a rescission application to the Labour Court to be based on the fraud, easily shown, i.e. that the evidence of LASA's single witness at trial was perjured in multiple basic respects, and that documents sourced after trial prove it. I'll be seeking leave to proceed on fresh pleadings, basing my claim on simple recruitment corruption in the form of cronyism.

[26] Complaint, paragraphs 13–15.

[27] Complaint, annexure 'E'.

[28] Complaint, annexure 'F'.

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30. To sum up, Waglay JP's violation of my fundamental right to 'Access to courts' guaranteed by section 34 of the Bill of Rights in Chapter 2 of the Constitution,[29] of which due process in litigation is implicitly integral[30] isn't part of my complaint to the JSC, because the JSC has no jurisdiction to address it. But it's certainly part of the *objective incontrovertible factual background of striking gross irregularity* in the disposal of my petition – ultimately explained by the memorandum that perverted it. In plain speech, the reason Waglay JP summarily tossed my petition before all the papers were in and before the matter was ripe for consideration is that the memorandum persuaded him that like me my petition was rubbish – the exact burden of the memorandum, which he understood perfectly; and trusting its author, he acted on it accordingly, by sending me away non-suited.

Ad iii.

31. This is precisely not my contention; and it's atrocious that Waglay JP should misdirect the Committee by making this utterly false claim. In truth and in fact, my complaint clearly and unambiguously states precisely the opposite.[31]

Ad iv.

32. Again, none of this forms any part of my complaint against Waglay JP, and he disgracefully misdirects the Committee in alleging otherwise, to distract it from its narrow enquiry into my actual complaint, which is that he abdicated his judicial independence in succumbing to improper influence in dismissing my petition:

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[29] 'Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.'

[30] Like equality of arms in litigation, entailing equal access to all material evidence – another implicit incident of this fundamental right, recently affirmed by the Constitutional Court, which LASA denied me by furtively concealing from me, with a Koki marker blacking it out, the **KEY** all-explanatory evidence of Mlambo JP's long former judicial relationship with my rival for the top post, recorded on the selection panel's recommendation report, and finally released uncensored, but only after I'd sued for it and was about to argue for it, years after the trial and dismissal of my wrongly-founded labour claim.

[31] Complaint, paragraphs 34 and 35.

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33. *First*, Ngcamu wasn't 'eventually appointed ... to the post [to] which the complainant [Brink] should have been appointed'. To the contrary, the still budgeted and funded post remains vacant.[32] In my complaint I stated that Ngcamu was 'interviewed and shortlisted'[33] for the post, not appointed. My petition states LASA's risibly false version[34] that after I'd been selected and recommended for it, the post was 'frozen' for lack of budget to fill it.[35] In his response to my complaint, Waglay JP is shockingly unreliable with the basic facts.

34. But his demonstrated unfamiliarity with these most basic facts of the case shows that he didn't bother reading my petition before tossing it on the strength of what the memorandum unpleasantly had to say about it and me, and not even when I put it before him a second time as an annexure to my complaint.

35. *Second*, by enclosing the word I used in my complaint – 'colleague' – in sneer quotes, Waglay JP falsely insinuates that my assertion of Mlambo JP's and my rival applicant Ngcamu's long judicial relationship between 'for "±6 years" before he applied for the post'[36] is questionable. By trying to dilute it in this way, he reveals his queasiness about my eventual discovery of this potent fact, unearthed by determined PAIA litigation years after trial and judgment in my failed labour claim and his dismissal of my petition.

36. In truth and in fact, and contrary to Waglay JP's false implication, there's no doubt about the said judicial relationship at all, because, exactly as I stated in my complaint, it's indisputable that 'Mzochitwayo Ngcamu AJ (as he used to be)'

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[32] Illegally. As the Constitutional Court noted in paragraphs 8 and 9 of its judgment in Zungu v Premier of the Province of KwaZulu-Natal and Others [2018] ZACC 1 (22 January 2018), allowing a budgeted, funded post to be 'left vacant' constitutes a 'breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position ... vacant.' With Mlambo JP's blessing, LASA has unlawfully breached the PFMA annually since 2010 – and furtively, since the so-called freezing of LASA's three remaining top legal professional, critical Senior Litigator posts has never featured in any of LASA's annual performance reports.
[33] Complaint, paragraph 11.
[34] For all the reasons laid out in my petition, annexure 'C' to my complaint.
[35] Complaint, annexure 'C', paragraphs 11–14.
[36] Complaint, paragraph 12.

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had been 'LASA Board chairperson Mlambo JP's judicial colleague for "±6 years" in the Labour Court'[37] to which Mlambo JP had repeatedly appointed him.

37. *Third,* Mlambo JP's conduct – be it in participating in 'a conspiracy' (Waglay JP's notion, not mine) or in any other regard – is not the subject of my complaint against Waglay JP, which is that he allowed himself to be improperly influenced by the memorandum in the disposal of my petition for leave to appeal. And it's deplorably misleading for him to misrepresent to the Committee my complaint against him by falsely alleging otherwise.

Ad 3.

38. Waglay JP is very correct in concluding about his preceding paragraph 2, subparagraphs i–iv, that 'All the above is patent nonsense.' Only, it's his nonsense not mine. He sets up a straw man and he shoots it down.

Ad 4.

39. Here Waglay JP offers the Committee the anodyne assurance that in the consideration and dismissal of my petition, everything went off just as it should have – perhaps with one exceptional qualification, which he doesn't mention here (after alluding to it in his preceding paragraph 2.ii), namely that my petition struck him and Davis and Sutherland JJA as such obvious junk that they didn't need to wait a minute longer before turfing it out; and accordingly there was no need to wait for me to answer LASA's condonation application[38] and for LASA to reply, and to then carefully assess and decide LASA's case for condonation in his customary, commendably thorough manner.[39]

40. What Waglay JP doesn't own up to the Committee is that, besides the memorandum and the condonation application, he had two primary affidavits

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[37] This approximate '±6 years' time period I quoted is directly sourced from the selection panel's recommendation report, recording (a) Ngcamu's background and qualifications, inter alia as a former long-time acting judge of the Labour Court (repeatedly appointed by Mlambo JP, which court he headed at the time) and (b) the reason the panel rejected and eliminated him from the running for the post: he lacked right of appearance, so had never litigated a case on his feet in the High Court, never mind in the country's top appeal courts.

[38] Complaint, annexure 'D' (material excerpt).

[39] Complaint, paragraph 19.2, citing Waglay JP's fine, careful judgment in the Eberspächer case.

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before him in the LAC case file: mine supporting my petition and LASA's opposing it. But he's silent about LASA's opposing affidavit. He doesn't say he disregarded it and didn't read and ponder what it contended about my case; and that he didn't do so for the reason that it wasn't properly before him, having been delivered out of time, objected to on account of this, and therefore the subject of a pending condonation application. He just doesn't mention it.

41. Fact is, LASA's opposing affidavit was in the petition file – physically, but not lawfully, to the extent that it was improperly before him and therefore not ready to read and consider, because it had been delivered out of time, and this procedural irregularity hadn't yet been excused by way of an order for condonation, made upon an evaluation of (a) LASA's excuse(s) advanced in its condonation application in the court file; (b) my answer to it (I never did get to answer it, because Waglay JP rushed to throw my petition out before I'd completed and filed my answering affidavit opposing it, still in time to do so); and (c) LASA's reply (unnecessary, because by prematurely and irregularly deciding the main case, and thereby closing the door on me before I could get a word in to refute the blatant lies[40] LASA told him about why it came to court late

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[40] I identified and refuted these lies in my answering affidavit in LASA's failed application to the Pietermaritzburg High Court (case 12124/16) to blow me out of court as a vexatious litigant (for successfully suing repeatedly for duly requested but persistently illegally and unconstitutionally refused records, and then suing to enforce (a) full and proper compliance with LASA's total surrender treaty signed at court just before argument, and (b) compliance with a further PAIA request specifically envisaged in the settlement agreement):
210. On 8 December 2014, immediately after dispatching my petition for leave to appeal to the JP of the LAC at his chambers in Johannesburg, via the Post Office's express, next-day, door-delivery courier service, two days before it was due, I emailed Mtati, as a courtesy, to inform him that I'd just done so, and vouched this by attaching (a) a scan of the courier's waybill; (b) a scan of the final signature page of my petition bearing my and the commissioner of oath's signatures; and (c) the unsigned final PDF of the petition, because I'd previously found that LASA's email programme traps attachments over 3MB, and the scan of my signed petition exceeded this and was too large to go through. As I explained in my email, my considerate purpose in doing this was to give Mtati a head-start on answering my petition, as the rules allowed him only ten days to do so. (I'd raced to comply with my own ten days allowed to draw, sign, file and serve; and I expected LASA to comply likewise.) A copy of my email to Mtati is annexed marked 'Q'.
211. As permitted by the rules of the LC, I then formally served my signed petition on LASA as required, by faxing it within an hour or so to its Durban correspondent, appointed by notice to me for my service of all court processes in my appeal; and after doing that, drew, signed, filed and served my service affidavit.
212. That is, I duly served a copy of my petition on LASA at its Durban office appointed two days before it was due under the LAC rules.
213. It's impossible that LASA's corresponding attorney in Durban, Ngcamu, my erstwhile rival for the Senior Litigator post and a former judge of the LC for six-and-a-half years, so I discovered

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to oppose my petition, Waglay JP rendered LASA's condonation application moot).

42. Waglay JP doesn't say he didn't read LASA's opposing affidavit. He doesn't say he didn't need to read it – either because it wasn't properly before him, or

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in April 2016, (a) didn't advise Mtati that I'd duly served my petition on him, and (b) just dropped the fax of my petition into an office file like an inexperienced articled clerk. And indeed this wasn't ever alleged.
214. LASA filed an opposing affidavit on or after 22 January 2015, well out of time. When Sekgota phoned to ask whether I'd received it, I confirmed I had, but mentioned it was late, to which he responded, 'We'll argue that 15 December [sic] to 15 January are dies non.'
215. That is, LASA's excuse for filing late was its belief that it wasn't.
216. I told Sekgota he was wrong, because there're no dies non in applications and petitions, only in High Court actions.
217. Mtati and his head office lawyers evidently accepted my lesson for them in civil procedure, and recognised their mistake, because this true explanation given to me for why LASA filed late never came up again. But instead of honestly stating it and asking the court's pardon for it, Mtati fabricated two new false excuses for opposing me out of time.
218. In his affidavit making LASA's case for condonation, to which he swore under penalty of being jailed for perjury, and also being sacked and struck off, Mtati claimed he'd not known I'd petitioned until after his return in January from LASA's annual holiday, when out of curiosity he had a look at my case document index online and saw my signed petition posted there. (My heads of argument, the judgment dismissing my claim, national newspaper reporting about it, my petition, and further documents, including Mtati's perjured condonation affidavit, are openly accessible at: goo.gl/WAuLK6.)
219. Naturally Mtati deceptively omitted to mention to the JP my email to him, which flatly contradicted his new excuse and exposed it as a blatant lie. And there's no possible pretending he didn't read it, because in telling this new lie of his under oath Mtati blundered by annexing to his condonation affidavit my scan of the waybill I'd emailed to him – but not the signature page of my petition, nor the final unsigned PDF I'd also emailed him. He made very sure not to share those with the JP, contradicting his new lying explanation for opposing me out of time.
220. Mtati's second false excuse, intended to garnish his first, refuted it. Immediately on receiving my petition at the Johannesburg LAC, delivered the day after I couriered it and faxed to LASA's appointed correspondent, in time and with a day to spare, registry clerk James Kamanga there phoned to say he needed an appeal case number from the LAC registry in Durban. Which he very obligingly immediately himself obtained, and phoned back shortly afterwards the same morning to convey it and to tell me he'd already given it to LASA so there was no need for me to.
221. Which means LASA had a copy of my signed and attested petition by fax the day before I filed it at the LAC, and got a new case number the next day, the day it arrived at the LAC, one day ahead of my ten days allowed to file and serve. All in good time and all in good order.
222. In a logically incomprehensible manner, Mtati tried falsely blaming the day between service of my petition on his correspondent and the allocation of a new appeal case number as reason to be confused about whether I'd petitioned or not, as a further basis to justify his inaction on receiving my petition and just pushing off for LASA's annual summer holiday without attending to oppose it. Except that his correspondent had received both my signed petition by fax, and the new Durban LAC case number by phone from the LAC in Johannesburg, so there could be no honest confusion about whether I'd petitioned or not.
223. The true reason, revealed to me by Sekgota, was that they all thought LASA's national Christmas holiday – dies non in high Court actions – didn't count in the reckoning of LASA's ten days to oppose my petition.

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because my petition was such obvious garbage that he didn't even need to hear what LASA had to say about it.[41]

43. Nor of course does he say that he didn't even read my petition, because it was clear to him from the memorandum that it was complete rubbish. In other words, he doesn't say the memorandum spared him the trouble of reading any of the papers.

44. Shown in my petition,[42] the trial judge made the most basic legal blunders vitiating the fairness of the trial even before getting his facts wrong.[43] The Committee will agree that no appeal judge giving my petition an honest, attentive reading could have concluded that it disclosed no fairly arguable case for appeal, because it identifies a multitude of fundamental reversible errors. Put another way, the contents of my petition absolutely eliminate the possibility that Waglay JP, Davis and Sutherland JJA 'unanimously ... concluded that the petition was without merit'.

45. Waglay JP's claim that 'We did not consider the condonation application of the respondent [LASA] as we concluded that the petition was without merit' implies that, besides LASA's sworn excuses for filing its opposing affidavit out of time, which he says weren't considered, he assessed the other evidence on affidavit before him before arriving at his conclusion that my petition was worthless. As said, he doesn't say that he also 'did not consider' LASA's opposing affidavit; he's silent about it.

46. This evidence on affidavit before Waglay JP comprised my supporting affidavit, and LASA's opposing affidavit not properly before him, the subject of a pending condonation application, and therefore – if the petition papers were read

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[41] Cf Vahed J's dismissal of the just mentioned application without calling on me to argue, the difference being that it was clear from the debate that he'd studied my 'expansive heads of argument' (from which he later 'borrow[ed] freely') before the hearing, in which I demonstrated that LASA's case was still-born, so there was really nothing for me to add from the bar. They're online at goo.gl/GUKfNj.

[42] Annexure 'C' to the complaint.

[43] Concerning LASA's transparently false financial insufficiency justification for aborting my appointment (comprehensively dismantled in my petition), which lying justification was repeated in the memorandum, see paragraphs 31–4 of the complaint and the annexures to which they refer.

A.M.N

at all, as Waglay JP claims – were considered before I'd had the opportunity under the audi rule to answer and refute the two flagrant lies told him on oath to justify LASA's filing of the opposing affidavit out of time.

47. Which is to say, on his own showing, Waglay JP denied me my fundamental right to due process; and to my considerable prejudice, because had he heard me in the condonation application, and not hurriedly slammed the door on me before I could answer it, he'd have appreciated that (a) LASA's two excuses given under oath for filing its opposing affidavit late were both perjured; (b) the same deponent to LASA's affidavit in the main case, opposing my petition, lies freely under oath whenever necessary to pervert a legal process, and (c) his several claims in his opposing affidavit were untrustworthy, more especially where they contradicted LASA's own shambolic case at trial.

48. Waglay JP's manifestly untruthful claim that the 'three individual files' compiled by the registrar for each of 'the three judges who are allocated the petitions ... only contain relevant documents properly filed' is flatly contradicted by the fact that the petition file in the Durban Labour Appeal Court registry contains the memorandum, as the registrar's office certified.[44]

49. And being unstamped by the registrar, the memorandum certainly wasn't 'properly filed'.

50. It's not my complaint that additional copies of the memorandum were made and passed to Davis and Sutherland JA in the files that Waglay JP claims the registrar prepared for them. They would have been horrified by it. So I'm sure they weren't shown it.

51. Furthermore, it's inconceivable to me that apprised by the registrar that LASA had filed a condonation application, in which my answering affidavit opposing it was still due, Davis and Sutherland JA would have countenanced and participated in Waglay JP's (a) violation of my constitutional right to due process by prematurely considering my petition, along with LASA's affidavit opposing it, before the latter had been properly received into the evidence, and

[44] Complaint, paragraph 23 and annexure 'B'.

(b) dismissal of my petition in those grossly irregular circumstances. In other words, I'm sure Davis and Sutherland JA weren't given a file with LASA's yet to be answered condonation application in it.

52. Waglay JP tells the Committee how petitions are ordinarily dealt with in the Labour Appeal Court. I don't doubt it, but the real evidence in the master file archived in the Durban LAC registry – found by Rawlins, and certified present in the file by the registrar's clerk – contradicts and exposes as false Waglay JP's feeble, untrue claim that 'The files only contain relevant documents properly filed.' To the contrary, the court file contains an irrelevant document not properly filed: the memorandum. And it's there for all to see right now.

53. If indeed the registrar prepared files for Davis and Sutherland JJA containing copies of all 'relevant documents properly filed', I don't doubt this would have been true of their files; because had they contained the irrelevant, improperly filed memorandum, they'd surely have cried foul. But it's wholly improbable that Davis and Sutherland JJA had all the 'relevant documents properly filed', because had that been so, they'd have appreciated that the case wasn't yet ripe for decision.

54. The flat fact that the memorandum was found in, and remains in, the master petition file archived in the Durban LAC registry contradicts and refutes Waglay JP's false claim here.

55. His false denial that the main LAC file contains the memorandum dishonestly suggests that the concrete foundation of my complaint to the JSC about this is just wind.

56. The Committee can safely exclude the possibility that the memorandum was placed in the primary LAC file containing the original documents[45] *after* my petition had been dismissed, and without Waglay JP's knowledge, because the

[45] Namely, the file kept and archived by the LAC registry in Durban. In his paragraph 4, Waglay JP describes the usual process, in which his registrar makes three files, one for each of the three judges of appeal allocated to decide the petitions. The first file opened contains the original court processes, and the other two contain copies.

author of the memorandum wouldn't have had any reason to torpedo a petition already sunk.

Ad 5.

57. My petition was manifestly not 'properly considered and refused', and this is incontestable having regard to the objective facts. It was rejected prematurely before all the papers were in, in a gross breach of the LAC's own rules, to say nothing of the most basic principle of natural justice to which I was entitled the benefit: the audi alteram partem rule. In his handling of my petition, and LASA's interlocutory application for condonation, Waglay JP denied me due process in the LAC as regulated by the rules of the court he heads.[46]

58. The complete explanation of why he did so is contained in my LAC file: the real evidence (the memorandum) that he allowed himself to be improperly influenced against me and my petition, and thereby induced to summarily and prematurely dismiss my plea for leave to appeal Cele J's dismissal of my claim.

59. Waglay JP says I 'was informed about' the fact that my petition was refused. Sure I was – right in the middle of drawing my answering affidavit to oppose LASA's condonation application, on the basis that its two excuses tendered on oath for opposing me late were outright lies.[47] So the fact that I 'was informed' that my petition had been rejected, stated by Waglay JP here, is deceptive distraction to create a patina of propriety over a grossly irregular proceeding.

60. Since Waglay JP denied me the opportunity to refute LASA's lies to him, and on this basis defeat LASA's fraudulent condonation application and thereby exclude from his consideration the profusion of other lies told in LASA's main affidavit opposing my petition, including brand new lies not told at trial, 'the complainant's petition was' clearly not 'properly considered', contrary to his false allegation to the Committee about this.

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[46] As noted above, Waglay JP's violation of my fundamental right to due process is a matter outside the JSC's jurisdiction.

[47] Complaint, paragraphs 16–17; and footnote 40 above.

Ad 6.

61. Every assertion Waglay JP makes in this paragraph is untruthful, false and misleading.

62. *First*, he persists in falsely exaggerating that I complain of 'documents' found in the court file, as if he doesn't know exactly what I'm talking about. In truth and in fact, as my complaint makes perfectly clear, it concerns a single memorandum in the court file and nothing else.

63. *Second*, he falsely alleges that I claim to have 'found' the memorandum 'in the Labour Court file.' This is absolutely untrue. In my complaint I claim precisely to have found it in 'the petition file'[48] (under Durban Labour Appeal Court case number DA21/14) and not in the Durban Labour Court file (LCD529/11).

64. *Third*, to construct the false alibi that he couldn't have violated Article 4 of the Code of Judicial Conduct as charged, by failing to maintain 'Judicial Independence', to wit by allowing himself to have been influenced against me and my petition by the memorandum and to have summarily dismissed my petition as it energetically urged, Waglay JP untruthfully distances himself from the scene of the crime.

65. He says my discovery of the memorandum 'in the Labour Court file ... has nothing to do with the Labour Appeal Court (LAC).' Quite the contrary, since the memorandum was indeed found in the LAC file, in truth and in fact it has everything 'to do with the Labour Appeal Court (LAC)', and more particularly 'to do with' him as head of that court, who dealt with my petition personally.

66. He falsely claims that 'The LAC has its own files, retained by its registrar Mr Phophi who is based in Johannesburg.' Indeed, 'The LAC has its own files', different from the Labour Court's files, but they're not 'retained by its registrar Mr Phophi who is based in Johannesburg', where the trial court sat in a different city. The registrar in Durban keeps the files of LAC cases in regard to Durban

[48] Complaint, paragraphs 20 and 21.2.

cases, not registrar Phophi in Johannesburg. My LAC case file is in Durban, and there's no such file in Johannesburg – so I directly ascertained from enquiries I made personally at the Johannesburg Labour Appeal Court registry, which I visited in July 2016.[49]

67. Understanding from the LAC rules that I had to deliver my petition directly to Waglay JP within 10 days, and believing him to be at his chambers in Johannesburg at the time, I'd couriered it directly to him there. On its arrival, my petition was allocated case number DA21/14 (D for Durban, A for appeals).[50]

68. After the dismissal of my petition – in Johannesburg, and not in Durban, as falsely stated on the dismissal order[51] – the case file was transferred to the Durban LAC registry for archiving there. It was not 'retained by [LAC] registrar Mr Phophi who is based in Johannesburg.'

69. In responding to my complaint, Waglay JP can't get even his most basic facts straight.

Ad 7.

70. Of course, generally speaking, 'Mlambo JP has no role to play in the decisions of the LAC',[52] as Waglay JP's predecessor as head of the LAC. Of course

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[49] In my answering affidavit in LASA's vexatious application, I affirmed:
76. The Memorandum turned up during a search of the petition file in April 2015. I wanted to see whether there was any record of Davis and Sutherland JJA's decision of my petition in Durban, as alleged on the order oddly issued by the registrar of the LAC in Johannesburg. There isn't. And there's no possible duplicate file containing any such record in the latter's office, because in July 2015 I drove up to the LAC in Johannesburg especially to check, and personally established this as a fact from two registry clerks up there.

[50] The Durban LAC case number appears on the memorandum, annexure 'A' to my complaint. Obtained from the LAC registry in Durban, the Durban LAC case number was annotated on the face of my petition by a clerk in the Johannesburg LAC registry shortly after receiving my petition by courier. So he told me on the telephone.

[51] Complaint, annexure 'G'. I established from a thorough investigation that none of the appeal judges named in the order were in Durban on the date the order claimed they were.

[52] The Committee might find it relevant that as a ***non-executive*** director and chairperson of LASA's Board of Directors Mlambo JP also 'has no role to play in the decisions of' CEO Vedalankar and NOE Nair, LASA's management executives jointly delegated by its Approval Framework to confirm or reject selection panel recommendations of Senior Litigator candidates; but in cavalier breach of LASA's internal regulations and indifferent to such niceties as the rule of law in public administration, he's illegally arrogated to himself the power to approve and reject such candidates as he pleases, in committee (for appearances) with various incompetent, unauthorised national management executives. In a word, Mlambo JP just does whatever he likes.

'it does not need to be said'. Strangely enough, though, Waglay JP finds it necessary to 'say it anyway.' He's evidently concerned to exculpate his long-time former superior in the Labour Appeal Court, under whom he'd been deputy head of court before being appointed Judge President himself when Mlambo JP was appointed to head the Gauteng Division of the High Court.

71. My instant complaint is against Waglay JP, arising from his judicial misconduct in the disposal of my petition, not against Mlambo JP. As said above, I've not specifically charged Mlambo JP with perverting the decision of my petition; and for the purpose of determining my complaint against Waglay JP (and my complaints against Mlambo JP), I don't require the Committee to make a finding as to who authored and gave the memorandum to Waglay JP, strenuously urging him to reject my petition.

72. It's untrue that I've 'filed a complaint against Mlambo JP in connection with this matter', to the extent that 'this matter' before the Committee is the criminal perversion of my petition for leave to appeal, and more particularly Waglay JP's breach of Article 4 of the Code of Judicial Conduct in abdicating his judicial independence in throwing my petition out on the strength of the memorandum's contentions that I'm an off-beam professional reprobate bringing obviously baseless cases to trial and on petition.

73. It's equally untrue that I 'intend... to [file complaints] against Davis JA and Sutherland JA.' Nowhere in my complaint do I state or suggest such an intention, as Waglay JP falsely alleges. Certainly not at this stage on the information currently known to me, because, as I've said, I don't believe they were party to the unlawful and corrupt disposal of my petition. Waglay JP just makes it up as he goes along. His intention here seems to be to portray me as funny in the head, endlessly complaining about everybody, baselessly.

74. Waglay JP betrays his concern that the Committee should not ask Davis and Sutherland JJA about 'this matter', by claiming to 'doubt that either of them will have anything further to add'. Quite the contrary, I'm confident that both will positively confirm to the Committee that neither had anything to do with the

case, and will refute Waglay JP's false claim in his response that 'we unanimously decided to refuse [my] petition.'

75. Waglay JP's intention in dissembling this 'doubt' is clearly to put the Committee off questioning Davis and Sutherland JJA about my complaint, or more precisely, about Waglay JP's claims about them in his response to it, with a view to verifying them.

76. To assist the Committee arrive at the truth of the matter, in its further investigation, obviously necessary, a draft interrogatory for Davis and Sutherland JJA will follow the submission of these comments.

77. Wherefore I persist with my complaint.

Signed at Eshowe on 9 June 2018.

ANTHONY BRINK

Signed before me at Eshowe on 9 June 2018 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

Name: ANDREW MANDLOKOSI NSELE

Address: S.A.P. 73 MAIN STREET ESHOWE.

Capacity: W/OFFICER

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
2018 -07- 09
ESHOWE
KWAZULU-NATAL

36 Pearson Street
Eshowe, KwaZulu-Natal
29 November 2019

The Honourable Chief Justice Mogoeng Mogoeng,
Chairperson and Information Officer:
Judicial Service Commission
188 14th Road, Noordwyk
Midrand 1685

Dear Justice Mogoeng

1. **The Judicial Conduct Committee's failure to finalise gross misconduct complaints against Mlambo JP and Waglay JP** [1]
2. **Your deputy information officer's unlawful failure to respond to a request for access to certain JSC records, duly made under section 18 of the Promotion of Access to Information Act ('PAIA'), and a plea for belated compliance with it** [2]
3. **A further PAIA request** [3]
4. **Outline of further intended gross misconduct complaints being held up by non-compliance with PAIA** [4]
5. **Retaliation** [5]
6. **The possibility of a conciliatory resolution** [6]

INTRODUCTION

1. I write to you in your capacity as chairperson and information officer of the Judicial Service Commission ('JSC') in a matter of unprecedented gravity, surely

[1] Paragraphs 3–30.
[2] Paragraphs 31–8.
[3] Paragraph 39.
[4] Paragraphs 40–48.
[5] Paragraphs 49–60.
[6] Paragraphs 61–3.

eclipsing the Constitutional Court's complaint against the head of the Western Cape Division of the High Court, Hlophe JP.

2. Coming right after your several recent public statements[7] in defence of the judiciary against the fake bribery and judicial capture allegations put about in social and other media, this will surely be the most appalling letter you've ever read; and well you might wonder at first whether I'm not part of the malicious 'campaign to delegitimise the judiciary',[8] bent on 'harming the reputation of our judges'[9] with yet more malicious corruption[10] claims about them.

THE JUDICIAL CONDUCT COMMITTEE'S FAILURE TO FINALISE GROSS MISCONDUCT COMPLAINTS AGAINST MLAMBO JP AND WAGLAY JP

3. In mid-2017 I lodged eight gross misconduct complaints under section 14(1) of the Judicial Service Commission Act 9 of 1994 ('the JSC Act') with the JSC's Judicial Conduct Committee ('JCC') against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, arising from his unlawful, unconstitutional, dishonest, and in two instances criminal, misconduct, wilfully committed not on the bench but in his capacity as then chairperson of Legal Aid South Africa[11] ('LASA'), manifestly 'incompatible with or unbecoming the holding of judicial office', as section 14(4)(e) of the JSC Act puts it, and with 'the core values of integrity, impartiality and transparency, set out in the Judicial Norms and Standards' to which 'the Judiciary commits itself'.[12]

4. My complaints charged Mlambo JP with suborning perjury; repeatedly conniving at and colluding in the illegal and unconstitutional suppression of public records duly requested under the Promotion of Access to Information Act 2

[7] In the period August to November 2019, quoted herein, referencing publications and their dates, but omitting article titles. I recognise that your speech reported by the media may not be perfectly verbatim.

[8] *Citizen*, 3 October 2019.

[9] *Citizen*, 8 October 2019

[10] The 'corruption' called to your attention in this letter doesn't concern lucre, but rather the general sort, no less serious, defined by the Oxford English Dictionary as '6.II.6 Perversion or destruction of integrity in the discharge of public duties by ... favour; the use or existence of corrupt practices, esp. in a state, public corporation, etc.' And by 'corrupt' I mean precisely '3.B.3 Debased in character; infected with evil; depraved; perverted; evil, wicked' and '4.B.4 Perverted from uprightness and fidelity in the discharge of duty'.

[11] As a putative guarantee of constitutional, legal and ethical probity in the conduct of LASA's operations, section 4(1)(a) of the Legal Aid Act 22 of 1969, in operation at the material time, required that LASA's Board include a judge, impliedly and in practice to chair it. Section 8(1) of the succeeding and current Legal Aid South Africa Act 39 of 2014 now explicitly prescribes: 'The judge appointed in terms of section 6(1)(a) is the chairperson of the Board.'

[12] Media Briefing Announcement, Office of the Chief Justice, September 2019.

of 2000 ('PAIA') to obstruct an investigation of jobs-for-pals recruitment corruption at LASA in which he was centrally involved; and lying and false 'confidential' reporting on multiple scores to the Minister of Justice and Constitutional Development (as the Department was then called), and then to the Portfolio Committee of the National Assembly for the same Department, to put down and pervert enquiries they'd separately and independently instituted into this corruption and its cover-up, involving inter alia the said persistent illegal and unconstitutional withholding of duly requested records[13] to hinder its exposure.

5. Unlike the Constitutional Court's complaint against Hlophe JP, arising from what he's alleged to have said behind closed doors, my complaints against Mlambo JP are all founded on supporting documents, which is to say are 'evidence-based',[14] supported by 'credible evidence',[15] 'concrete proof',[16] 'verifiable documentary ... proof'.[17] All are substantiated by real 'evidence to support [my] confidence-damaging allegations that any judge is corrupt'.[18]

6. In the same period, I filed a gross misconduct complaint against Basheer Waglay JP, head of the Labour- and Labour Appeal Courts, for failing to observe the 'fierce independence'[19] he swore to maintain as a judge in trying his cases, and breaking his judicial oath to 'administer justice to all persons alike without fear, favour or prejudice'.

7. Like my complaints against Mlambo JP, my complaint that Waglay JP acted under improper influence was similarly objectively supported by 'concrete proof',[20] 'verifiable documentary ... proof'[21] in the form of an anonymously written,

[13] Most of the documents were ultimately clawed out of LASA via multiple pre-trial discovery processes, comprising an application to compel after LASA's total refusal to discover any one of the documents requested at the original pre-trial conference, followed by two additional pre-trial conferences held at court under judicial supervision; and then, after trial, via numerous applications to court under section 78 of PAIA – nine to date, the first five, set down together, conceded by LASA at the point of argument in the Magistrate's Court, and the sixth, to compel LASA's full and proper compliance with its settlement agreement, partially conceded by disgorging further records in successive batches under pressure of set-downs of the application. (My claim to the balance of the promised records is pending). Three PAIA applications are pending in the High Court, the first of which was argued on 30 August 2019, with judgment reserved.

[14] *Citizen*, 8 October 2019.

[15] SAnews.gov.za, 14 September 2019.

[16] *Ibid*.

[17] *Ibid*.

[18] *Ibid.*

[19] *Ibid.*

[20] *Ibid*.

[21] *Ibid*.

unsigned, undated, and unstamped 'memorandum' crudely disparaging me to devastate my credibility, and dishonestly misrepresenting the issues in my case at trial and my case on appeal – calculated to poison him against me, prejudice his consideration of my petition for leave to appeal, and pervert its decision, as indeed it did.

8. Fortunately for me, this criminal instrument used to defeat the ends of justice was inadvertently left in the court file, and turned up some months later during my investigation of the peculiar circumstances in which Waglay JP had strangely prematurely and irregularly dismissed my petition in the middle of a condonation application LASA had brought after opposing me out of time, before all the affidavits were in and the matter was ripe for consideration.

9. As requested, the registrar's office made and provided a copy of this hard 'evidence of taking instructions on how to prepare a judgment, evidence of being influenced one way or the other by people other than considering what has been presented before them',[22] and certified an inventory listing the court file's contents, including the 'memorandum'.[23]

10. My purpose in making my complaint against Waglay JP certainly wasn't to 'delegitimise the outcome'[24] of my petition and to discredit his 'judgment against'[25] it given on 18 February 2015,[26] because by the time I made my complaint on 15 June 2017, I'd already learnt that my action in the Labour Court had been *correctly dismissed* a year-and-a-half earlier on 18 September 2014, in that my cause of action had been completely wrong.[27]

[22] News24, 14 August 2019, quoting Judiciary spokesman Nathi Mncube.

[23] The 'memorandum' was still in the file when last checked, only it had been moved to the top of its contents, which means after I mentioned in an affidavit having found it someone went back to look, drew it, and then put it back, out of its original order.

[24] *Citizen*, 3 October 2019.

[25] *Ibid*.

[26] Without reasons, in the brief standard-form template used to dismiss all such petitions.

[27] Deliberately kept ignorant of the true facts by the determined illegal suppression of a pivotal document I'd duly requested, I'd wrongly surmised and pleaded *covert unfair discrimination* as the reason my appointment to LASA's top legal professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg, had been blocked following my unanimous recommendation for the post by a duly constituted selected panel of LASA's top lawyers in KwaZulu-Natal. The actual reason for the silent, off-the-record, unauthorised, illegal backroom abortion of my recruitment, only discovered long after the trial – with great difficulty and via persistent litigation – turned out to be everyday jobs-for-pals recruitment corruption. Years after Waglay JP's dismissal of my petition for leave to appeal the dismissal of my unfair discrimination action, I discovered from the selection panel's complete recommendation report – repeatedly requested and repeatedly refused on shifting grounds, but finally disgorged by suing for it – that unfair discrimination had nothing to do with it; the reason I wasn't appointed was everyday cronyism, in that LASA Board chairperson Mlambo JP, then head of the Labour- and Labour Appeal Courts, wanted the appointment of my rival applicant, his long-time judicial colleague Ngcamu AJ (as he used to be), whom he'd repeatedly got appointed as an acting judge of the Labour Court over a period of six-and-a-half years prior to his application for the top post (so the

11. Given that section 15(2)(d) the JSC Act prescribes that meritless complaints found to be 'frivolous or lacking in substance' 'must be dismissed',[28] the JCC clearly didn't think my complaints against Mlambo JP and Waglay JP were 'gratuitous allegations of corruption',[29] 'scurrilous claims of corruption within the Judiciary'.[30] Quite the contrary, satisfied that I'd made out prima facie, answerable cases against the two accused Judge Presidents on all counts, it required both to respond to them.

12. To recap, consistent with your admonition to 'watch us closely'[31] and not to allow 'complacency to set in'[32] by reposing our trust in the courts with our eyes closed, 'otherwise our constitutional democracy is gone',[33] and consistently with your call on the public to 'come forward'[34] 'with evidence of judges implicated in corruption'[35] and 'share it with us'[36] – since 'the South African public deserve a corruption-free Judiciary',[37] 'a credible, independent and truly transparent Judiciary'[38] – I did indeed 'come forward' to the JCC 'with evidence of judges implicated in corruption' annexed to complaints I made, signed after 'raise[ing my] hand to tell the truth, the whole truth and nothing but the truth'.[39] Nothing in my affirmed complaints and affirmed comments on the judges' responses to them 'is untrue'[40] and I was and remain 'prepared to give evidence even in a

recommendation report crucially revealed) – regardless of the fact that the selection panel had disqualified and rejected him for not meeting the job criteria, in that he lacked right of appearance in the High Court and any litigation experience on his feet there. (My dogged persistence in pursuing the post foiled the plan to appoint him instead of me.) Eight months after my successful interview, and as I was pressing for my appointment, I was told the post had been 'frozen' for lack of budget to fill it. There's no record of any such decision, and LASA's financial records show that in truth the post was and has remained budgeted by LASA and funded by the Treasury via the Justice Department. Completely different, radically contradictory, mutually exclusive and destructive stories cooked up by National Operatrions Executive Brian Nair, also contradicted by LASA's own records, were told to the Board for not filling the post, along with two other such posts, which, despite being budgeted and funded, have remained 'frozen' to date – *illegally*, as the Constitutional Court confirmed in paragraphs 8 and 9 of *Zungu v Premier of the Province of KwaZulu-Natal and Others* (CCT136/17) [2018] ZACC 1 (22 January 2018): '[L]eaving ... vacant' a budgeted and funded 'position' in an organ of state is a 'breach of the provisions of the Public Finance Management Act (PFMA)', namely section 53(4). On receipt of the withheld records I've sued LASA for, I'll be returning to the Labour Court with a common law rescission application founded on newly discovered documents showing that LASA's defence of insufficient budget to fill the post was a fraud on the trial judge, and I'll be persisting with my claim to my appointment on fresh pleadings.

[28] Like Hoffman SC's obviously spurious complaint against you, dismissed under this section in September 2013.

[29] SAnews.gov.za, 14 September 2019.

[30] Media Briefing Announcement, Office of the Chief Justice, September 2019.

[31] News24, 23 November 2019.

[32] *Ibid*.

[33] *Ibid*.

[34] *Citizen*, 3 October 2019.

[35] *Ibid*.

[36] SAnews.gov.za, 14 September 2019.

[37] *Ibid*.

[38] *Ibid*.

[39] *Mail & Guardian*, 11 October 2019.

[40] *Ibid*.

court of law or commission of enquiry'[41] and 'to testify as to its veracity'.[42] I was equally prepared to 'make my identit[y] known to the Judiciary'[43] and didn't hide behind any 'mask'[44] by making my complaints anonymously.[45]

13. You appealed to the public to 'tell us which judge has been ... corrupted and by whom'. In the latter regard, I did so in my invited comments on Waglay JP's response to my complaint against him. On a conspectus of the cogent circumstantial evidence available weighed with the probabilities,[46] I identified the obviously well placed, well connected, highly motivated author of the anonymous, unstamped[47] 'memorandum' slipped past the registrar directly to Waglay JP to torpedo my petition as having likely been then LASA Board chairperson Mlambo JP,[48] under whom Waglay JP had served as Deputy Judge President, and whom he had succeeded as Judge President of the Labour- and Labour Appeal Courts.

14. But I didn't 'give information'[49] about the judicial corruption indicted in my complaints 'to the police or the media'[50] as you urged, because I preferred that the JCC deal with my 'credible evidence of ... corruption against the Judiciary'[51] under its statutory mandate, rather than the criminal courts and court of public opinion, and that the judiciary itself act to 'root out these injurious practices'[52] by two of its senior fellows. (The 'police or the media'[53] will necessarily be my last resort in the event that the JCC fails to prosecute my complaints properly and in due time.)

[41] SAnews.gov.za, 14 September 2019.

[42] *Ibid*.

[43] *Ibid*.

[44] *Ibid*.

[45] Like the anonymous complainant who blew the whistle on a Sassa executive manager for fixing jobs for 'his girlfriends'; for not 'following due process'; and for appointing 'people in positions even though the applicants did not meet the job criteria'. (News24, 'Public Protector probes Sassa manager for alleged abused of state funds and power', 25 November 2019). Similar unethical abuse of power by Mlambo JP is mentioned in paragraph 46 and footnote 27.

[46] I'm a civil law specialist advocate of three-and-a-half decades standing, with extensive experience also as a district and regional court magistrate, including several years as a full-time civil trial magistrate, and a sterling appeal record.

[47] Not having been stamped by the registrar, the 'memorandum' obviously didn't pass over his reception counter in the ordinary course and was given to Waglay JP surreptitiously.

[48] How the JCC handles the complaint will determine whether I file a formal charge against Mlambo JP for this.

[49] *Citizen*, 3 October 2019.

[50] *Ibid*. Subsequent to making my complaints to the JCC, I copied them to South Africa's leading investigative journalist Martin Welz, editor and publisher of *Noseweek*, and he telephoned me for over an hour to discuss them.

[51] SAnews.gov.za, 14 September 2019.

[52] *Ibid*.

[53] *Ibid*.

15. As you frankly conceded, 'Any South African who cares about our constitutional democracy, any South African who cares about the future of our children, we say to you, we're not a perfect institution.'[54] Indeed so: no less than three Judge Presidents in our country currently stand accused of the most serious imaginable corruption. And although you affirmed during your 17th Nelson Mandela Lecture a few days ago, 'I am not saying there is something wrong with our judges. I am confident in us',[55] you seemed to have had at least one particular instance in mind when adding, 'You must be worried when you read a judgment and you are struggling to make sense of it.'[56]

16. That the JSC itself is not invulnerable to corruption you acknowledged too:

> You have got to observe carefully. You have got to watch how people are being interviewed because there are times when you can tell certain people have been shielded from being asked critical questions. How can you have an independent judge ... when questions are asked to them, people build a scrum around them. When these things happen, you must know that people are attempting to capture the judiciary.[57]

17. For your information only, since the JCC is currently seized with them, I enclose copies (printed in a compressed format) of my complaints; the accused judges' haughty and mendaciously evasive responses; and my comments on them, in which I point up their aggravating dishonesty. Perusing them you'll readily appreciate the enormity of the matter, the egregiousness of the judicial misconduct in question, and the immense damage to public confidence in the judiciary that they portend – threatening to 'delegitimise the Judiciary and endanger constitutional democracy'[58] by collapsing public confidence in the judicial process and its officers.

[54] News24, 3 October 2019.
[55] News24, 23 November 2019.
[56] *Ibid.*
[57] *Ibid.*
[58] SAnews.gov.za, 14 September 2019.

18. When remarking at your media briefing on 13 September 2019 that only a judge 'completely bereft of legal professional and judicial ethics'[59] would act corruptly, with Mlambo JP seated alongside you[60] as the very face of judicial 'integrity, impartiality and transparency'[61] and of the 'credible, independent and truly transparent Judiciary'[62] that 'South Africans need and deserve',[63] you couldn't have been aware of his unlawful, unconstitutional and criminal misconduct described and documented in my complaints against him, showing that he's 'completely bereft of legal professional and judicial ethics'[64] and that in practice he scorns the 'core values of integrity, impartiality and transparency'[65] to which you absolutely sincerely said the judiciary is committed. Nor could you have been aware of the 'concrete proof'[66] put up with my complaint against Waglay JP that in rejecting my petition for leave to appeal the dismissal of my labour claim, he was 'taking instructions on how to prepare a judgment [and] being influenced one way or the other by people other than considering what has been presented before [him]'.[67]

19. On 11 February 2019, during a phone call to request another copy of my complaint against Waglay JP (the acknowledged original I'd delivered had been lost), JSC secretary Lynnette Bios responded to my query about progress in the prosecution of my complaints against Mlambo JP, also made way back in mid-2017, that they were being dealt with under section 17 of the JSC Act.

20. You'll understand my disgust at this. Section 17 governs the disposal of 'serious, non-impeachable' misconduct, for which the maximum possible 'remedial steps [that] may be imposed' under subsection (8) are an apology, reprimand, warning, compensation order, counselling, training, or other appropriate corrective measure, excluding impeachment, to which 'appropriate remedial action will be limited' under subsection (1)(a).

[59] *Ibid.*
[60] *Ibid.*
[61] Media Briefing Announcement, Office of the Chief Justice, September 2019.
[62] SAnews.gov.za, 14 September 2019.
[63] *Ibid.*
[64] *Ibid.*
[65] Media Briefing Announcement, Office of the Chief Justice, September 2019. See paragraph 4 above.
[66] SAnews.gov.za, 14 September 2019.
[67] Judiciary spokesman Nathi Mncube quoted by News24, 14 August 2019

21. Clearly on any proper, honest appraisal, Mlambo JP's exceptionally serious, dishonest, unlawful, unconstitutional and criminal misconduct, closely detailed and substantiated in my complaints, is eminently impeachable and falls to be dealt with under section 16, governing the disposal of 'impeachable complaints'[68] of 'gross misconduct'.[69]

22. Despite Ms Bios's assurance in her letter of 29 August 2017, acknowledging receipt of my complaint against Waglay JP made six weeks earlier, that 'The Secretariat will notify you of the outcome of your complaint in due course', it's yet to do so in the two-and-a-half years since. So much for section 195(1)(g) of the Constitution: 'Transparency must be fostered by providing the public with timely, accessible and accurate information'.

23. The JCC's mishandling of and dragging anchor with my gross misconduct complaints against Mlambo JP and Waglay JP flies in the face of everything you stated absolutely sincerely in your leadership talk at Ekurhuleni in July 2019:

> We have got to make it our business not to beatify others at the expense of others, not to make others untouchable, and not to allow anybody, including me, to be awarded an underserved saintly status. … We are determined not to be told who is clean and who is dirty. We are going to research it ourselves and where there is smoke we will follow it up to its logical conclusion.[70]

It likewise contradicts your absolutely sincere claim that 'all allegations of corruption against judges are closely examined'[71] (per the reporter's paraphrase); that the judiciary had 'never avoided holding their own accountable';[72] that it 'had never shied away from openly pursuing any judge who is rightly or wrongly accused of misconduct';[73] and that 'Most cases of alleged misconduct against judges have been speedily finalised',[74] the exceptions being the Hlophe JP,

[68] '16 Committee may recommend appointment of Tribunal in respect of impeachable complaints'.
[69] Per section 16(1).
[70] *The Mercury*, 18 July 2019.
[71] Dailymaverick.com, 4 October 2019.
[72] *Citizen*, 3 October 2019.
[73] News24, 3 October 2019.
[74] *Ibid.*

Motata J, Preller J, Mavundla J, and Phoswa J complaints, delayed for 'good reasons',[75] namely 'a series of legal challenges that led to inordinate delays which nobody could have done anything about.'[76]

24. In contradistinction to those judges' cases, no 'legal challenges'[77] have impeded the prosecution of my complaints against Mlambo JP and Waglay JP. To any reasonable observer, the JCC's 'inordinate delays'[78] in dealing with my complaints 'legitimately'[79] 'raise concerns about the speed'[80] at which the JCC has done its work – or rather, not done it – more especially since no 'good reasons'[81] exist to explain it, like the various 'legal challenges'[82] raised by Hlophe JP, Motata J and Phoswa J that I'm aware of.

25. The JCC indeed 'could have, but failed to, expedite this process'[83] of prosecuting my complaints against Mlambo JP and Waglay JP; and my dissatisfaction over its slow-walking can't credibly be written off to 'ignorance or frustration'[84] on my part.

26. Whereas a man accused of shoplifting a piece of cheese invariably gets prosecuted to verdict/sentence within weeks at the most, two Judge Presidents accused of the most extreme 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution',[85] with the gravest implications for 'the reputation of our judges',[86] and for 'our constitutional democracy',[87] sit pretty, confident of their impunity, untouched, undisciplined, above the law, years afterwards.

27. In the circumstances, it appears that contrary to your absolutely sincere belief and assurance about this, the judges on the JCC are indeed reluctant to

[75] *Ibid*.
[76] *Ibid*.
[77] *Ibid*.
[78] *Ibid*.
[79] IOL, 3 October 2019.
[80] *Ibid*.
[81] News24, 3 October 2019.
[82] *Ibid*.
[83] *Ibid*.
[84] *Ibid.*
[85] Per section 14(4)(a) of the JSC Act.
[86] *Citizen*, 8 October 2019.
[87] News24, 3 October 2019.

'hold... their own accountable'[88] in the Mlambo JP and Waglay JP particular cases – if not actually disposed to 'build a scrum around them'[89] and 'cover up'[90] their capital misconduct.

28. The JCC's decision to deal with my complaints about Mlambo JP's manifestly impeachable misconduct, including his crimes, under section 17, thereby exposing him to no more than a slap on the wrist under subsection 17(8), speaks precisely to the JCC 'want[ing] to cover up'[91] what he's done; and it traduces your absolutely sincere assurance that 'We are dead against corruption'[92] in the judiciary.

29. As Jefferson put it to Washington in 1784, the foundation of constitutional orders like ours is 'the denial of every pre-eminence', but the JCC's conduct illustrates that on the ground the law isn't actually flat and isn't being applied equally to the higher and lower orders in our country – diametrically contradicting your opening observation in your judgment in *Public Protector v South African Reserve Bank* [2019] ZACC 29 (22 July 2019):

> [1] Accountability, equality before the law and transparency are some of the values on which our constitutional democracy was founded. It ought therefore never to matter who a person, natural or juristic, is whenever the need arises to breathe life into these values.

30. Only, at the JCC apparently it does matter. When it comes to 'holding all, including the high and mighty, accountable for their alleged or perceived wrongdoing',[93] the seemingly 'hypocritical'[94] judges of the JCC evidently lack the energy and appetite to prosecute Mlambo JP and Waglay JP for their 'high crimes and misdemeanours' (in the fitting old English of the US Constitution governing presidential impeachment) – again flatly contradicting what you said

[88] *Citizen*, 3 October 2019.
[89] News24, 23 November 2019.
[90] IOL, 3 October 2019.
[91] *Ibid.*
[92] SAnews.gov.za, 14 September 2019.
[93] *Public Protector*, paragraph 2.
[94] News24, 23 November 2019: 'Mogoeng also said judges were the ones who administered oaths to presidents and members of Parliament, expecting them to be loyal to their oath of office. He said it would be "hypocritical" to expect them to commit to doing what the Constitution demanded, if judges didn't do the same.'

at the start of your judgment in *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11 (31 March 2016):[95]

> [1] One of the crucial elements of our constitutional vision is to make a decisive break from the unchecked abuse of State power and resources that was virtually institutionalised during the apartheid era. To achieve this goal, we adopted accountability, the rule of law and the supremacy of the Constitution as values of our constitutional democracy. For this reason, public office-bearers ignore their constitutional obligations at their peril. This is so because constitutionalism, accountability and the rule of law constitute the sharp and mighty sword that stands ready to chop the ugly head of impunity off its stiffened neck.

YOUR DEPUTY INFORMATION OFFICER'S FAILURE TO RESPOND TO A REQUEST FOR ACCESS TO CERTAIN JSC RECORDS, DULY MADE UNDER SECTION 18 OF THE PROMOTION OF ACCESS TO INFORMATION ACT, AND A PLEA FOR BELATED COMPLIANCE WITH IT

31. On 6 March 2019, I filed a PAIA request for access to certain JSC records. The contextual notes appended to my request made plain that my main purpose[96] in seeking access to the documents specified in the first part of my request was to ascertain how the JCC had practically swept my eight gross misconduct complaints against Mlambo JP under the carpet. The second part of my request concerned the nomination of a certain female former LASA management executive for appointment to a tribunal constituted under section 16 of the JSC Act to try the Constitutional Court's complaint against Hlophe JP; her appointment to the tribunal; followed by her resignation from it before it sat, and the reason for this odd development.[97]

[95] Hereafter referred to as *EFF 1*.

[96] Under section 11(3) of PAIA my reasons for requesting access to the records were irrelevant to the decision of my request. I indicated them nonetheless.

[97] See paragraph 46 below.

32. Copies of my request and its covering email are annexed marked 'A' and 'B'. Following a reminder, your deputy information officer Nelson Phakola assured me that my request would be responded to. His email is annexed marked 'C'.

33. In breach of his promise, and contradicting your absolutely sincere assurance that 'The judiciary commits itself to ... transparency',[98] since 'South Africans need and deserve a credible, independent and truly transparent Judiciary',[99] I received no response to my request.

34. That is, instead of being 'truly transparent' and conducting itself in conformity with one of the 'core values'[100] of our open democracy, the JSC has showed itself to be truly opaque, 'ducking and diving as if we want to cover up',[101] in the manner of apartheid officials after a death in detention.

35. In mitigation, the JSC's failure to comply with its constitutional information transparency obligations is nothing out of the ordinary in democratic South Africa. In fact it's balefully typical of the 'shocking dereliction of duties by public ... bodies to realise South Africans' constitutional right of access to information', as the Access to Information Network ('ATI') noted in 2016, reporting that that '46% of requests submitted to government were refused – i.e. no information was provided' and that '58% of these refusals were deemed refusals – i.e. the requests were ignored.' 'Only 34% of requests submitted to government were granted in full.' Pointing up these findings, a press release by the information transparency advocacy organisation Right2Know is annexed marked 'D'.

36. Hoping to achieve the JSC's compliance with my request by extra-curial means, I made a formal human rights violation complaint to the South African Human Rights Commission ('SAHRC') on 10 July 2019, protesting that by ignoring my request the JSC had infringed my fundamental civil right to public body information guaranteed by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution. Unfortunately, notwithstanding its special statutory powers under section 83(3) of PAIA to monitor public body compliance with PAIA; to

[98] Media Briefing Announcement, Office of the Chief Justice, September 2019.
[99] SAnews.gov.za, 14 September 2019.
[100] Media Briefing Announcement, Office of the Chief Justice, September 2019.
[101] IOL, 3 October 2019.

assist the public access records; and to mentor public body information officers in how to respond lawfully to record requests and thereby respect and give effect to requesters' constitutional right to information, my formal complaint to this Chapter 9 institution responsible for overseeing public body compliance with PAIA[102] was batted away on the basis that 'it may be best for you to proceed to court in this matter. The JCS's failure to respond to your request and/or provide you with information relating to the fees you need to pay to have your request processed is reviewable in court as you have noted.'[103]

37. I demurred at suing under section 78 of PAIA to compel delivery of the requested JSC records because the respondent in such an application would have to have been you in your capacity as JSC information officer *ex officio* under section 1 of the Act.[104] And suing you, the Chief Justice, who I respect and admire immensely, was a dreadful prospect. No simple matter either, because section 25 of the Supreme Court Act 59 of 1959 would have required that I first obtain the consent of your Constitutional Court to call you to court.

38. It's unimaginable to me that you knew about, much less acquiesced in, the illegal and unconstitutional tacit refusal of my PAIA request. Hence this appeal to you in your capacity as JSC information officer to see to your deputy information officer's belated compliance with it.[105]

A FURTHER RECORDS REQUEST

39. I enclose a further PAIA request for access to records concerning the JCC's handling of my complaint against Waglay JP.

OUTLINE OF FURTHER INTENDED COMPLAINTS BEING HELD UP BY NON-COMPLIANCE WITH PAIA REQUESTS

40. I've several further gross misconduct complaints to make against Mlambo JP, in which I'll demonstrate that he disregards the rule of law at whim;

[102] Section 84 of PAIA requires the SAHRC to report annually on this to the National Assembly.

[103] My complaint to the SAHRC and the correspondence between us that followed are privately accessible in a Dropbox folder online at https://goo.gl/Ut9eH5.

[104] Your deputy information officer hadn't actually decided my request; he'd merely assured me it would be responded to.

[105] Subsection 17(2) of PAIA provides: 'The information officer of a public body has direction and control over every deputy information officer of that body.'

that 'the core values of integrity, impartiality and transparency, set out in the Judicial Norms and Standards'[106] have zero meaning for him; and that he is 'completely bereft of legal professional and judicial ethics'[107] – of personal ethics too – but I'm being obstructed and delayed in this by the JSC's tacit,[108] and LASA's express,[109] illegal and unconstitutional refusals to comply with my record requests.

41. Some of my further intended complaints against Mlambo JP will concern his procedural and ethical corruption of staff recruitment at LASA; his brazen illegal intrusion of himself as a *non-executive* director of LASA's Board by interfering in recruitment operations and decisions,[110] and his disregard for the rule of law in flouting LASA's internal regulations – its Recruitment code[111] and Approval Framework – precisely governing recruitment procedure at LASA to ensure fairness; transparency; the elimination of improper considerations in employment decisions by executive management, such as a Board member's personal preference for a particular candidate; and the approval, by management executives delegated by the Approval Framework,[112] of the best available candidates for appointment to advertised vacant posts following their recommendation by selection panels constituted under the Recruitment code to shortlist, interview, select and recommend applicants for them.

42. Aided by internal documents and inside information leaked to me by sympathetic current and former high-ranking LASA officers, my investigation of

[106] Media Briefing Announcement, Office of the Chief Justice, September 2019.

[107] SAnews.gov.za, 14 September 2019.

[108] Section 27 deems a failure to respond to a records request within 30 days to be a refusal.

[109] I have several applications pending against LASA to compel its delivery of records contemptuously refused on Chief Legal Executive Hundermark's instructions under section 45 of PAIA as an alleged waste of LASA's time; and a further such application is in preparation to compel the delivery of records he refused on this basis earlier this year, some later turned over. As said, my first five applications brought in the Magistrate's Court were conceded on Hundermark's instructions on the morning they were to be argued, and his waste-of-time story was abandoned. An application to compel LASA's full and proper compliance with its settlement agreement by turning over all requested records sued for was partially conceded by turning over further records in two batches; and an application is pending to compel delivery of the remainder, along with a compliant section 23 affidavit regarding non-existent records. The first of three High Court PAIA applications I brought in 2016, 2017 and 2018 was argued on 30 August 2019; judgment was reserved and is due imminently.

[110] In his State of the Nation Address on 16 February 2018, President Cyril Ramaphosa mentioned this general problem at public entities: 'We have found ... that board members get involved in operational measures. ... We will remove board members from any role in [them].'

[111] Fully named 'Policies and Procedures on Recruitment, Induction, Probation and Relocation'.

[112] Section 8.2.2 (b) of LASA's Approval Framework governing 'Appointments', read with 'Key to Levels', stipulates that the management executives 'delegated for approval' of 'appointment recommendations' concerning grade LP10 'Senior Professional staff' posts like Senior Litigator posts are the 'NOE' who gives 'Final approval', subject to the assent of the 'CEO': she 'Must agree'.

the pervasive, systemic corruption of Senior Litigator recruitment at LASA,[113] by drilling into it with multiple PAIA requests[114] followed by multiple applications to court to compel compliance with them when illegally and unconstitutionally refused,[115] has revealed that Mlambo JP has totally corrupted these recruitment processes, both openly on the record and covertly behind the scenes. That is, I've found this corruption to extend far beyond the original single instance I began probing with PAIA in August 2010.[116]

43. My relentless investigation of this corruption, undaunted by every obstacle thrown up to hamper it, has laid bare the radically contradictory, mutually exclusive and destructive lies told to me and to the highest authorities to cover it up,[117] as well as LASA's ongoing illegal contraventions of section 53(4) of the Public Finance Management Act 1 of 1999[118] in deliberately not filling its budgeted and funded Senior Litigator posts at the seats of the High Court at Pietermaritzburg and Durban[119] with the appropriately qualified and experienced candidates duly recommended for them by a duly constituted selection panel in November 2009, exactly one decade ago.

44. All thanks to Mlambo JP, this corruption has totally deprived the indigent in KwaZulu-Natal of expert litigation services since the Board's creation of LASA's Senior Litigator posts in November 2006 (two posts in especially populous KwaZulu-Natal, because of the special need and demand), along with seven other

[113] A former LASA national management executive, who chaired the selection panel that interviewed applicants for the Mahikeng Senior Litigator post, informs me that the candidate he and his panel recommended was passed over and a rejected candidate was appointed instead. LASA (Hundermark) has illegally and unconstitutionally refused my request for access to material records in this regard, and I've sued for them; the case was argued in the High Court on 30 August 2019 and reserved judgment is pending. I've sourced a record showing that Mlambo JP, unlawfully sitting in committee with several management executives equally unqualified and unauthorised by the Recruitment code and Approval Framework, illegally re-interviewed and then illegally vetoed the appointments of three Senior Litigator candidates who'd been duly recommended by selection panels. How their posts were filled with other persons, after Mlambo JP's illegal abortions of their recruitments, is unclear to me because again LASA (Hundermark) is illegally and unconstitutionally withholding requested records in this regard; they're the subject of pending litigation to compel their production. Following the illegal abortions of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments, the fully budgeted and funded posts have been corruptly 'frozen', unfilled for a decade, under a welter of changing, radically contradictory explanations, some of which are quoted with supporting records in my complaints to the JCC.

[114] Virtually all illegally and unconstitutionally refused on shifting, spurious grounds, ultimately abandoned at court, some of which were then vexatiously revived. LASA's persistent aggravated PAIA delinquency since 2010 is chronicled in a 'Special Report' to the SAHRC, online at https://goo.gl/Ut9eH5.

[115] My PAIA applications are accessible via the above hyperlink. I also used multiple pre-trial discovery processes; see footnote 13.

[116] See footnote 113.

[117] Mlambo JP's lies to the Justice Minister and to the chairperson of the Justice Portfolio Committee are treated in my fifth to eighth complaints. After I categorically refuted one of his blatant lies to them, it was feebly retracted in an affidavit made on his behalf and on his instructions after consultations, as 'an error', 'palpably an error'.

[118] See the Constitutional Court's decision in *Zungu* quoted in footnote 27. For radically contradictory reasons advanced, the extra Senior Litigator post created for the Eastern Cape in March 2010 at Mthatha has also been illegally 'frozen' off the record since May that year.

[119] The Auditor General has never picked up and reported this major ongoing illegality involving underexpenditure of millions of rands annually.

such posts in other provinces, after the National Assembly raised its concerns about reports received of deficient legal professional expertise available at LASA – repeatedly acknowledged by Mlambo JP and then Legal Development Executive, now Chief Legal Executive Patrick Hundermark[120] – and pertinently asked whether LASA employed Senior Litigators to remedy the problem.

45. On 30 August 2019, I argued an application[121] in the High Court at Pietermaritzburg[122] for an order compelling LASA's surrender of duly requested records, all illegally and unconstitutionally refused on the disingenuous basis that my requests were an obvious waste of LASA's time.[123] Judgment was reserved,[124] and I expect it will flush out numerous further documents needed to support more complaints against Mlambo JP concerning his wholesale corruption of recruitment operations at LASA and its cover-up – other grossly unethical and inappropriate job-fixing too:

46. In your Nelson Mandela Lecture you pointed out very correctly that 'Power corrupts', and asked the public to enquire, 'Who are we uncomfortably or indecently friendly to?'[125] What I've learned about this will inform a future complaint against Mlambo JP for his grossly unethical abuse of power as LASA chairperson in trading *favours* with LASA staff[126] – a matter notorious in the organisation according to a former national management executive who detailed it to me; but, as said, I've been held up in drawing and lodging this intended complaint by LASA's[127] and the JSC's[128] illegal and unconstitutional failures to turn over records needed for it.

[120] Since elevated to membership of LASA's Board as an executive director.

[121] See footnote 13.

[122] It was launched in October 2016. By several means immaterial to detail here, Hundermark succeeded in delaying the hearing for years.

[123] Section 45 of PAIA permits the refusal of requests that are 'manifestly frivolous or vexatious' or unreasonably time-consuming to respond to. Since 2013, LASA (Hundermark) has reflexively refused all my requests on this spurious ground. At court in February 2016, a few months before I launched my first PAIA application in the High Court in October, LASA (Hundermark) abandoned this waste-of-time story and agreed to surrender all the records I'd sued for – then revived it to refuse my next and all following requests.

[124] It's due imminently under section 5.2.6 of the Judicial Norms and Standards, allowing judges three months to write and deliver their reserved judgments.

[125] News24, 23 November 2019.

[126] That is, 'corruption or sectional beneficial use or abuse of institutional power', as you put it in paragraph 4 of *Public Protector*.

[127] One of the records for which I sued LASA in the application currently pending judgment in the High Court at Pietermaritzburg is the notice issued to a LASA officer calling on her to give reasons why she shouldn't be suspended pending the determination of a charge of gross dishonesty brought against her. I'm informed that she responded by resigning, after which – despite this rotten background – she was fixed an appointment on the tribunal established to try Hlophe JP, from which she also strangely resigned. Part Two of my PAIA request for JSC records in March 2019 probes the reason for this.

[128] See Part Two of my PAIA request for JSC records, annexure 'A' hereto.

47. I also intend making a second complaint against Waglay JP for tossing my petition for leave to appeal without the concurrence of the two other appeal judges named in the order dismissing it. An examination of the court file has established that there's no record whatsoever that they ever considered and decided my petition against me; and it's inconceivable to me that a judge can make a judicial decision without recording it – such as by signing below the words 'I agree'.

48. But there'll be little point in filing any further gross misconduct complaints with the JCC if, as it appears, it's unwilling to deal properly and expeditiously with complaints against 'certain people',[129] whom it's thus far 'shielded from being asked critical questions'[130] and from being held to account. It would be as futile as laying a complaint at a police station about a rogue policeman whose colleagues are more interested in protecting him than upholding the law.

RETALIATION

49. Interviewing applicant's for judgeships last month, you said, 'I like people who speak truth to power'[131] – having remarked in your judgments that taking on the powerful invariably comes at a heavy personal cost. In *EFF 1* you observed that 'allegations and investigation of improper or corrupt conduct against all, especially powerful public office-bearers, are generally bound to attract a very unfriendly response'.[132] In *Public Protector,* referring to the apartheid and colonial eras 'preceding our constitutional democracy',[133] you recalled more specifically:

> [4] Harsh consequences including smear or other writings bereft of intellectual integrity could flow from displaying the nerve to speak out or act against injustice, corruption or sectional beneficial use or abuse of institutional power or public resources. It was potentially

[129] News24, 23 November 2019.
[130] *Ibid.*
[131] *Mail & Guardian,* 11 October 2019.
[132] Paragraph 55.
[133] *Public Protector*, paragraph 3.

career-limiting[134] and even life-threatening for those who were supposed to know their place to seek to have the right thing done by challenging the "entitled" perpetrators of injustice or their allies.

50. A few days before making these observations in that judgment, you said much the same in a speech: 'Justice Mogoeng called for vigilance on how those who tried to investigate figures who were deemed untouchable were bombarded with insults and negativity even when there were indications that there was something worth probing.'[135] This sure speaks to me. My 'allegations and investigation of improper or corrupt conduct against'[136] your judicial brethren Mlambo JP and Waglay JP, about whom I'd complained in court papers before approaching the JCC with the solid 'indications that there was something worth probing'[137] did indeed 'attract a very unfriendly response'.[138] For 'challenging the "entitled" perpetrators of injustice'[139] and for having had 'the nerve to speak or act out against injustice, corruption or sectional beneficial use or abuse of institutional power or public resources'[140] by these 'powerful public office-bearers',[141] exceedingly 'harsh consequences ... flow[ed]'[142] for me alright, and I attracted the most violent retaliation possible short of a bullet in the head.

51. To neutralise me as a whistleblower, in the manner of the Mob rubbing out witnesses, Mlambo JP and his consigliore Hundermark (fixed an acting judicial appointment for his loyalty) went all out to annihilate me by wrecking my reputation, destroying my legal career, depriving me of my livelihood, strangling me financially, and having me stripped of my fundamental civil rights in our democracy, like a 'communist' listed by the Minister of Justice during apartheid.

[134] Precisely for 'displaying the nerve to speak or act out against injustice, corruption or sectional beneficial use or abuse of institutional power or public resources' in the apartheid era 'preceding our constitutional democracy', I lost my post as a full-time civil magistrate in the early 1990s. Threatening the Justice Department with a review application, I'd successfully challenged my irregular transfer out of town at the behest of then Deputy Minister of Justice Danie Schutte, mobilised against me by my opponent in a noise nuisance dispute (his noise), using his political connections with the local branch of the National Party in the Tammany Hall manner. (This back-story was reliably leaked to me by a senior court officer afterwards.) On the day the Director General backed down and cancelled the transfer, I was demoted to traffic court. (I then quit and joined the Bar.) As described in this 'RETALIATION' chapter, I paid yet again, now in the constitutional democratic era, the 'career-limiting' price of 'challenging the "entitled" perpetrators of injustice or their allies' in the judiciary.

[135] *The Mercury*, 18 July 2019. (The talk mentioned in paragraph 23 above.)

[136] Paragraph 55.

[137] The Mercury, 18 July 2019.

[138] *Ibid.*

[139] *Public Protector*, paragraph 4.

[140] *Ibid.*

[141] *Ibid.*

[142] *Ibid.*

52. To discredit my complaints by discrediting me, Mlambo JP and his 'all[y]'[143] Hundermark have conducted an ongoing smear campaign against me, defaming me to the Minister,[144] to the chairperson of the Justice Portfolio Committee,[145] to the courts,[146] and, most recently to you[147] – as witness Mlambo JP's vicious *ad hominem* attack on me in his response to my complaints against him, wantonly smearing me as a 'racist'[148] (who doesn't 'love this country and all its people')[149] to dishonestly imply that my eight complaints against him were motivated by racial animus.

53. Mlambo JP's 'writings'[150] to me, to the Minister, to the Portfolio Committee, to the courts, and to you have been entirely 'bereft of intellectual integrity'[151] to say the least of it, and they reveal him to be a complete stranger to the truth.[152]

54. For pleading Mlambo JP's corruption in the Labour-[153] and Labour Appeal Courts,[154] and Waglay JP's in the Magistrate's Court[155] and High Court,[156] Mlambo JP and Hundermark contrived to have me struck off the roll of advocates with a complaint to the Bar in November 2015 that I'd scandalised the

[143] *Ibid.*

[144] See my fifth to eighth complaints to JCC.

[145] *Ibid.*

[146] See my first complaint to the JCC. Other lying calumnies in aggravation of damages were catalogued in page after page of my heads of argument in my labour case.

[147] Mlambo JP improperly addressed his response to my complaints directly to you, not to the JCC. You appear not to have read it, however, and to have duly passed it on to the JCC, because during your presentation of the judiciary's annual report in October 2019 you mentioned only the long pending complaints against Hlophe JP and Motata, Preller, Mavundla, and Phoswa JJ, and not my long pending complaints against Mlambo JP and Waglay JP, showing you weren't aware of them.

[148] I categorically refute Mlambo JP's despicable lie about me in light of some private information provided in my comments on his response.

[149] SAnews.gov.za, 14 September 2019.

[150] *Public Protector*, paragraph 4.

[151] *Ibid.*

[152] Mlambo JP's dishonest 'writings' are the subject of my complaints to the JCC. My invited comments on his response to them show it to be equally dishonest.

[153] In my original statement of claim. On a silk's advice as to trial strategy, I didn't plead Mlambo JP's misconduct in my amended statement of claim on which my case was tried, nor did I impeach it at trial; contrariwise, to confine the issues I stated that I held him clear.

[154] In my petition for leave to appeal. Neither the trial judge Cele J nor the appeal judge(s) Waglay JP (et al.) found any fault with my case against Mlambo JP made in my court papers. During argument I specifically asked Cele J whether he was minded to criticise any aspect of the manner in which I'd litigated against LASA, so that I might address it (LASA was seeking punitive costs for my criticism of Mlambo JP in my original statement of claim). He amiably waved me away, and later complimented both sides for our conduct in the case, after delivering judgment. Neither of his judgments dismissing my claim and my application for leave to appeal stated or implied anything adverse about my forthright criticism of Mlambo JP in my original statement of claim. Had Waglay JP been troubled by the equally mordant case I made against Mlambo JP in my petition for leave to appeal, and by my forthright identification of Cele J's many radical reversible errors*, he could have said so and penalised me in costs. He didn't, and in dismissing my petition made no costs order. (*As basic as misallocating the onus of proof (as he and LASA conceded); refusing to allow me to cross-examine key LASA witnesses specially subpoenaed for the purpose; failing to consider the contradictory, mutually exclusive and destructive excuses, unsupported and contradicted by the records, advanced for not appointing me; also his misconduct in dozing during the afternoon sessions and failing to prepare for the oral argument by reading my extensive heads of argument – as he jocosely volunteered in his chambers.)

[155] To illustrate the extent of the background corruption I was up against, I put the 'memorandum' up with one of my PAIA applications.

[156] After discovering the 'memorandum', I launched a semi-urgent interdict application to the High Court at Pietermaritzburg. Although timeously delivered to the sheriff's office for service, the papers weren't served before the hearing as a result of a communication failure, and my case was struck from the roll.

court.[157] Without hearing me, or even informing me of the complaint against me, the Bar resolved to apply that I be ignominiously expelled from its ranks. You explained its unreconstructed *denkstil* in *Public Protector*:

> [3] For centuries preceding our constitutional democracy, untouchability was so entrenched or virtually institutionalised that it was unthinkable for some to challenge the apparent or actual criminality, naked injustice or corruption that reigned in our country. So normalised was impunity and injustice that some citizens were not only expected to accept their unjustly prescribed inferiority, but to also succumb to the "preferred" impermissibility for them to be critical of the untouchables.

55. When some months later I chanced to learn of the Bar's intention to have me professionally decapitated for not 'succumb[ing] to the "preferred" impermissibility ... to be critical of the untouchables'[158] and for my allegedly unprofessional 'challenge [to] the apparent or actual criminality, naked injustice or corruption that reigned in our country' among 'the untouchables'[159] in the judiciary, and I requested a hearing, the learned leaders of the Bar agreed to reverse their *ex parte* decision and deigned at last to observe that elementary principle of natural justice, the *audi alteram partem* rule, with which they appear hitherto to have been unfamiliar.

56. I answered the charge that I'd professionally disgracefully impugned Mlambo JP's and Waglay JP's integrity by furnishing the Bar with copies of my vouched complaints to the JCC, and that was the end of it. Still, with news of the Bar's original decision having spread through the professional grapevine, the attempted hit on me has stained my name; I've picked this up in my interactions with my colleagues and the bench.

[157] Nominally signed by Hundermark's then immediate subordinate and subaltern Legal Executive Thembile Mtati, but almost certainly drawn by Hundermark, the 'complaint deals with the manner in which Advocate Brink conducts his litigation, [his] unwarranted, abusive and defamatory statements made against members of the bench ... Judge President Mlambo of the North and South Gauteng Divisions of the High Court [and] Judge President Waglay of the Labour Court ... [T]he conduct of Advocate Brink is not befitting of an officer of the Court more so to act as a Magistrate. The language used is unprofessional, the manner he relates to colleagues and Judges requires sanction.'

[158] *Public Protector*, paragraph 3.

[159] *Ibid*.

57. Mlambo JP and Hundermark copied their complaint[160] to the Magistrates Commission, which passed it on to the Justice Department without thinking to investigate it. For the reason you identified in *Public Protector*, quoted just above, my contract as an acting magistrate in Eshowe, KwaZulu-Natal, was thereupon summarily terminated[161] a few days later, without notice to me of the complaint, let alone a hearing, and I was thrown off the bench.[162]

58. I only learned of LASA's hand in my sacking eighteen months later when at the end of May 2017 the Chief Magistrate at Pietermaritzburg telephoned to ask me to apply for another acting appointment at another court in the region, where I was needed to relieve the resident magistrate away on Regional Court test. To our mutual surprise, the Deputy Minister refused to appoint me, on account of the complaint against me.[163] That is, for 'displaying the nerve to speak out or act against injustice, corruption or sectional beneficial use or abuse of institutional power or public resources'[164] and for having had the temerity to 'challenge the apparent or actual criminality, naked injustice or corruption ... of the untouchables',[165] Mlambo JP and Hundermark had succeeded in getting me both fired and blacklisted[166] as a professional reprobate unfit to preside as a magistrate[167] – turning things seriously 'upside down'.[168]

59. Like former President Jacob Zuma resorting to every possible legal trick to derail his corruption prosecution, Mlambo JP's fixer Hundermark's next gambit to obstruct my investigation of his boss's corruption and finish me off good and

[160] Again, nominally signed by Mtati.

[161] Like all acting magistrates on contract, I was employed on routinely renewed rolling three-month contracts, suddenly ended.

[162] The reason my contract wasn't renewed, which my permanent colleague understood and conveyed to me, and which I accepted at the time, was that I'd served a maximum two years on contract. In fact, as I later learned, there's no such policy limit, and other acting magistrates have served very much longer.

[163] The Chief Magistrate's secretary emailed me on 1 June 2017: 'The Deputy Minister's office has sent us communication regarding a pending complaint from Legal Aid against you and so at this stage it does not as though your appointment will be authorised.'

[164] *Public Protector*, paragraph 4.

[165] *Public Protector*, paragraph 3.

[166] The Magistrate's Commission explained to the Chief Magistrate on 13 June 2017 that 'the complaint was lodged to prevent Mr Brink from being appointed as an Acting Magistrate due to his prior behaviour.' A 'Deputy Minister Memo' to the Justice Department's deputy information officer on 7 July 2017 confirmed: 'LASA informed the Magistrates Commission during November 2015 of their concerns for Adv Brink to be appointed as an Acting Magistrate. The Office of the Deputy Minister will in the normal course consult with the Magistrates Commission whether they have information on the their system regarding retired or ex magistrates or acting magistrates that the Deputy Minister should be aware of when considering applications from Heads of Court. It is during this process of consultation that the Magistrates Commission provided us with the concerns raised by LASA.'

[167] See footnote 157: '[T]he conduct of Advocate Brink is not befitting of an officer of the Court more so to act as a Magistrate.' My blacklisting likely also cost me a permanent appointment to a civil magistrate post for which I was interviewed in August 2017 ('Mr Brink, you have a very impressive CV'), after which, silence.

[168] *Public Protector*, paragraph 104.

proper was to apply[169] to the High Court at Pietermaritzburg in October 2016 for orders interdicting me[170] from accessing any more of LASA's records[171] and banning me from seeking relief from the courts[172] as an alleged 'vexatious litigant' – for repeatedly suing for records needed for my corruption investigation, whenever illegally and unconstitutionally denied me, including records Hundermark had formally pledged to hand over in a settlement agreement made[173] with me at the Magistrate's Court in February 2016 after totally capitulating to my first five PAIA applications brought to compel their delivery to me, as well as records he'd implicitly undertaken to provide in response to what we agreed would be my final PAIA request to be made in the matter of LASA's Senior Litigator posts.[174]

60. A year later on 27 October 2017 the High Court at Pietermaritzburg found Hundermark's malicious, vexatious application to be so obviously devoid of merit that I wasn't even called on to argue, and it was dismissed immediately after LASA's counsel sat down. And so the hunting shot missed.

THE POSSIBILITY OF A CONCILIATORY RESOLUTION

61. I conclude by recording that I'm not on any 'vindictive crusade'[175] (even less 'against the innocent').[176] Now that it's in the JCC's hands I appreciate I no longer control the ball, but for my own part I'd infinitely prefer a global, conciliatory resolution of my complaints to the JCC and my claims against LASA,[177] closing this sordid saga so that I might move on with my life after ten

[169] With Mlambo JP's approval: as with all litigation by and against LASA, the case was reported to the Board in a quarterly litigation report by Hundermark's corporate legal department.

[170] With the same corrupt intent, Gavin Watson interdicted the Special Investigating Unit from investigating his and other Bosasa executives' tender corruption in 2009 – see 'How Bosasa's Watson evaded SIU attention', *Citizen*, 2 April 2019.

[171] That is, deprived of my fundamental right to information in the democratic era, guaranteed by section 32 of the Bill of Rights.

[172] That is, deprived of my fundamental right to seek relief from the courts in the democratic era, guaranteed by section 34 of the Bill of Rights.

[173] Via Legal Executive Mtati, present at court and taking and acting on Hundermark's telephonic instructions. The pledge was dishonoured: some records were turned over, but many key records were retained, and LASA's section 23 affidavits certifying non-existent records were uselessly non-compliant – as both the magistrate pointed out and as LASA's counsel conceded in court on the record. These failures to honour the settlement agreement are the subject of a pending application to compel full and proper compliance with it.

[174] My investigation was substantially complete.

[175] *Public Protector*, paragraph 104.

[176] *Ibid.*

[177] On its end, all 'the biggest law firm on the African continent' (as LASA bills itself) has to do is return to the rule of law by (a) removing the illegal, off-the-record, unauthorised block on its recruitment process for its still vacant, still budgeted, still funded, critical, top legal professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg, which was illegally 'frozen' off the record ten years ago this month when I was unexpectedly and disagreeably recommended for it instead of Mlambo JP's judicial friend Ngcamu; (b) quit contravening section 53(4) of the PFMA by at last applying the salary funding it has budgeted for and received, and still budgets for and

wasted, joyless years, completely consumed by my ongoing struggle for justice, at immense, irrecoverable personal cost. Which has only steeled my resolve.

62. Otherwise, *aluta continua* against 'the "entitled" perpetrators of injustice',[178] the 'untouchables'[179] 'completely bereft of legal professional and judicial ethics',[180] with all my power and 'deploying all the resources at [my] command.'[181]

63. As my indefatigable pursuit of justice in my case over the past decade[182] must show beyond any doubt, clearly I don't 'know [my] place'[183] and don't cringe before corrupt power, and I'm unshakeably determined to 'have the right thing done'[184] in this matter by all and by any lawful means, whatever it takes.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

receives, for the post ever since it was created in November 2006; (c) resume due process by concluding and finalising my appointment with effect from 1 January 2010, the earliest date I said I could begin when asked about this by the selection panel – in which event I'll withdraw my pending court applications; abandon my further intended applications currently in preparation; withdraw my complaints to the JCC; and abandon my further intended complaints, currently on hold pending the delivery of duly requested records needed to support them.

[178] *Public Protector*, paragraph 4.

[179] *Public Protector*, paragraph 3.

[180] SAnews.gov.za, 14 September 2019.

[181] *EFF 1*, paragraph 86.

[182] Numerous litigations, many shelves full of papers.

[183] *Public Protector*, paragraph 4.

[184] News24, 23 November 2019.

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

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

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number:

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

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

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

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

Judicial Service Commission

188 14th Road, Noordwyk, Midrand, Gauteng

By email, under section 18(1):

To Secretary Lynette Bios

And to Deputy Information Officer Sello Chiloane

B. Particulars of person requesting access to the record

(a) The particulars of the person who requests access to the record must be recorded below.
(b) Furnish an address and/or fax number in the Republic to which information must be sent.

Full names and surname	:	Anthony Robin Brink
Identity number	:	5902255116081
Postal address	:	36 Pearson Street, Eshowe 3815, KwaZulu-Natal
Fax number	:	N/A
Telephone number	:	083 779 4174
E-mail address	:	anthonybrink.sa@gmail.co**m**

C. Particulars of person on whose behalf request is made:

N/A

D. Particulars of record

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

NOTE: Contextual notes to Parts One and Two of this section are annexed hereto.

PART ONE

1. The record of the decision to dispose of the requester's (Brink's) (a) eight gross misconduct complaints to the Commission against Mlambo JP (ref: JSC 533/17), and (b), Brink's further gross misconduct complaints, arising from Mlambo JP's response to them, made in his invited comments on his response, merely under section 17 of the Judicial Service Commission Act 9 of 1944 governing 'serious, non-impeachable complaints'.

2. In addition to item 1 above, the rest of the documents in case file JSC 533/17 kept by the Commission in Brink's complaints against Mlambo JP, i.e. the complete contents of the file, including any and all annotations on its cover – but excluding Brink's complaints; Mlambo JP's response to them; and Brink's invited comments on his response, all of which latter documents Brink already has in his possession.

3. All email records archived on the Commission's email server from 1 June 2017 to the date on which this records request is complied with, responsive to a search on 'Brink' and/or 'Mlambo' and/or '533/17'.

4. The Commission's annual reports to Parliament for 2017 and 2018 made under section 6 of the said Act.

5. The Judicial Conduct Committee's six-monthly reports to the Commission in 2017 and 2018 made under section 10(2) of the said Act.

PART TWO

6. The terms of reference of the Tribunal appointed under section 16 of the said Act to investigate and report on the complaints to the Commission made against Hlophe JP.

7. Mlambo JP's nomination of attorney Noxolo Maduba for appointment to the said tribunal in 2012/2013. (*Note: Only the part of the record reflecting the identity of Mlambo JP as the person who nominated Maduba for appointment is required; the text of his commendation of her in the nomination, i.e. its contents, hit by section 12 of PAIA, may be redacted.*)

8. Maduba's letter of appointment to the said Tribunal in or about February 2013.

9. Hlophe JP's (and/or other) subsequent objection(s) to her appointment.

10. Maduba's response, if any, to the objection(s).

11. Maduba's letter of resignation from the Tribunal.

E. Fees

*(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid. (b) You will be notified of the amount required to be paid as the request fee. (c) The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.*

On advice under section 22(1) of the amount of the request fee to be paid and of the Commission's bank account details, the fee will be paid by EFT.

F. Form of access to record

Mark the appropriate box with an "X".
(a) Your indication as to the required form of access depends on the form in which the record is available.
(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.
(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in written or printed form -			
X	copies of records		inspection of record

2. If record consists of visual images - N/A

3. If record consists of recorded words or information which can be reproduced in sound - N/A

4. If record is held on computer or in an electronic form -					
	printed copy of record		printed copy of information derived from the record*	X	copies in computer readable form – to be emailed as file attachments.

G. Notice of decision regarding request for access

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

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

By email.

Signed at Eshowe on 6 March 2019

SIGNATURE OF REQUESTER

CONTEXTUAL NOTES

> *The law is a web for small flies, the big ones burst through.*
>
> Anacharsis (6th Century BC) quoted by Plutarch (c. 46–120 AD)
> Jonathan Swift (1667–1745) and Honoré Balzac (1799-1850)
> made the same observation.

AD PART ONE

Over the period June–July 2017, the requester ('Brink') lodged eight gross misconduct complaints with the Commission against Legal Aid SA ('LASA') Board chairperson Dunstan Mlambo JP, head of the Gauteng Division of the High Court,[1] and, as requested, resubmitted them in November 2017 in a single indexed and paginated bundle.[2] All complaints complied with section 14 of the Judicial Service Commission Act 9 of 1944 ('the Act').

Brink's exceptionally serious complaints, all finely particularized and founded on supporting documents, indicted Mlambo JP's:

- subornation of perjury committed on his instructions in an answering affidavit deposed to on his behalf by his de facto attorney, LASA Legal Executive Thembile Mtati, opposing Brink's application under section 25 of the Supreme Court Act 59 of 1959 for leave to subpoena him for cross-examination on his capital misconduct (outlined below), which perjury comprised an elaborate, malicious fabrication contrived to defame Brink and devastate his credibility in court, and thereby pervert the judicial

[1] Further complaints will follow upon LASA's surrender under court order of records it has illegally refused, for which Brink has sued under section 78 of PAIA. His applications to compel access, both in the Eshowe Magistrate's Court and the High Court at Pietermaritzburg, are pending. His three High Court applications have been set down for argument in ten days time, on 15 March 2019. An application to compel full and proper compliance with LASA's settlement agreement concluded in February 2016, on capitulating to five PAIA applications brought there, will be set down after disposal of the High Court cases.

[2] The bundle is accessible in this Dropbox folder online: …….

decision of the application – i.e. perjurious defamation to defeat the ends of justice;[3]

- repeated and persistent collusion in and connivance at LASA CEO and information officer Vidhu Vedalankar's clearly illegal and unconstitutional repeated blanket refusals to comply with requests for information Brink duly made under section 18 of the Promotion of Access to Information Act 2 of 2000 ('PAIA') in 2010, with the corrupt object of perpetuating a mendacious cover-up of recruitment corruption in which he, Mlambo JP, was centrally involved (see below), by suppressing documentary evidence exposing it (disgorged many years later, after protracted illegal obstruction, by suing for it under section 78 of PAIA);
- lying and false reporting to the Justice Minister and to the Justice Portfolio Committee of the National Assembly on multiple scores – in the latter case crimes under sections 17(2)(d) and (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 – in a secret ('confidential') false report he made 'Re: Adv Anthony Brink' to pervert enquiries they had separately and independently instituted at Brink's instance – in the latter case to corruptly defeat the National Assembly's constitutional oversight responsibility over LASA imposed by section 55(2)(b)(ii) of the Constitution – namely enquiries into:
  - § Vedalankar's clearly false budgetary insufficiency excuse (contradicted and refuted by LASA's own financial records, finally disgorged with PAIA many years later, after first being refused), concocted on 18 October 2010 in response to a searching PAIA request by Brink in August 2010 (repeatedly refused) probing the silent, unrecorded, unauthorised, illegal abortion of Brink's recruitment to LASA's top legal professional post in KwaZulu-Natal, namely its still vacant, still

[3] Mentioned below, Mlambo JP resorted to exactly the same kind of false and malicious defamation of Brink to discredit his misconduct complaints against him to the Commission.

budgeted, still funded Senior Litigator post at Pietermaritzburg,[4] after his successful interview and recommendation for the post on 12 November 2009 by a selection panel of LASA's most senior lawyers in the region; at which interviews the panel disqualified and rejected Mlambo JP's judicial friend, Ngcamu AJ (as he used to be) – whom Mlambo JP had repeatedly over a period of about six years got appointed to act as a fellow judge on the Labour Court bench headed by him at the time, and who was then back at the side-bar[5] – for the reasons that he had no right of appearance in the High Court and had zero litigation experience on his feet there;

§ repeated clearly illegal and unconstitutional blanket refusals to comply with Brink's PAIA requests in 2010 probing the propriety and legality of the abortion of his recruitment, under cover of the said false financial insufficiency excuse eventually fed him eleven months later under rising pressure to account, in which reports to the Minister and to the Portfolio Committee Mlambo JP falsely and mendaciously alleged full, timeous, and due compliance with Brink's PAIA requests, whereas in truth and in fact, as Mlambo JP knew full well from Brink's repeated petitions to him for his intervention in the exercise of his fiduciary duty to LASA to ensure statutory and constitutional compliance by its management executives, Brink's requests had been totally refused: both of them obviously illegally and unconstitutionally, and the first unlawfully out of time as well.

Which lying financial insufficiency excuse (contradicted and refuted by LASA's own records, later disgorged with PAIA) Mlambo JP mendaciously

[4] In Zungu v Premier of the Province of KwaZulu-Natal and Others [2018] ZACC 1 (22 January 2018, the Constitutional Court observed that allowing a budgeted post to be 'left vacant' constitutes a 'breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position ... vacant.' That is, the abortion of Brink's recruitment was also illegal under the PFMA.

[5] According to a media report, the Commission had rejected his application for a permanent appointment as a judge on account of his failure to disclose misconduct convictions by the Law Society.

repeated to the Minister and to the Portfolio Committee in his 'confidential' reports to falsely put down Brink's true complaints to them and to successfully pervert their enquiries into the obviously irregular and unlawful abortion of Brink's recruitment – also, to the same corrupt end, mendaciously advancing a novel false logistical/practical excuse (contradicted and refuted by LASA's own records), invented to patch a hole in the original financial excuse that exposed it as obviously false.[6]

In short, Brink charged Mlambo JP with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Act, eminently warranting his suspension and removal from office under section 177(3) and section 177(1)(a) of the Constitution.

The fact that Mlambo JP was required to respond to Brink's complaints shows that (a) they were found not to be 'frivolous or lacking in substance', per section 15(d), and peremptorily subject to summary dismissal under section 15(2), and that contrariwise they were found to make out serious prima facie answerable cases on all counts; and (b) that Mlambo JP's misconduct complained of was found to 'fall within the parameters of any of the grounds set out in section 14(4)', per section 15(1), namely 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution' (section 14(4)(a)); a 'wilful … breach of the Code of Judicial Conduct' (section 14(4)(b)); or 'other wilful … conduct … incompatible with or unbecoming the holding of judicial office' (section 14(4)(e)).

[6] A few months after Mlambo JP's false and mendacious secret report to the Portfolio Committee in June 2011 had been thoroughly exposed and refuted in legal pleadings by Brink filed in July and October 2011, National Operations Executive Brain Nair abandoned the two absolutely false and mendacious financial and false logistical/practical excuses that Mlambo JP gave the Minister and the Portfolio Committee for Brink's non-appointment, and replaced them in his 'Report to Board' in November 2011 with new, totally different, also absolutely false and mendacious excuses (contradicted and refuted by LASA's own records) namely 'recruitment challenges' and the alleged professional incompetence of and non-delivery by LASA's incumbent six Senior Litigators. In other words, the discredited and refuted lies that Mlambo JP told the Minister and the Portfolio Committee to pervert their enquiries were dropped and substituted with other lies. Indeed, after Brink exposed and refuted the lying false logistical/practical excuse advanced to the Minister and to the Portfolio Committee, it was expressly retracted on affidavit by Mtati, Nair confirming, as 'an error', 'palpably an error'.

In his response to Brink's complaints addressed to the Chief Justice, Mlambo JP massively compounded his gross misconduct by falsely and maliciously defaming Brink as a racist,[7] and by telling him several other objectively demonstrable lies.

On 11 February 2019, during a telephone call received from Commission secretary Lynette Bios about a different matter, Brink enquired about the status of his complaints against Mlambo JP, to which she responded that it had been decided to deal with them under section 17.

Section 17 governs the disposal of 'serious, non-impeachable complaints' only.

If the secretary's information to Brink that his eight capital complaints against Mlambo JP, profoundly aggravated by his dishonest response to them, are to be dealt with merely under section 17 was correct, it means that the judge who took this decision reckons Mlambo JP's extraordinarily grave misconduct, including his crimes, detailed and documented in Brink's complaints, and disclosed in his response to them, was not gross misconduct contemplated by section 14(4)(a) of the Act and section 177(1) of the Constitution.

It means – in ludicrous contradistinction – that whereas Motata J's conduct in driving drunk, crashing his car into a wall, racially abusing the owner of the wall, and then at trial calling him a racist and falsely denying his intoxication, was duly found by the Judicial Conduct Tribunal chaired by Jappie JP to be impeachable gross misconduct, Mlambo JP's subornation of perjury to falsely defame and discredit Brink so as to pervert an application for leave to subpoena him for cross-examination on his misconduct; his repeated collusion in and connivance at LASA information officer Vidhu Vedalankar's persistent illegal and unconstitutional blanket refusals to

[7] In his invited comments on Mlambo JP's response, Brink mentioned that his late life-partner was African. His current lady partner is Indian.

comply with Brink's PAIA requests, so as to suppress evidence of recruitment corruption in which he was centrally involved; his lying and false reporting to pervert ministerial and parliamentary enquiries into this illegal, unethical, and unconstitutional conduct; and then his false and malicious smearing of Brink as a racist in his response to Brink's complaints, and his other many clearly false allegations made in his response to counter Brink's complaints, is merely 'serious' criminal and other egregious misconduct – but it is 'non-impeachable', per the heading of section 17, in the opinion of the judge who decided to proceed against Mlambo JP only under section 17; and that all this extreme misconduct charged and documented by Brink, and further disclosed in Mlambo JP's response, warrants no higher a sanction than an apology, reprimand, warning, compensation order, counselling, training, or other appropriate corrective measure, under section 17(8) – besides impeachment – to which range of puny penalties 'remedial action will be limited' under section 17(1)(a).

Even a child can see that the decision to sweep Mlambo JP's aggravated criminal and other capital misconduct under the carpet in this manner doesn't come close to meeting the rationality requirement for valid and lawful administrative action, and won't survive public exposure and judicial review.

Brink's reason for making this request under PAIA for access to the Commission's records specified in Part A – albeit that section 11(3) of PAIA holds his reason to be irrelevant to the Commission's information officer's decision whether to grant it or not – is to investigate the circumstances in which the obviously grossly irregular, indefensible, insupportable decision was made to deal only under section 17 with Brink's plainly impeachable capital misconduct complaints against Mlambo JP, profoundly aggravated by his response to them, with the transparent aim of ensuring that under section 17(8) he escapes justice with a slap on the wrist; and to establish the identity of his friend of his on the JSC who imagines that Brink's capital

charges are going to be quietly disposed of in this unlawful manner, and that his identity and his attempt to protect his friend like this aren't going to be very publicly ventilated and exposed to anti-corruption and Constitution watchdog NGOs and the national newspapers.

Having regard to the stunning double standards being applied, the decision to proceed against Mlambo JP under section 17 only, *yokuthi uvele udonswe ngendlebe*, will undoubtedly interest Hlophe JP facing impeachment by a Tribunal under section 16.

AD PART TWO

A former Free State Provincial Executive of LASA has alleged to Brink that Mlambo JP used his influence to secure the appointment in February 2013 of former LASA Bloemfontein Justice Centre Executive Noxolo Maduba to the Tribunal established to investigate and report on the complaints to the Commission made against Hlophe JP; and that after the latter objected to her appointment, she resigned it.

Whether this information is correct remains to be determined. Commission deputy information officer Sello Chiloane vaguely recalled it in a telephone call he made to Brink on 14 November 2016.

If it's true, the significance of Mlambo JP's agency in achieving Maduba's appointment, his special motivation for doing so, and why it was grossly inappropriate and unethical in the particular circumstances, is not relevant to state here, but will be detailed in an ethics complaint to the Commission upon delivery of the documents requested in Part Two and of another

document for which Brink has sued LASA in the High Court at Pietermaritzburg.[8]

Brink is not seeking access to any record contemplated in section 12(d) of PAIA, namely 'a record referred to in paragraph (gg) of the definition of "administrative action" in section 1 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000),[9] regarding the nomination, selection or appointment of … any … person by the Judicial Service Commission'. That is, Brink is not seeking access to any record revealing *the specifics of the nomination* nor the *reasons the Commission decided to select and appoint Maduba*, i.e. information bearing on the decision-making process, which is protected by section 12 – only confirmation of the fact that Mlambo JP nominated her, and some records generated subsequent to her appointment, and therefore not hit by section 12, concerning her resignation and the reasons for it.

[8] The application, case 11187/16P, is set down for argument on 15 March 2019, along with two similar PAIA applications, cases 14224/17P and 5239/18P.

[9] Section 1 of PAJA, 'Definitions', provides:
'In this Act, unless the context indicates otherwise- "administrative action" means any decision taken, or any failure to take a decision, by-
(a) an organ of state, when-
(i) exercising a power in terms of the Constitution or a provincial constitution; or (ii) exercising a public power or performing a public function in terms of any legislation; or
(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision,
which adversely affects the rights of any person and which has a direct, external legal effect, but does not include-
…
(gg) a decision relating to any aspect regarding the nomination, selection or appointment of a judicial officer or any other person, by the Judicial Service Commission in terms of any law'.

R40
B

Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

Request for access to records under PAIA

1 message

Anthony Brink <anthonybrink.sa@gmail.com> 6 March 2019 at 15:42
To: Lynette Bios <lbios@judiciary.org.za>
Cc: Sello Chiloane <Chiloane@concourt.org.za>

Dear Ms Bios
I attach a PAIA request for the Commission's information officer's or deputy information officer's response as soon as reasonably possible (per the Act) please.
Yours sincerely
Anthony Brink
Cc: DIO Sello Chiloane

JSC PAIA request 6 March 2019.pdf
74K

R40
C

Gmail Anthony Brink <anthonybrink.sa@gmail.com>

Unanswered PAIA request

3 messages

Anthony Brink <anthonybrink.sa@gmail.com> 23 April 2019 at 14:28
To: nphakola@judiciary.org.za
Cc: schiloane@judiciary.org.za, Sello Chiloane <chiloane@concourt.org.za>, Lynette Bios <lbios@judiciary.org.za>

Dear Mr Phakola
I attach an important letter for your immediate attention please.
Yours sincerely
Adv AR Brink

Phakola 23 April 2019.pdf
30K

Nelson Phakola <nphakola@judiciary.org.za> 24 April 2019 at 14:49
To: Anthony Brink <anthonybrink.sa@gmail.com>
Cc: Sello Chiloane <schiloane@judiciary.org.za>, "Sello Chiloane (Concourt)" <chiloane@concourt.org.za>, Lynette Bios <lbios@judiciary.org.za>

Dear Adv. Brink

Receipt of your below email is acknowledged and I will revert back to you soon.

Regards

Nelson Phakola

Deputy Information Officer

[Quoted text hidden]

anthonybrink.sa@gmail.com <anthonybrink.sa@gmail.com> 25 April 2019 at 11:26
To: Nelson Phakola <nphakola@judiciary.org.za>

Thanks, Mr Phakola.

Anthony Brink

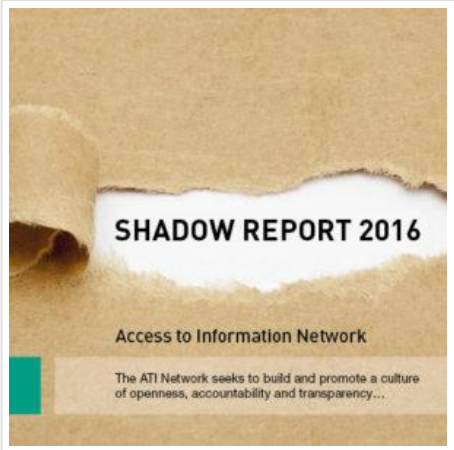
Sent from my Windows 10 device

[Quoted text hidden]

New report reveals shocking failure by public and private bodies to uphold South Africans' right of access to information

Posted in: Campaign Updates, InfoAccessNow | February 23, 2017

New research by the Access to Information Network (ATI Network)[1] has revealed a shocking dereliction of duties by public and private bodies to realise South Africans' constitutional right of access to information.



See the full Shadow Report 2016 online here.

The Shadow Report 2016 was compiled with statistics from requests for information made using the Promotion of Access to Information Act, 2000 (PAIA) by the 13 civil society organisations which make up the ATI Network. The Report covers the period 1 August 2015 to 31 July 2016, during which ATI Network members submitted 369 PAIA requests to government and private bodies. Key findings of the Shadow Report 2016 are:

- 46% of requests submitted to government were refused – i.e. no information was provided.
- 58% of these refusals were deemed refusals – i.e. the requests were ignored.
- Only 34% of requests submitted to government were granted in full.
- 64% of the appeals submitted to government were deemed to have been dismissed – i.e. the appeals were ignored.
- 67% of requests submitted to private companies were refused – i.e. no information was provided.
- Only 13% of requests submitted to private companies were granted in full.

These findings, in particular the number of PAIA requests and appeals which are simply ignored by government, are deeply concerning. They point to a clear failure by both public and private bodies to realise our right of access to information.

We are, however, encouraged by the progress made in the extent to which certain public bodies are expanding the number and categories of records which they will make automatically available to the public, i.e. without the need to submit a PAIA request.

It is in the State's interests to make information widely, publicly and automatically available. Making information automatically available not only significantly reduces the number of PAIA requests submitted, and therefore reduces the associated administrative burden, it also increases public trust in and cooperation with decision-makers.

The Shadow Report 2016 contains the following key recommendations:

- Public bodies must be encouraged to broaden their categories of automatically available information, and all such information should be placed on their websites.

- All licences should include a condition requiring the licence holder to make a copy of its licence available on its website or to anyone on request.
- Greater adherence to the severability clauses in PAIA would promote the objectives of PAIA while protecting information that should not be disclosed.
- The terms “trade secrets” and “commercial information” in PAIA should be clearly defined, to prevent their use as unsubstantiated excuses for failing to disclose records which should be publicly available.
- Capacity constraints within public bodies need to be addressed to ensure that the obligations under PAIA can be met.

About the ATI Network

The ATI Network was established in 2008 in response to the need for civil society collaboration to strengthen the effective use and implementation of PAIA, the mechanism via which our constitutional right to access information should be realised. The ATI Network currently consists of the following members (in alphabetical order):

amaBhungane Centre for Investigative Journalism

Centre for Applied Legal Studies

Centre for Environmental Rights

Corruption Watch

Equal Education Law Centre

Khulumani Support Group

Open Democracy Advice Centre

Oxpeckers Investigative Environmental Journalism

Probono.org

Public Service Accountability Monitor

Right2Know

South African History Archive

Wits Justice Project

For more about this report, contact:

Toerien van Wyk

Acting SAHA Directorate and FOIP Coordinator

011 718 2563

foip@saha.org.za

Annette Gibbs

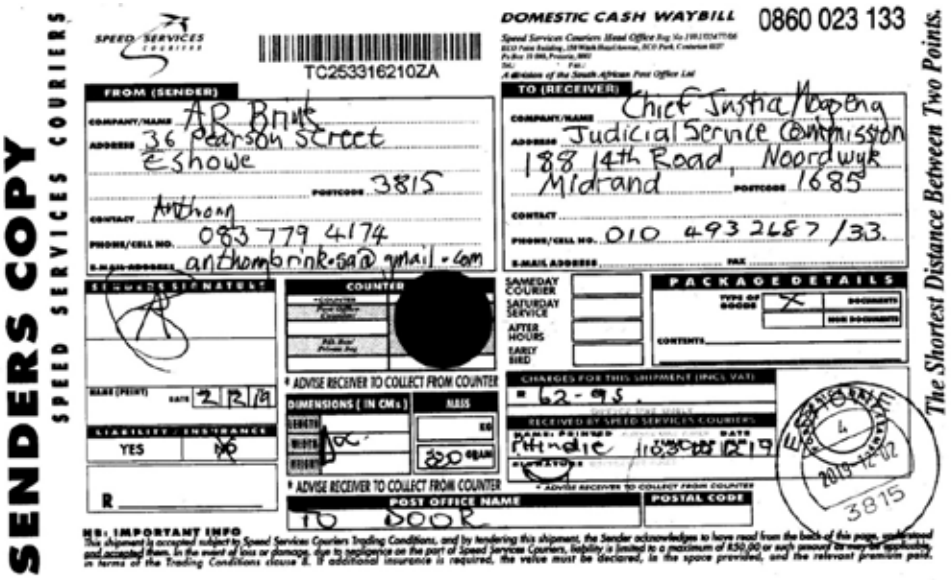
Centre for Environmental Rights

agibbs@cer.org.za

082 467 1295

1 Formerly known as the Promotion of Access to Information Act (PAIA) Civil Society Network.

Brink to Mogoeng CJ, Nov 2019: Waybill and Delivery Confirmation


SENDERS COPY
SPEED SERVICES COURIERS

SPEED SERVICES COURIERS

TC253316210ZA

DOMESTIC CASH WAYBILL 0860 023 133

FROM (SENDER)
COMPANY/NAME AR Brink
ADDRESS 36 Pearson Street
Eshowe
POSTCODE 3815
CONTACT Anthony
PHONE/CELL NO. 083 779 4174
E-MAIL ADDRESS anthonbrink-sa@gmail.com

TO (RECEIVER)
COMPANY/NAME Chief Justice Mogoeng
ADDRESS Judicial Service Commission
188 14th Road, Noordwyk
Midrand
POSTCODE 1685
CONTACT
PHONE/CELL NO. 010 493 2687 /33.
E-MAIL ADDRESS
FAX

SENDER'S SIGNATURE
DATE 2/12/19
LIABILITY INSURANCE
YES NO
R

COUNTER
* ADVISE RECEIVER TO COLLECT FROM COUNTER
DIMENSIONS (IN CMs)
MASS
320 GRAM
* ADVISE RECEIVER TO COLLECT FROM COUNTER
POST OFFICE NAME
POSTAL CODE
TO DOOR

SAMEDAY COURIER
SATURDAY SERVICE
AFTER HOURS
EARLY BIRD

PACKAGE DETAILS
TYPE OF GOODS
DOCUMENTS
NON DOCUMENTS
CONTENTS

CHARGES FOR THIS SHIPMENT (INCL VAT)
R 62-95
RECEIVED BY SPEED SERVICES COURIERS
NAME PRINTED Phindile
SIGNATURE
DATE 2/12/19

WESTVILLE 4 2019-12-02 3815

The Shortest Distance Between Two Points.

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The Shortest Distance Between Two Points.

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Item Number: TC253316210ZA **was last scanned on:** 2019/12/04 **at** 09::

Location last scanned: PTAFR

Currently has status of: POD

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3	UDPS	2019/12/04	06:32	PTAFR	LATEMAIL
4	RECEIVE	2019/12/04	06:02	PTAFR	
5	COLL DOC	2019/12/04	00:53	JHBNET	C392525969

TRACKING LINE	TYPE	DATE	TIME	BRANCH	COMMENTS
1	POD	2019/12/04	09:50	PTAFR	TSHEPISO
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3	UDPS	2019/12/04	06:32	PTAFR	LATEMAIL
4	RECEIVE	2019/12/04	06:02	PTAFR	
5	COLL DOC	2019/12/04	00:53	JHBNET	C392525969
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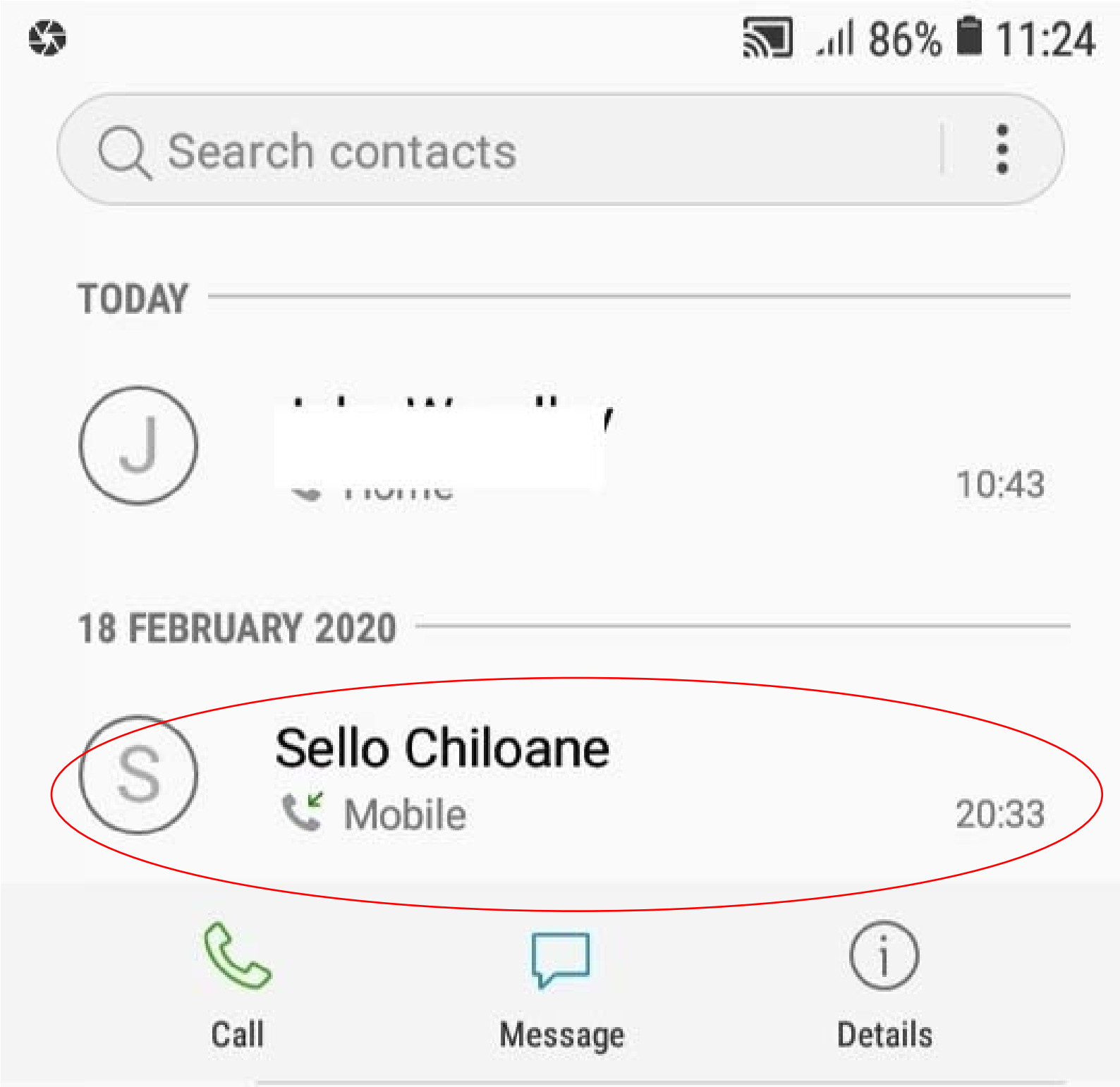
7	COLL IN	2019/12/02	11:00	ESHOWE POSTOFFICE	ACCEPTANCE (O) SCAN


86% 11:24
Search contacts
TODAY
J
10:43
18 FEBRUARY 2020
S
Sello Chiloane
Mobile
20:33
Call
Message
Details

R42

Gmail Anthony Brink <anthonybrink.sa@gmail.com>

Dropbox links to complaints against Mlambo JP and Waglay JP

5 messages

Anthony Brink <anthonybrink.sa@gmail.com> 18 February 2020 at 22:48
To: Sello Chiloane <Chiloane@concourt.org.za>

Dear Mr Chiloane
Thanks again for your call earlier this evening.
As discussed, here's a link to a Dropbox folder containing my eight complaints against Mlambo JP, his response, and my comments; and my complaint against Waglay JP, his response, and my comments:
https://www.dropbox.com/sh/byoncruhqen31nu/AAA-vWxJ1PagJpkOtxPUFh6Ea?dl=0
I had to move documents around a bit from folder to folder, and then a distraction delayed me, so I'm sorry it took me a bit longer to get back to you than expected.
I look forward to the due disposal of my complaints.
Yours sincerely
Anthony Brink

PS: Of possible interest to you, I've just created and posted this website: illegal-aid.co.za
I was about to go very public with my JSC complaints, but in light of your assurance that the ball is finally rolling I've removed the hyperlink to them.
My complaint to the Auditor-General will be signed and attested, and couriered tomorrow, and then posted on the site.

Anthony Brink <anthonybrink.sa@gmail.com> 19 February 2020 at 11:35
To: Sello Chiloane <Chiloane@concourt.org.za>

PS: I've put Rawlins's confirmatory affidavit in the Waglay JP folder as well.
Here's a direct link to it:
https://www.dropbox.com/s/1t8y1rabauep8xu/1.Confirmatory_affidavit.pdf?dl=0
[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 19 February 2020 at 11:38
To: Sello Chiloane <Chiloane@concourt.org.za>

PPS: It was put up with the original signed and attested complaint against Waglay JP, which the late Ms Bios told me had been mislaid.
[Quoted text hidden]

Sello Chiloane <Chiloane@concourt.org.za> 19 February 2020 at 11:42
To: Anthony Brink <anthonybrink.sa@gmail.com>

Thanks Sir

[Quoted text hidden]

Sello Chiloane <Chiloane@concourt.org.za> 19 February 2020 at 16:08
To: Anthony Brink <anthonybrink.sa@gmail.com>

Thanks Sir

From: Anthony Brink [mailto:anthonybrink.sa@gmail.com]
Sent: 19 February 2020 11:39 AM
To: Sello Chiloane <Chiloane@concourt.org.za>

[Quoted text hidden]

786

[Quoted text hidden]

R42

36 Pearson Street
Eshowe 3815
KwaZulu-Natal
18 August 2020

Secretary Sello Chiloane
Judicial Service Commission
188 14th Road, Noordwyk, Midrand
By email: chiloane@concourt.org.za

Dear Mr Chiloane

GROSS MISCONDUCT COMPLAINTS AGAINST
MLAMBO JP AND WAGLAY JP

1. Six months ago today, on Tuesday 18 February 2020, you called me after-hours at 20h33, urgently requesting copies of my gross misconduct complaints against Mlambo JP and Waglay JP, filed and acknowledged in mid-2017.

2. Your call followed my letter to the Chief Justice six weeks earlier,[1] in which I protested the failure of the Judicial Conduct Committee ('JCC') of the Judicial Service Commission ('JSC') to have resolved my said complaints, then two-and-a-half years since I made them.

3. I made a record of your call by taking a screenshot of calls received on my cellphone that day, showing your name, number and the date and time you called. I'd saved your number after you called me in November 2017, so your name showed up when you called me this second time.

4. Concerning the delay in the prosecution of my complaints, you mentioned the illness, incapacity and death of former JSC secretary Lynette Bios, to which I responded that indeed she'd extraordinarily unprofessionally lost my original complaint against Waglay JP and had asked for a copy, which I'd provided.

[1] My letter, my complaints, the judges' responses, and my invited comments, are all now freely accessible online at illegal-aid.co.za/JSC.

5. The breakdown of her health seemed a plausible if unsatisfactory explanation for the breakdown of proper administration in the JSC's office and the delayed disposal of my complaints.

6. To my enquiry about where you were phoning from at such a strangely late hour, you answered that you were still in your office. Since this was four hours after your colleagues had gone home, I conveyed my concern for you that gathering scanned copies of my complaints, the responses they drew and my invited comments on them, and then uploading them all in PDF to a Dropbox folder for you – the latter step an unavoidably technically slow process – would take me another hour or two. You responded that it didn't matter, and that you'd wait for them, mentioning that you were preparing them for immediate consideration.

7. I inferred from this that after reading my letter the Chief Justice had ordered immediate action taken to finalize my disgracefully long-outstanding complaints.

8. During our conversation, I expressed my outrage at Ms Bios' reply to my enquiry about progress in the disposal of my complaints against Mlambo JP (I'd asked her this when she called to request a copy of my complaint against Waglay JP) that the JCC had resolved to deal with my eight capital complaints against him, two of which charged crimes, merely under section 17 of the Judicial Service Commission Act, governing the disposal of serious but non-impeachable judicial misconduct. You responded with the mollifying assurance that under this section a Tribunal could still be appointed to try my complaints against him.

9. When during our conversation I lamented the JSC's shocking unconstitutional failure to respond to my record requests under the Promotion of Access to Information Act ('PAIA'), made primarily to establish the identity of the judges who'd resolved to proceed against Mlambo JP only under section 17 and who were responsible for delaying the prosecution of my complaints, you responded that my requests had become practically redundant, in that my

complaints were now being given immediate attention – adding that if the JCC's eventual decisions didn't satisfy me, I could take them on review under the Promotion of Administrative Justice Act ('PAJA').

10. As undertaken, I provided you the same night with all the documents you'd requested, by emailing you at 22h48 a hyperlink to a Dropbox folder to which I'd uploaded them. You acknowledged receipt the follow day. Like the log of your call to me, I've obviously kept the record of these emails for future use if needs be.

11. Six months later I've heard nothing more.

12. The JCC's conduct makes a mockery of the 'Basic values and principles governing public administration' prescribed by section 195(1) of the Constitution, including that 'Transparency must be fostered by providing the public with timely, accessible and accurate information.' The unreasonableness of the delay in dealing with my complaints and keeping me in the dark about it is illustrated analogously by the rule in the Judicial Norms and Standards issued by the Chief Justice that judgments should ordinarily be delivered within three months of the hearing.

13. The JCC's resolution of my now three-year-old complaints has now become pressing for two reasons.

14. *First*, paragraphs 49–60 of my letter to the Chief Justice mentioned the severe retaliation I experienced on multiple fronts for complaining of Mlambo JP's gross misconduct as Board chairperson of Legal Aid South Africa ('LASA'), including his criminal misconduct on two counts.

15. Having failed at this before, LASA is having another go at getting me struck off the roll of advocates for impugning Mlambo JP's integrity in my labour litigation against it in the period 2011–14. (Neither the trial judge nor the appeal judge found any fault with my court papers that LASA is complaining about.)

16. As said in my letter to the Chief Justice, my complete answer to LASA's complaint against me to the Society of Advocates of KwaZulu-Natal in November

2015 (of which I chanced to learn only in April 2017) was to provide the Society with copies of my eight gross misconduct complaints against Mlambo JP made to the JCC in June-July 2017; and with that the matter ended.

17. Earlier this year, however, LASA revived the same complaint before the Legal Practice Council ('LPC') on the ludicrous basis that the Society didn't have jurisdiction to handle the matter. (It dealt with it before the LPC even came into office.)

18. Should I need to answer the revived complaint (and on account of *autrefoit acquit* I believe not), I will want to report to the LPC the JCC's decision of my gross misconduct complaints. The JCC's continued foot-dragging is making them look meritless, and they certainly aren't.

19. *Second*, the Auditor-General ('AG') enquired a month ago about progress in the disposal of my complaints to the JCC, and I was bound to report that five months after providing you with the copies you'd requested, I'd heard nothing more.

20. The AG's Investigation division is currently dealing with Part One of my complaint of criminal and other capital contraventions of the Public Finance Management Act by current and former top officers of LASA,[2] as well as twelve criminal charges made against former LASA CEO Vidhu Vedalankar.[3] (Contrary to its sainted public image, LASA became prodigiously corrupt during the tenure of Mlambo JP as its Board chairperson.)

21. Again, I'm concerned that the JCC's silence and apparent inactivity might be construed by the AG as an indication that my complaints against Mlambo JP

[2] Accessible online at illegal aid.co.za/AG. Near completion, Part Two of my complaint details wholesale procedural and ethical recruitment corruption at LASA in which Mlambo JP was centrally involved – a 'material irregularity' under section 1 of the Public Audit Act and therefore of direct concern to the Auditor-General.

[3] Accessible at illegal aid.co.za/NPA. Like my criminal charges against former CEO Vedalankar, criminal charges against Chief Legal Executive Patrick Hundermark, National Operations Executive Brian Nair, and Human Resources Amanda Clark will follow.

have been found meritless, because this will surely prejudice the handling and determination of my complaints to the AG.

22. The purpose of this letter therefore is to enquire as to (i) the reason the JCC hasn't decided my complaints three years since I filed them, and six months since I supplied copies of them, along with the accused judges' responses and my invited comments on them, and (ii) when I can expect action on them.

23. If I haven't heard from you by Tuesday next week, I'll conclude that the JCC will not be performing its statutory function in duly disposing of my complaints against Mlambo JP and Waglay JP without the stimulus of:

(i) adverse publicity in the Sunday Times, Sunday Independent, City Press, Business Day, Rapport, Daily Maverick online, and in the television programme Carte Blanche;

(ii) public agitation by such anti-corruption and similar public interest NGOs as Corruption Watch, Freedom Under Law, OUTA, SAIRR, CASAC, AfriForum, Accountability Now, and Judges Matter;

(iii) more criticism by the German, British, American, Dutch and Swiss governments – as in January 2019 about the rampant corruption in our country – now about the corruption in the top ranks of the South African judiciary, about which the French, Chinese, Russian and Indian governments are likely also to be interested;

(iv) a public complaint by Hlophe JP about the JCC's selective prosecution of him alone, while tacitly granting his colleagues Mlambo JP and Waglay JP impunity for their impeachable high crimes and misdemeanours, just as serious as, if not more serious than, those with which he's to be tried in October; and,

(v) enquiries from the President and Justice Minister as to why the JCC is giving the said judges a free pass.

24. Anticipating six silent months since you asked for copies of my complaints, and now more than three years since I filed the originals, that the JCC will continue conducting itself in the Mlambo JP and Waglay JP matters as a judicial mutual defence union rather than as a judicial disciplinary body, and expecting the need to spur the prosecution of my complaints by disseminating them to the above interested parties, I've just taken delivery of a special order of five reams (5000 folios duplex-printed) of light copy paper especially suitable for bulk printing and mailing with a view to distributing copies of my complaints, the judges' responses, and my comments on them, together with copies of my letter to the Chief Justice and this one to you.

25. If you consider that my recordal above of what you told me on 18 February is inaccurate on any score, please identify in what respect, because should it be necessary to take up your suggestion to sue the JSC under PAJA in the High Court at Pietermaritzburg for an order compelling it to decide my complaints, I'll be relying on the facts recounted in this letter, which will be annexed to my founding affidavit together with my preceding letter to the Chief Justice.

26. Finally, in telling me that my PAIA requests concerning my misconduct complaints had become redundant, you overlooked my unrelated request for records concerning Ms Noxolo Maduba's appointment to, and then odd resignation from, the Tribunal originally appointed to try the Constitutional Court's complaint against Hlophe JP. My information is that her appointment was grossly improper in the particularly disgraceful circumstances of which I've been apprised, involving grossly unethical abuse of power and influence, to Hlophe JP's considerable prejudice. You'll recall relating during your call to me in November 2017 that, as you remembered it, she'd resigned (about five years earlier) to avoid an 'unseemly scandal'. My unanswered PAIA request in March 2019 about this was directed at collecting evidence for use in a further gross misconduct complaint against Mlambo JP.

27. Please see to it that I'm furnished with these records[4] at last. You failure to do so will found the only reasonable conclusion to be drawn by any reader of this letter to whom it's been copied, namely that the JSC is suppressing these records to protect Mlambo JP from being held to account.

28. Kindly advise me (i) who the current chairperson of the JCC is, and (ii) who the judge is who's dealing with my complaints against Mlambo JP and Waglay JP.

29. I might have mentioned during your last call to me that I'm working virtually full-time on exposing the corruption that I've run into at LASA and in judiciary,[5] and that my determination in this project is absolute and implacable.

30. Be assured therefore that my complaints against Mlambo JP and Waglay JP are not going to die in someone's bottom drawer, and that to guarantee this I'm preparing to launch my complaints into the court of public opinion by way of the nuclear option mentioned above. So you would be well advised to take this communication seriously. Please discuss it with the Chief Justice and with the chairperson of the JCC.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com | 083 779 4174

[4] Records requested: (1) The terms of reference of the Tribunal appointed under section 16 of the said Act to investigate and report on the complaints to the Commission made against Hlophe JP. (2) Mlambo JP's nomination of attorney Noxolo Maduba for appointment to the said tribunal in 2012/2013. (*Note: Only the part of the record reflecting the identity of Mlambo JP as the person who nominated Maduba for appointment is required; the text of his commendation of her in the nomination, i.e. its contents, hit by section 12 of PAIA, may be redacted.*) (3) Maduba's letter of appointment to the said Tribunal in or about February 2013. (4) Hlophe JP's (and/or other) subsequent objection(s) to her appointment. (5) Maduba's response, if any, to the objection(s). (6) Maduba's letter of resignation from the Tribunal.

[5] See generally: illegal-aid.co.za.

R43

Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

Brink's gross misconduct complaints against Mlambo JP and Waglay JP: Notice of intentions

1 message

Anthony Brink <anthonybrink.sa@gmail.com> 18 August 2020 at 18:34
To: Sello Chiloane <Chiloane@concourt.org.za>

Sello Chiloane
Secretary: Judicial Service Commission

Dear Mr Chiloane
I attach an extraordinarily important letter for your attention please.
Yours sincerely
Anthony Brink

Chiloane_18_August_2020.pdf
105K

795

36 Pearson Avenue
Eshowe 3815
KwaZulu-Natal
29 November 2020

The Honourable Deputy Chief Justice Raymond Zondo
Member of the Judicial Conduct Committee
Judicial Service Commission
c/o Commission of Enquiry into State Capture
Hillside House, 17 Empire Road
Parktown
Johannesburg 2193

And to cc list

Dear Judge Zondo

UNRESOLVED, EXCEPTIONALLY SERIOUS GROSS MISCONDUCT COMPLAINTS AGAINST MLAMBO JP AND WAGLAY JP

I write to you in your capacity as *de jur*e member of the Judicial Conduct Committee ('JCC') of the Judicial Service Commission ('JSC') under section 8(1)(b) of the Judicial Service Commission Act.

One year ago today, I wrote to Chief Justice Mogoeng Mogoeng in his capacity as JSC chairperson, protesting his JCC's failure to have determined my several gross misconduct complaints filed two-and-a-half years earlier in mid-2017 against Dunstan Mlambo, Judge President of the North and South Gauteng Division of the High Court, and Basheer Waglay, Judge President of the Labour- and Labour Appeal Courts. A copy of my letter to the Chief Justice is enclosed.

In response, JSC secretary Sello Chiloane telephoned me in February this year, urgently requesting copies of my complaints, the accused judges' responses, and my invited comments on them, and assuring me that they would be dealt with at last. I provided him these documents in PDF via Dropbox right after his call, and he acknowledged receipt.

Hearing no more from the JCC in the next six months, I wrote to Chiloane in August demanding action. A copy of my letter to him is enclosed. He didn't respond, and a further three silent months have passed.

It's now been three-and-a-half years since I filed my capital complaints against Mlambo JP and Waglay JP, and besides requiring them to answer them a year later (which they did, atrociously, and profoundly aggravating them), and then asking me for copies, the JCC has taken no further steps to resolve them – at least none that I've been told about.

A week ago on the 23rd, as you were ordering legal action against former President Jacob Zuma for walking out of your Commission of Enquiry into State Capture, you remarked very correctly that it was:

> a serious matter. It impacts on the integrity of the Commission, the rule of law and public accountability. ... The rule of law and public accountability are values fundamental to our constitutional order and our Constitution promises that all are equal before the law. This is a principle of our Constitution and of a society built upon the rule of law.

Summarised in my letter to Mogoeng CJ, my nine complaints to the JCC against the respondent judges are likewise an extraordinarily 'serious matter'. All but one are squarely founded on supporting documents. Two charge crimes. As said in my letter to the Chief Justice, the misconduct of which I complain dwarfs, or at least equals, anything of which Hlophe JP, head of the Western Cape Division of the High Court, stands accused.

The JCC's inaction in the matter contradicts everything you said about the 'rule of law and public accountability' being 'values fundamental to our constitutional order'.

Although indeed 'our Constitution promises that all are equal before the law', the JCC has failed to deliver on this most 'fundamental' 'principle of our

Constitution and of a society built upon the rule of law.' Contrariwise, it appears to be laughing it off.

Manifestly your JCC is not treating the two accused judge presidents as 'equal before the law', like the rest of us.

In sum, the JCC's shameful failure to prosecute my complaints negates these most basic principles of our constitutional democracy that you rightly emphasized when taking Zuma to task for holding himself above the law.

In my letter to JSC secretary Chiloane I raised the possibility of having to refer my complaints to the court of public opinion, both local and international, should the JCC continue sitting on its hands; and I identified several likely interested and concerned parties – my list of which I've since amplified very considerably in preparation for this baleful eventuality, should it be necessary.

I should report that both the media and Hlophe JP are already onto this scandal.

At a meeting with her here in Eshowe a month ago on 27 October, I gave Marianne Thamm, Deputy Editor of *The Daily Maverick* and one of our country's leading judicial-watching, corruption-exposing journalists, an in-depth briefing about this matter, during which I furnished her with copies of my letters to the Chief Justice and JSC secretary Chiloane.

Earlier that month, I wrote to Hlophe JP, alerting him 1) to the fact that the JCC was selectively prosecuting him; 2) to the JSC's repeated, shocking, illegal and unconstitutional suppression of records that I'd duly requested under the Promotion of Access to Information Act ('PAIA'), which I need, *inter alia*, to support a further gross misconduct complaint against Mlambo JP; and 3) to the JSC's shielding of Mlambo JP in this manner, apparently to protect him from being held to account for his further grossly unethical abuse of power, which had threatened Hlophe JP with extreme prejudice. Two days ago on the 27th, Hlophe JP telephoned to thank me for informing him about this, and confirmed first hand certain hearsay information stated in my letter to him, which I'd

received from a reliable, well placed source, pertaining to Mlambo JP's staggering further misconduct that I intend reporting.

I appreciate that you are hands-full with your all-important State Capture Commission, but my extraordinarily grave complaints against the respondent judges, duly made to the JCC on which you serve, can't go on collecting dust.

Any reasonable person must wonder why the JCC is not bringing Mlambo JP and Waglay JP to book for their capital misconduct, as it energetically goes about prosecuting Hlophe JP.

The gross unreasonableness of the JCC's delay in deciding my complaints is pointed up by the Norms and Standards for the Performance of Judicial Functions, issued by the Chief Justice in 2014. Unless a case is unusually complex or massive, a judge must 'strive to finalise' it 'as expeditiously as possible' within one year and must deliver any reserved judgment within three months. In the case of my complaints to the JCC, the papers have long all been in and the matters ripe for adjudication, but nothing's happening. As said, I lodged my complaints back in mid-2017, and they were answered (appallingly) the following year; yet contrary to JSC secretary Chiloane's assurance to me in February that they would finally be attended to, they've yet to be decided. The delay is outrageous.

If as the second most senior ranking member of the JCC you're seen to be giving a free pass to two fellow senior judges charged with the grossest impeachable misconduct, even as your State Capture Commission duly holds corrupt politicians, corrupt public servants, and other corrupt persons to account, it may well adversely 'impact on the integrity of the Commission' that you chair, or at least on public confidence in it. It will certainly impact on the integrity of the judiciary.

Besides the public's compelling interest in the JCC's determination of my complaints without further delay, I have a direct personal and professional interest in it of my own. As mentioned in my letter to the Chief Justice, Legal Aid South Africa ('LASA'), formerly chaired by Mlambo JP, is trying to

annihilate the witness against him by having me struck off the roll of advocates. My offence? Allegedly disgracefully unprofessionally scandalizing the court by complaining of Mlambo JP's misconduct in my papers in my labour litigation against LASA and then in my complaints to the JCC. In so doing, LASA – actually Chief Legal Executive Patrick Hundermark, who Mlambo JP has rewarded for his servility with an acting judicial appointment in the past – is employing a grotesquely perverse, cynical offence-as-defence strategy to turn the tables and depict me as the malfeasor in the matter, rather than the accused judges. (Think Zuma's spurious complaint to the JCC against you after you dismissed his recusal application.)

Mentioned in my letter to the Chief Justice, I'd assumed that LASA's complaint against me to the Society of Advocates of KwaZulu-Natal ('the Society') made in 2015 had been dismissed in 2017 after I submitted copies of my complaints against Mlambo JP as my complete answer to LASA's complaint against me, because after I did so I heard no more. But I've just learned in September from a document elicited from the Society with a PAIA request that its Litigation Committee had recommended that the Bar Council await the JCC's decision of my complaints against Mlambo JP and Waglay JP before deciding whether to act on LASA's complaint against me. The Legal Practice Council, which came into being in 2018, has inherited the Society's file in the matter, and its local provincial disciplinary officer Nadira Harripersad told me two days ago on the 27th, in response to my telephonic enquiry about this, that it's still open.

The Auditor-General's Investigations division – which is dealing with my documented complaints against several of LASA's top management executives regarding their massive ongoing contraventions of the Public Finance Management Act, numerous criminal offences committed under that Act and other laws, and a host of 'material irregularities' as defined by the Public Audit Act – is also concerned to know about progress in the JCC's disposal of my complaints to it, because its Senior Manager Kamesha Naidoo asked me about this in July.

Having already appealed to the Chief Justice a year ago – fruitlessly in the result – I now repeat my plea to you, as the second most senior member of the JCC, to see to the long overdue decision of my complaints.

I'm not prepared to wait any longer. The JCC's dereliction of its statutory responsibilities in the Mlambo JP and Waglay JP matters is scandalous.

I hope to have your reply by 31 December – failing which, after calling local and international attention as widely as I can to the JCC's failure to prosecute my complaints, I'll be applying to the High Court in the new year for a mandamus against the JSC, alternatively for relief under the Promotion of Administrative Justice Act – as indeed JSC secretary Chiloane himself suggested I seek if I was dissatisfied with the JCC's further handling of my complaints.

I conclude by recording that I'm sensitive to the enormous damage to the reputation of the South African judiciary that the prosecution of my complaints portends, and accordingly I reiterate my preference for a global, conciliatory settlement and resolution. But this is something for the JSC and the LASA Board to decide and work out. Otherwise the law must take its course, and I'm working full-time to make sure that it does.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

PS: I've addressed this letter to you for delivery at your physical address at the Commission on State Capture where you currently work, *first* to ensure you receive it as soon as possible; and *second* to prevent it from being intercepted and not reaching you. Although my letter couriered to the Chief Justice was addressed to him for his personal attention, I'm now wondering whether his

office staff ever placed it before him to read, seeing as there's been no conclusive follow-up in the year since I wrote to him.

Cc:
The Honourable Chief Justice Mogoeng Mogoeng, chairperson of the Judicial Service Commission;
The Honourable Judge President John Hlophe, Western Cape Division of the High Court;
Memme Sejosengwe, Secretary General, Office of the Chief Justice;
Jakes Jacobs, Chief Director, Office of the Secretary General, Office of the Chief Justice;
Nathi Mncube, Spokesperson, Office of the Chief Justice;
Sello Chiloane, Secretary of the Judicial Service Commission;
Adv Marissa Bezuidenhout, Head of Corporate Legal and Provisioning Services, Management Executive Committee, Auditor-General South Africa;
Adv Paul Pretorius SC, Evidence Leader, Commission on State Capture;
Marianne Thamm, Deputy Editor: *The Daily Maverick*.

This letter and the documents to which it refers are accessible in PDF online at illegal-aid.co.za.

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PHONE/CELL NO. 083 779 4174
E-MAIL ADDRESS

TO (RECEIVER)

COMPANY/NAME Deputy Chief Justice
ADDRESS Raymond Zondo
Commission of Enquiry into State Capture
Hillside House
17 Empire Rd Parktown
POSTCODE Johannesburg 2193
CONTACT
PHONE/CELL NO.
E-MAIL ADDRESS
FAX

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The Shortest Distance Between Two Points.

803

36 Pearson Street
Eshowe, KwaZulu-Natal
29 November 2020

The Honourable Chief Justice Mogoeng Mogoeng,
Chairperson and Information Officer:
Judicial Service Commission
188 14th Road, Noordwyk
Midrand 1685

Dear Justice Mogoeng

I enclose a copy of my letter of even date to Deputy Chief Justice Zondo, along with copies of letter to you a year ago and to JSC secretary Chiloane in August.

The matter is monumentally important.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

36 Pearson Avenue
Eshowe 3815
KwaZulu-Natal
29 November 2020

Mr Jakes Jacobs
Chief Director, Office of the Secretary General, Office of the Chief Justice
Private Bag X10
Marshalltown 2017

Dear Mr Jacobs

I enclose a copy of my letter to Deputy Chief Justice Zondo of even date, along with copies of my letters to the Chief Justice a year ago and to JSC Secretary Chiloane in August.

The reason I've copied you in on this correspondence is because it is critical that the Chief Justice sees it. Although I've copied him separately, I need to be sure he gets it.

For the reason stated in the postscript to my letter to Zondo DCJ, I'm now wondering whether the Chief Justice ever received my preceding letter to him a year ago.

The subject of my correspondence is monumentally important.

I've written in similar terms to Ms Memme Sejosengwe, Secretary General: Office of the Chief Justice, and would be grateful if you'd liaise with her and confirm that the Chief Justice has personally received the letter copies that I've enclosed. (His copies mailed him separately are printed normally.)
Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

36 Pearson Avenue
Eshowe 3815
KwaZulu-Natal
29 November 2020

Mr Nathi Mncube
Spokesperson, Office of the Chief Justice
Private Bag X10
Marshalltown 2017

Dear Mr Mncube

I enclose a copy of my letter of even date to Deputy Chief Justice Raymond Zondo, along with copies of my letters to the Chief Justice a year ago and to JSC Secretary Sello Chiloane in August.

The reason I've copied you in on this correspondence is that it's critical that the Chief Justice sees it. Although I've copied him separately, I need to be sure he gets it. (The copies I've mailed him are printed normally.)

For the reason stated in the postscript to my letter to Zondo DCJ, I'm now wondering whether the Chief Justice ever received my preceding letter to him a year ago.

The subject of my correspondence is monumentally important. As you'll see from my letter to Zondo DCJ, both Hlophe JP and *Daily Maverick* Deputy Editor Marianne Thamm are now onto it.

Please enquire from the Chief Justice and confirm that he's personally received the letter copies that I've enclosed.

I've written in similar terms to Memme Sejosengwe, Secretary General: Office of the Chief Justice, and to Jakes Jacobs, her Chief Director, and would be grateful if you'd liaise with them about this. The Chief Justice will not be amused if he's kept in the dark and is the last to know if and when this thing very publicly blows up.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

36 Pearson Avenue
Eshowe 3815
KwaZulu-Natal
29 November 2020

Ms Memme Sejosengwe
Secretary General, Office of the Chief Justice
Private Bag X10
Marshalltown 2017

Dear Ms Sejosengwe

I enclose a copy of my letter to Deputy Chief Justice Zondo of even date, along with copies of my letters to the Chief Justice a year ago and to JSC Secretary Chiloane in August.

The reason I've copied you in on this correspondence is because it is critical that the Chief Justice sees it. Although I've copied him separately, I need to be sure he gets it.

For the reason stated in the postscript to my letter to Zondo DCJ, I'm now wondering whether the Chief Justice ever received my preceding letter to him a year ago.

The subject of my correspondence is monumentally important.

In the situation, please enquire from him and confirm that he's personally received the letter copies I've enclosed.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

36 Pearson Avenue
Eshowe, KZN
29 January 2021

The Honourable Deputy Chief Justice Raymond Zondo
Member of the Judicial Conduct Committee
Judicial Service Commission
c/o Commission of Enquiry into State Capture
Hillside House, 17 Empire Road
Parktown
Johannesburg 2193

And to cc list

Dear Judge Zondo

THE FAILURE OF YOUR JUDICIAL CONDUCT COMMITTEE TO DETERMINE LONG OUTSTANDING GROSS MISCONDUCT COMPLAINTS AGAINST MLAMBO JP AND WAGLAY JP

I regret the inconvenient timing of this letter in view of former President Zuma's all-important imminent second appearance before your Commission of Enquiry into State Capture ('Commission'), compounded by the fast approaching conclusion of its term, but I write about a matter of extraordinary importance, and unless it's attended to without further undue delay, the consequences promise to be dire.

On 30 November last year, intending the most rapid possible guaranteed delivery, I dispatched a letter addressed to you for delivery directly to your Commission's work address by the state-owned courier, Speed Services Couriers.

It never arrived. The Post Office's online parcel tracking system records only that my letter was received for despatch; but my telephonic enquiry made to the

courier's call centre established that it reached the Braamfontein Post Office five days later – where it remains, undelivered, despite my 'Front Door Delivery' entry on the waybill.

My subsequent attempts to reach the call centre by phone and then email to enquire how such stranded post might be released and forwarded have gone unanswered. Small surprise, because I read in the news two weeks ago that the South African Post Office is again 'on the brink of collapse'.

Hence my decision to send my November letter to you again, this time by ordinary post. To ensure you see it, however, I'll copy it to Judicial Service Commission ('JSC') Secretary Sello Chiloane by email with the request that he forward it to you, copying the Chief Justice in.

If you don't receive this letter and its enclosures by post, Post Office inefficiency will be the likely cause. If you don't receive it from Secretary Chiloane by email, and only get to read it later on when the scandal blows, he'll have to explain why he prevented your remedial intervention by keeping it from you. I say this considering the indications, mentioned just below, that my critically important preceding letter to JSC chairperson Mogoeng CJ in November 2019 in the same matter, promptly delivered by courier on 4 December according to the tracking report, was not passed on to him by his staff, despite my having marked it 'For Personal Attention' and 'Exceptionally Important'.

Mentioning other complaints, Mogoeng CJ was strangely silent about mine against Mlambo JP and Waglay JP at his presentation of his office's annual report in November 2020. And again he didn't mention them last month when remarking (according to the Independent Online on 11 December) that the Hlophe JP case:

> was one of three matters against judges that have taken long to be heard. One of these is against Judge Nkola Motata in Gauteng, who

> was convicted of drunk driving in 2009. “So, we should be happy as the South African public, though the matter took long. We should be pleased the Judicial Conduct Tribunal sat and judges testified and the Judge President testified. We are held accountable.” Justice Mogoeng said the public would have been worried if the matter had been swept under the carpet.

Besides the Hlophe JP case, Mogoeng CJ's mention of the relatively trivial Motata J one strongly suggests that the third unspecified ‘matter’ wasn't any of my several exceptionally serious complaints against Mlambo JP and Waglay JP that ‘that have taken long to be heard’, and indeed have yet ‘to be heard’, more than three-and-a-half years since I lodged them. It seems clear from this that Mogoeng CJ is unaware of them. And it's precisely because I'm neither ‘happy’ nor ‘pleased’ about the outrageous delay in the prosecution of my complaints that I've been writing both to him and to you since November 2019.

Enclosed are (a) my letter to you in November 2020; (b) my letter to Mogoeng CJ in November 2019 – answered by a night-time phone call from Secretary Chiloane in February 2020, urgently requesting copies of all my complaints, and assuring me of their prompt disposal at last; and (c) my letter to Chiloane six silent months later in August 2020, pressing for the decision of my complaints, which he ignored.

I've enclosed also a copy of the courier's waybill for my November letter to you. A messenger sent to the Braamfontein Post Office, quoting its reference number, will be able to retrieve the original.

At the time I couriered my November letter to you, I mailed hard copies by ordinary post to Mogoeng CJ, his office's Secretary General Memme Sejosengwe, Chief Director Jakes Jacobs, and Spokesman Nathi Mncube. For his general information, I also copied your Commission's Evidence Leader Paul

Pretorius SC. (Vouching this, I have a photograph of all the envelopes stacked on the Post Office teller's counter about to be stamped.)

Expecting that you'd have my November letter a couple of days after dispatch, I delayed emailing copies to most of the other cc addressees listed at the foot of it, namely Secretary Chiloane; Marianne Thamm, Deputy Editor: *The Daily Maverick* (mentioned in my November letter); and Adv Marissa Bezuidenhout, head of Corporate Legal and Provisioning Services at the Auditor-General South Africa ('AG') and a member of the Management Executive Committee. (After studying my extensive, documented, affirmed complaint about the financial corruption, maladministration and criminality at Legal Aid South Africa under Mlambo JP's tenure as chairperson – in which he was centrally involved – she referred it to the AG's Investigation division.)

The reason I delayed emailing them is because I thought it proper that as principal addressee you read my November letter first, and I intended emailing them once I'd seen from the post office's parcel tracking system that you'd received it. As it turned out, you never did.

I'll now email the rest of my November letter cc addressees. I've already emailed Hlophe JP for his direct interest stated in all three of my enclosed letters covered by this one: to Mogoeng CJ, to you, and to Secretary Chiloane.

I'll also copy this letter and its enclosures to a senior investigative and legal journalist working for a prime-time television news programme. Tipped by a concerned 'member of the legal community', she contacted me ten days ago on the 19th about 'the complaint[s] that you laid with the JSC against Judges Mlambo and Waglay [which] have been pending for an extended period of time' – remarking that it's 'very important to keep a close eye on the functioning of the judiciary, including the proper functioning of the disciplinary process.'

I provided her with the hyperlink to my complaints, to the accused judges' responses, and to my invited comments on them, all publicly accessible online, and she told me she's studying them.

The horrifying evidence given to your Commission earlier this week by Loyiso Jafta, acting Director General of the State Security Agency ('SSA'), that there's 'very strong circumstantial evidence' that around R22 million in cash was paid to bribe and corrupt the judiciary during the SSA's rogue operation 'Project Justice' – confirmed by your next witness 'Ms K' on the team that investigated the matter – will surely have been noted by governments abroad, especially those that took the unusual step of writing together to President Ramaphosa in January 2019 about the problem of rampant public sector corruption in our country.

As said in my November letter, I appreciate that the prosecution of my complaints against Mlambo JP and Waglay JP will massively (further) damage the reputation of our judiciary, both locally and internationally, but for the Judicial Conduct Committee, of which you and the Chief Justice are mandatory members, to practically cover up their extraordinarily serious misconduct by giving my complaints the 'File-13' treatment will certainly be far worse.

In paragraph 78 of its unanimous decision in your Commission's favour yesterday, the Constitutional Court reiterated the point you made after former President Zuma's illegal walk-out, quoted in my November letter: 'In our system, no one is above the law.' Which is to say, neither former State Presidents nor sitting Judge Presidents.

Since you didn't receive my November letter, I hereby extend the time limit for a response that mentioned in it to the end of February. Considering the pressure you're under to complete your State Capture Commission's work in the next few weeks, I'm amenable to a further extension, if requested.

If the Judicial Conduct Committee continues abnegating its crucially important disciplinary obligations by leaving my capital complaints against Mlambo JP and Waglay JP mouldering in the bottom drawer, contradicting Mogoeng CJ's unquestionably sincere assurance in December that 'We are held accountable', and should my complaints practically be 'swept under the carpet' (his reported words), I'll proceed as indicated in my November letter – first by going international in March, in the manner I mentioned, adding copies of this letter to the others; and then by applying to the High Court for an order compelling the JSC's determination of my disgracefully, indeed unlawfully long unresolved complaints.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

Cc:
The Honourable Chief Justice Mogoeng Mogoeng: Chairperson of the JSC;
Sello Chiloane: Secretary of the JSC;
The Honourable Justice John Hlophe JP: Head of the Western Cape High Court;
Adv Marissa Bezuidenhout: member of the Management Executive Committee and Head of Corporate Legal and Provisioning Services, Auditor-General SA;
Marianne Thamm, Deputy Editor: *The Daily Maverick*.

This letter and all documents to which it refers are accessible in PDF online at illegal-aid.co.za.

R46

Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

Correspondence for Zondo DCJ in re Brink's unresolved complaints against Mlambo JP and Waglay JP

1 message

Anthony Brink <anthonybrink.sa@gmail.com> 3 February 2021 at 22:51
To: Sello Chiloane <Chiloane@concourt.org.za>

Dear Mr Chiloane
Please forward the attached correspondence to Zondo DCJ.
Please copy it to Mogoeng CJ when you do.
My January 2021 letter to Zondo DCJ explains why he didn't receive my previous letter to him in November 2020, and why I'm emailing you.
Since you're mentioned in both my letters to Zondo DCJ, I suggest you read them.
You'll appreciate that this extraordinarily serious matter has become urgent.
Sincerely
Adv Anthony Brink

4 attachments

- **4.Zondo_DCJ__Jan_2021.pdf** 29K
- **2.Chiloane__Aug_2020.pdf** 170K
- **1.Mogoeng_CJ__Nov_2019.pdf** 320K
- **3.Zondo_DCJ__Nov_2020.pdf** 627K

814

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

188, 14th Road, Noordwyk, Midrand, 1685
Private Bag X10, Marshalltown, 2107
Tel: +27 10 493 2500 (Switchboard)
E-mail: info@ judiciary.org.za
www.judiciary.org.za

Adv. A Brink
36 Pearson Avenue
Eshowe 3815
KwaZulu-Natal
3815

Dear Adv. Brink

LETTERS TO CHIEF JUSTICE, MOGOENG MOGOENG AND DEPUTY CHIEF JUSTICE ZONDO

Your letter dated 29 November 2020 received on 11 February 2021 bears reference.

Kindly be advised that if you wish to write to the Honourable Chief Justice Mogoeng Mogoeng, in his capacity as the Head of the Judiciary, you must address your letters to Mr. Allister Slingers and/or Ms. Elizabeth Moloto. Their email addresses are slingers@concourt.org.za and moloto@concourt.org.za .

Letters for the attention of the Deputy Chief Justice Zondo must be emailed to Ms. Lethu Ntimane. Her address is Ntimane@concourt.org.za .

Any complaint about the conduct of Mr. Sello Chiloane must be addressed to Ms. M. Sejosengqwe using the same Marshalltown address or by emailing Mr. Desmond Moekoa at DMoekoa@judiciary.org.za .

I trust you will find the above in order,

Yours Sincerely,

Mr. Nathi Mncube
Spokes Person of the Judiciary of South Africa
Date: 17/2/2021

36 Pearson Avenue
Eshowe 3815
KwaZulu-Natal
25 February 2021

The Honourable Chief Justice Mogoeng Mogoeng
Chairperson: Judicial Service Commission
By email: slingers@concourt.org.za & moloto@concourt.org.za

Cc:
The Honourable Deputy Chief Justice Raymond Zondo
Member of the Judicial Service Commission
By email: ntimane@concourt.org.za

The Honourable Julius Malema MP
Member of the Judicial Service Commission
By email: slindokuhle.njapha@effonline.org & effsg2npa@gmail.com

The Honourable Cyril Ramaphosa
President of the Republic of South Africa
By email: presidentrsa@presidency.gov.za

And other interested parties.

Dear Justice Mogoeng

MY MEETING WITH FORMER PRESIDENT ZUMA TO BRIEF HIM ABOUT MY GROSS MISCONDUCT COMPLAINTS AGAINST MLAMBO JP AND THE JSC'S FAILURE TO PROSECUTE THEM

At around 9 o' clock on Monday night, 22 February 2021, I met former President Jacob Zuma in the upstairs study of his house at Nkandla, to brief him about my eight capital misconduct complaints against Dunstan Mlambo JP, filed with the Judicial Service Commission ('JSC') in mid-2017, and about the JSC's failure to

prosecute them in the three-and-a-half years since, despite my persistent pleas to you and to Deputy Chief Justice Zondo to see to it.

The reason the former President requested to see me was apparent from his repeated criticism of Mlambo JP in his media statement released a week earlier (online at bit.ly/3pNgKdG). An attorney friend had informed a junior ANC leader about my unresolved complaints to the JSC against Mlambo JP, and he'd got word to the former President about it.

At our meeting, I handed him an indexed bundle of hard copies of my letters to you in November 2019, to JSC secretary Chiloane in August 2020, and to Zondo DCJ in November 2020 and January 2021 – as well as Judiciary spokesperson Mncube's letter to me a week ago in which he acknowledged receipt of my first letter to Zondo DCJ in November 2020, covering a copy of my letter to you a year earlier.

The index to this correspondence is annexed. As appears from its endnote, all my letters, my complaints to the JSC, the accused judges' responses, and my invited comments on them, are accessible in PDF via the 'Judicial Service Commission' link on the front-page of my online document archive in this colossal corruption case: illegal-aid.co.za.

Since some of my letters incidentally criticised the former President, I told him bluntly, 'I haven't come here as your friend. Nor have I come as your enemy. But as they say up there in the Middle East, my enemy's enemy is my friend' – and he laughed appreciatively at my candour.

I walked him though the substance of my eight complaints against Mlambo JP, pointing up that two of them charged jailable crimes.

I mentioned how he'd suborned the most fantastic, poisonous perjury in an affidavit put up by his attorney on his instructions, totally fabricated out of thin air to wreck my credibility and blow me out of court in my application for leave to subpoena him for cross-examination on his repeated criminal lies told in his 'confidential report' signed and submitted to the National Assembly's Justice

Portfolio Committee to pervert its enquiry into (i) top-level recruitment corruption at Legal Aid SA ('LASA') in which he was centrally involved as Board chairperson, and (ii) LASA's repeated and persistent, illegal and unconstitutional refusals to comply with my PAIA requests duly made in an investigation of this corruption, in which obstruction he was complicit, as LASA's email records reveal.

I canvassed also my gross misconduct complaint filed against Waglay JP in mid-2017 for breaking his judicial oath and corruptly throwing a case LASA's way at its *written* behest, which the JSC has likewise neglected to prosecute. I mentioned that the unstamped, anonymous 'memorandum' slipped to Waglay JP, crudely disparaging me and importuning him to dismiss the case with lies about it – which note he disastrously left in the court file for me to discover very fortuitously some months later during an inspection of the file in search of other information in it – was photocopied for me by the registrar and certified present in the file by stamping an inventory of its contents after checking them item by item. I mentioned the indications (set out in my invited comments on Waglay JP's response to my complaint against him) that the likely author of this criminal 'memorandum' used to defeat the ends of justice was Mlambo JP – in other words that Mlambo JP had corruptly prevailed on his long-time judicial colleague Waglay JP to pervert the decision of the case in which he stood direly exposed.

I told him how to further protect Mlambo JP, both the JSC and LASA were illegally and unconstitutionally withholding records duly requested under PAIA to obstruct my access to documents needed for use in support of a further complaint against him regarding his especially unethical and scandalous role in fixing the appointment of a certain woman to the original tribunal constituted to try the Constitutional Court's complaint against Hlophe JP. I mentioned to the former President that Hlophe JP had recently telephoned me and confirmed the hearsay report I'd received about this from a reliable inside source, a former national management executive at LASA (sick to the gills with the corruption he'd encountered there).

The key point I emphasized to the former President was that as the Zondo Commission was coming after him and the JSC was coming after Hlophe JP, the JSC – of which both you and Zondo DCJ are obligatory members – is giving a free pass to two other judge presidents guilty of the most extreme impeachable documented misconduct.

At the end of our meeting, the former President was profuse in his thanks for my information about the Mlambo JP case and the JSC's failure to hold him to account. My parting suggestion was that he pass on my letters to you and Zondo DCJ to his lawyers, saying, 'They'll jump out of their chairs when they read this.'

On the very day of the meeting, President Cyril Ramaphosa used his weekly newsletter to rebuke his predecessor for charging 'without any evidence' that Mlambo JP and certain other judges had violated their judicial oaths; and he urged that 'Anyone who has evidence of any wrongdoing by any judge should make use of the avenues provided in our Constitution and in our law to ensure that appropriate action is taken.' (See bit.ly/3usuvSB.)

As I told the former President at our meeting, no 'appropriate action' had been 'taken' against Mlambo JP and Waglay JP, despite my presentation to the JSC of hard documentary 'evidence' of the most egregious imaginable 'wrongdoing' by them. I informed him that my eight complaints against Mlambo JP, substantiated by supporting documents, showed that he was guilty of far more than political bias in his judgments – as evinced by his ludicrously contradictory decisions against him (Zuma) in 2017 on the powers of the Public Protector and in favour of his successor in 2020. I advised him, as I'd advised you in my November 2019 letter, that my complaints against Mlambo JP and their supporting documents show unequivocally that he's an unconvicted criminal with no regard for the truth, for the law, and for the Constitution. And that Waglay JP had corruptly tossed a case, prematurely, before all the papers were in, at the secret *written* instance of my opponent, and almost certainly Mlambo JP himself. In other words, as President Ramaphosa put it very correctly, albeit suggesting the contrary, 'there are some within the judiciary

who are failing to uphold the values and principles with which they have been entrusted.'

Even though there are indeed 'clear processes established in law to deal with allegations of misconduct against members of the judiciary', as President Ramaphosa put it, what I found when proceeding to 'make use of the avenues provided in our Constitution and in our law to ensure that appropriate action is taken', by providing documentary 'evidence of any wrongdoing by any judge' in support of nine complaints about it, was that zero 'appropriate action [was] taken.'

That is, despite my due 'presentation of evidence to support these claims ['of misconduct' to] the relevant authorities', the JSC did nothing to hold the guilty judge presidents to account.

It seems to me that it's precisely the JSC's strange inaction that 'undermine[s] the judiciary and the important function that it performs in our democracy', because it shows that the JSC doesn't care if a judge president tells blatant vicious lies in an affidavit put up by his attorney on his instructions; repeatedly connives at and colludes in the illegal and unconstitutional suppression of duly requested public records in service of a corruption cover-up in which he's centrally involved, so as to obstruct its investigation and exposure; and tells multiple objectively demonstrable lies, with the same corrupt intention, in a 'confidential' report to the Justice Minister and to the Justice Portfolio Committee to pervert their separate, independently instituted enquiries into recruitment corruption and malicious non-compliance with PAIA at the public entity he chaired at the time – all of which illegality and unconstitutionality he's involved in. And the JSC doesn't care if another judge president betrays his judicial oath by corruptly throwing a case, after being anonymously importuned to do so *in writing* by a public entity chaired by his long-time colleague, Mlambo JP, and almost certainly by Mlambo JP himself.

Which is to say, your and President Ramaphosa's very nice assuring words about presenting clear evidence of judicial malfeasance to the JSC for appropriate disciplinary action *don't line up so well with the reality situation*.

The lesson for the public would seem to be: Don't bother complaining to the JSC about gross judicial misconduct, especially not by judge presidents, because as the Hlophe JP, Mlambo JP, and Waglay JP cases illustrate, over at the JSC some judge presidents are more equal than others.

The purpose of this letter is to alert you to the fact that former President Jacob Zuma is now fully apprised of the JSC's failure to discipline two utterly corrupt judge presidents, and that the JSC's unlawful and unconstitutional dereliction of its obligations looks certain to be ventilated by him and/or his lawyers – and sooner rather than later, considering his bitter criticism of Mlambo JP and Zondo DCJ in his mid-February media statement.

So this might be a good time for the JSC to start getting a move on.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

PS: When I got home after the meeting, I found an email from JSC secretary Chiloane covering affidavits by Mlambo JP and his former court secretary telling more brazen lies in a laughably feeble and dishonest attempt to refute the first of my eight complaints against him. I'll be dealing with Mlambo JP's aggravation of my first complaint in my comments thereon, invited in the email.

Encl: Index to JSC letter bundle.

RE: ADV BRINK'S GROSS MISCONDUCT COMPLAINTS TO THE JUDICIAL SERVICE COMMISSION AGAINST MLAMBO JP AND WAGLAY JP

Letters:

1. to Mogoeng CJ, chairperson of the Judicial Service Commission and of its Judicial Conduct Committee, 29 November 2019 – with proof of dispatch by courier on 2 December 2019 and of delivery on 4 December 2019 – unacknowledged

2. to Sello Chiloane, JSC secretary, 18 August 2020 – with proof of delivery by email – unacknowledged

3. to Zondo DCJ, member of the JSC and of its JCC, 29 November 2020 (enclosing a copy of letter to Mogoeng CJ) – with proof of despatch by courier on 30 November 2020 – receipt acknowledged on 17 February 2021 (see #5 below)

4. to Zondo DCJ, 29 January 2021, despatched by ordinary mail for speed, but copied by email to secretary Chiloane on 3 February 2021 with the request that he forward it to Zondo DCJ – unacknowledged.

5. from Judiciary Spokesperson Nathi Mncube, 17 February 2021, acknowledging receipt on 11 February 2021 of first letter to Zondo DCJ (#3 above) couriered on 30 November 2020

These letters and the gross misconduct complaints to which they refer (outlined in paragraphs 3ff of Brink's letter to Mogoeng CJ), plus the accused judges' responses and Brink's invited comments on them, can all be accessed via the 'Judicial Service Commission' link on the front page of illegal-aid.co.za.

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Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

Adv Brink's meeting with fmr President Zuma on Monday to discuss his unresolved misconduct complaints against Mlambo JP

1 message

Anthony Brink <anthonybrink.sa@gmail.com> 26 February 2021 at 00:01
To: slingers@concourt.org.za, moloto@concourt.org.za, ntimane@concourt.org.za, Sello Chiloane <Chiloane@concourt.org.za>, nmncube@judiciary.org.za, Knowledge Nkosi <knkosi@judiciary.org.za>

Dear Gentlemen and Mesdames
I attach a letter for the attention of Chief Justice Mogoeng and Deputy Chief Justice Zondo.
Its extraordinary importance is indicated by the heading of this email.
It's critically important that they read my letter before former President Jacob Zuma and/or his lawyers go public on the JSC's failure to prosecute my gross misconduct complaints against Mlambo JP and Waglay JP in the three-and-a-half years since I filed them.
Yours sincerely
Adv Anthony Brink

Mogoeng_CJ_25_February_2021.pdf
57K

R48

Gmail Anthony Brink <anthonybrink.sa@gmail.com>

Brink's February letter to Mogoeng CJ: Personal acknowledgment by the Presidency: Defective email address for Ms. Lethu Ntimane

10 messages

Anthony Brink <anthonybrink.sa@gmail.com> 5 March 2021 at 13:37
To: nmncube@judiciary.org.za
Cc: Knowledge Nkosi <KNkosi@judiciary.org.za>, Sello Chiloane <Chiloane@concourt.org.za>

Dear Mr Mncube

Your letter of 17 February 2021 advised me that 'Letters for the attention of Deputy Chief Justice Zondo must be emailed to Ms. Lethu Ntimane. Her address is Ntimane@concourt.org.za.'

But when I used that email address to copy Zondo DCJ my letter to Mogoeng CJ of 25 February 2021, my email bounced back.

It looks certain therefore that Zondo DCJ didn't receive his copy of my letter to Mogoeng CJ reporting my meeting with former President Jacob Zuma at his house at Nkandla three days earlier to brief him about the JSC's failure to prosecute my eight gross misconduct complaints against Mlambo JP.

And it's crucial that he reads it, because after first registering receipt of my letter with an automatically generated email, the Presidency subsequently emailed a personal acknowledgement, copied to several officers in that office. It seems clear from this that the Presidency has taken note of the important contents of my letter to Mogoeng CJ.

I've also received an acknowledgment of receipt for the copy I emailed JSC Member Hon Julius Malema MP, which I delivered by SMS containing a hyperlink to the letter online.

It's obviously vital therefore that as a cc addressee Zondo DCJ receives his copy of my February letter to Mogoeng CJ.

Please provide me with Ms Ntimane's correct email address to enable me to email it to him.

Alternatively, please forward my February letter to Zondo DCJ directly, and then confirm having done so. I've attached it again for your convenience.

Yours sincerely

ADV ANTHONY BRINK

Cc: Sello Chiloane: JSC Secretary

Knowledge Nkosi: PA to the Chief Director, Court Administration

Mogoeng_CJ_25_February_2021.pdf
57K

Nathi Mncube <NMncube@judiciary.org.za> 5 March 2021 at 16:33
To: Anthony Brink <anthonybrink.sa@gmail.com>, "ntimbane@concourt.org.za" <ntimbane@concourt.org.za>

[Quoted text hidden]

825

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Lethu Ntimbane <Ntimbane@concourt.org.za> 5 March 2021 at 16:38
To: Nathi Mncube <NMncube@judiciary.org.za>
Cc: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Mr Mncube

I trust you are well.

I acknowlede receipt of the attahed email and its contents.

I will await Adv. Brink's letter and bring it to the attention of the Deputy Chief Justice.

Kind Regards

Lethu Ntimbane

PA to the Deputy Chief Justice

Constitutional Court of South Africa

Tel: +27 (0) 11 359 7480

Email: ntimbane@concourt.org.za

Website: www.constitutionalcourt.org.za

From: Nathi Mncube [mailto:NMncube@judiciary.org.za]

Sent: 05 March 2021 04:34 PM
To: Anthony Brink <anthonybrink.sa@gmail.com>; Lethu Ntimbane <Ntimbane@concourt.org.za>
Subject: RE: Brink's February letter to Mogoeng CJ: Personal acknowledgment by the Presidency: Defective email address for Ms. Lethu Ntimane

[Quoted text hidden]

R48

Anthony Brink <anthonybrink.sa@gmail.com> 7 March 2021 at 23:19
To: Lethu Ntimbane <Ntimbane@concourt.org.za>
Cc: Nathi Mncube <NMncube@judiciary.org.za>

To: Ms Lethu Ntimbane, PA to Deputy Chief Justice Raymond Zondo

From: Adv Anthony Brink

Dear Ms Ntimbane

With reference to your email to Judiciary Spokesperson Nathi Mncube on Friday, which you kindly copied to me, I attach a copy of my recent letter to Chief Justice Mogoeng for the immediate attention of Deputy Chief Justice Zondo, a key cc addressee.

In its original PDF format (attached), the 7-page letter is ideal for printing and reading on paper. If on the other hand it's to be read on a portable device like a smart-phone or tablet, the alternative full-page webpage format that I've prepared will be more convenient. It's accessible at https://bit.ly/2ZTxky2.

I'd be grateful if you'd convey to Judge Zondo that:

(a) I remember him pleasantly from a case we did on opposing sides in the Pietermaritzburg High Court in the nineties when we were both younger men (we settled mid-way).

(b) Having watched much of the proceedings of his State Capture Commission on television, I hold him in the highest regard. I don't mean to add unnecessarily to his burdens as he finalises its work in the little time left to it, but the matter about which I've written is extremely and extraordinarily important, in that the capital gross misconduct of which I've complained, if publically ventilated, threatens immense damage to the reputation of the South African judiciary. To study the complaints is to see why.

(c) As mentioned in my letter, former President Jacob Zuma is now onto it, and may well raise the JSC's failure to prosecute it.

(d) After an automatic boilerplate acknowledgment, I thereafter received a personal one from the Presidency, copied to several officers in that office, suggesting that serious note has been taken of the contents of my February letter to the Chief Justice, of which President Ramaphosa was also a cc addressee. My copy to JSC Member Hon Julius Malema, likewise a cc addressee, has been personally acknowledged too.

(e) I repeat my yearning for a global conciliatory resolution (and a phone call by Mlambo JP to the current chairperson of Legal Aid SA could start the ball rolling in

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that direction), even as I appreciate that matters may have now gone too far for such a total settlement, as very desirable as it may be in the judiciary's interest.

(f) To put a hard point on it, as I regret I must, if the matter can't be resolved by conciliation, and the JSC fails to take concrete steps to prosecute my misconduct complaints by the end of this month, now well over three-and-a-half years since I lodged them, I reiterate my intentions set out in my letter to Judge Zondo in November 2020, acknowledged by Judiciary Spokesperson Mncube last month, namely to go international in the manner I described and then to sue to compel;

(g) I'm working full-time on this corruption case -- a decade-long struggle at vast and irrecoverable personal cost to me and those closest to me, and I'll not be quitting until I have justice;

(h) As mentioned in my attached letter to the Chief Justice last month, all my letters to him and to Deputy Chief Justice Zondo pressing for the JSC's action on my gross misconduct complaints are accessible at www.illegal-aid.co.za/JSC, as are my complaints, the accused judges' responses, and my invited comments on them.

Yours sincerely
Adv Anthony Brink
083 779 4174

Mogoeng_CJ_25_February_2021.pdf
57K

Lethu Ntimbane <Ntimbane@concourt.org.za> 8 March 2021 at 09:14
To: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Adv. Brink

I confirm receipt of the attached PDF letter, as per previous trailing emails.

I will bring it to the attention of the Deputy Chief Justice.

Kind Regards

Lethu Ntimbane

[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 8 March 2021 at 11:23
To: Lethu Ntimbane <Ntimbane@concourt.org.za>

Thanks so much Ms Ntimbane.
Will you share that email too?
Sincerely

828

Anthony Brink
[Quoted text hidden]

R48

Lethu Ntimbane <Ntimbane@concourt.org.za> 8 March 2021 at 11:55
To: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Adv Brink

You are most welcome.

For any emails for the attention of the DCJ, you can use the same email address that you are currently using.

[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 8 March 2021 at 12:04
To: Lethu Ntimbane <Ntimbane@concourt.org.za>

Thanks again Ms Ntimbane.
The email I was referring to, for Zondo DCJ to see, is of course the one I sent you last night covering my February letter to Mogoeng CJ fo Judge Zondo's attention.
Best regards
Anthony Brink
[Quoted text hidden]

Lethu Ntimbane <Ntimbane@concourt.org.za> 8 March 2021 at 12:06
To: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Adv Brink

Yes, I have shared that too.

Noted, thank you.

[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 8 March 2021 at 12:12
To: Lethu Ntimbane <Ntimbane@concourt.org.za>

First class!
AB
[Quoted text hidden]

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Gmail Anthony Brink <anthonybrink.sa@gmail.com>

My meeting with former President Zuma last Monday to discuss my gross misconduct complaints against Mlambo JP

4 messages

Anthony Brink <anthonybrink.sa@gmail.com> 26 February 2021 at 11:07
To: presidentrsa@presidency.gov.za

Dear President Ramaphosa
I attach for your information a copy of my letter to Chief Justice Mogoeng yesterday about the above.
You will readily appreciate the extraordinary gravity of the matter.
Yours sincerely
Adv Anthony Brink

Mogoeng_CJ_25_February_2021.pdf
57K

President RSA <PresidentRSA@presidency.gov.za> 26 February 2021 at 11:10
To: Anthony Brink <anthonybrink.sa@gmail.com>

We acknowledge with thanks, receipt of your correspondence addressed to the President of the Republic of South Africa, His Excellency, President Cyril Ramaphosa

Going forward, the Presidential Hotline (Email: President@presidency.gov.za) will respond to all Service Delivery related issues. The contact number for the Presidential Hotline is 17737.

All other matters referred to PresidentRSA@presidency.gov.za will receive the required attention and a response will be communicated soonest.

Thank you

http://www.thepresidency.gov.za/content/legal-disclaimers

Robert Ngobeni-Hlongwane <Robert@presidency.gov.za> 3 March 2021 at 07:35
To: "anthonybrink.sa@gmail.com" <anthonybrink.sa@gmail.com>
Cc: Nomusa Zondi <Nomusa@presidency.gov.za>, Makhosini Makhubele <Makhosini@presidency.gov.za>, Mike Louw <mike@presidency.gov.za>

Dear Adv Brink

Receipt of your correspondence addressed to the President of the Republic of South Africa, HE President Cyril Ramaphosa, is acknowledged with appreciation.

Kind regards

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Robert Hlongwane

Private Office of the President

West Wing, Room 65, Union Buildings

The Presidency

Tel: 012 300 5219

Website: www.thepresidency.gov.za

E-Mail: Robert@presidency.gov.za

[Quoted text hidden]

http://www.thepresidency.gov.za/content/legal-disclaimers

http://www.thepresidency.gov.za/content/legal-disclaimers

http://www.thepresidency.gov.za/content/legal-disclaimers

Anthony Brink <anthonybrink.sa@gmail.com> 3 March 2021 at 08:56
To: Robert Ngobeni-Hlongwane <Robert@presidency.gov.za>

Thank you, Mr Ngobeni-Hongwane.
Sincerely
Anthony Brink
[Quoted text hidden]

image001.jpg
9K

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

188, 14th Road, Noordwyk, Midrand, 1685
Private Bag X10, Marshalltown, 2107
Tel: +27 10 493 2500 (Switchboard)
E-mail: info@ judiciary.org.za
www.judiciary.org.za

JUDICIAL CONDUCT COMMITTEE

Enq: Ms Kutlwano Moretlwe
Tel: (010) 493 2652
Email: KMoretlwe@judiciary.org.za

22 February 2021

Adv A R Brink
1 Boast Street
Eshowe
KwaZulu-Natal
3815

E-mail: anthonybrink.sa@gmail.com

Dear Adv Brink

RE: COMPLAINTS LODGED BY ADV BRINK

[1] We refer to your complaint lodged against Judge President D Mlambo of the Gauteng Division of the High Court.

[2] We have been directed by Zondi JA, a member of the Judicial Conduct Committee to write to you as follows:

[3] Judge President Mlambo was requested to respond to the allegation in paragraph 9 of the affidavit deposed to by Mr Thembile Mtati, which is an annexure your first complaint, in which it was alleged that you arrived unannounced in Judge President Mlambo's chambers, a conduct to which the Judge President allegedly took strong exception. You vehemently denied this allegation in reply.

[4] Judge President Mlambo has responded to the allegations contained in para 9 of the affidavit by filing affidavits which are now brought to your attention. Copies of the affidavits received from Judge President Mlambo are enclosed herein for your ease of reference.

[5] You are hereby invited to comment on the attached affidavits, if you wish to do so. Should you elect to express any views on the affidavits, it would be appreciated if you could kindly do so by no later than 05 March 2021.

Yours sincerely,

Sello Chiloane
Secretary, Judicial Conduct Committee

R50

Gmail Anthony Brink <anthonybrink.sa@gmail.com>

Letter from JCC

2 messages

Sello Chiloane <Chiloane@concourt.org.za> 22 February 2021 at 15:49
To: Anthony Brink <anthonybrink.sa@gmail.com>
Cc: Kutlwano Moretlwe <KMoretlwe@judiciary.org.za>

Dear Sir

Kindly find attached herewith a letter and attachments for your consideration.

Kind regards

Sello

3 attachments

Letter to Adv Brink-Feb 2021- JP Mlambo Affidavits.pdf
58K

JP AFFIDAVIT - Mr. Brink complaint - signed.pdf
221K

TUMI AFFIDAVIT - Mr. Brink Complaint - signed.pdf
231K

Anthony Brink <anthonybrink.sa@gmail.com> 25 February 2021 at 17:02
To: Sello Chiloane <Chiloane@concourt.org.za>

Got thanks Mr Chiloane.
Only opened and read now.
Been busy with a letter to Mogoeng CJ to report an important meeting I had on Monday night, that he sure will want to hear about.
I'll email it in a few hours, copying you in.
I'll be commenting on the affidavits you sent me soon.
Cheers
AB
[Quoted text hidden]

AFFIDAVIT

I, the undersigned, DUNSTAN MLAMBO, do hereby make an oath and state that in 2012, my then Judges Secretary, Ms. Tumelo K. Motswasele, gave me documents she received from Mr. Brink who had come to my Johannesburg chambers to deliver them.

DEPONENT

SIGNED and SWORN TO before me, at PRETORIA on this 04 day of NOVEMBER 2020 by the Deponent who has acknowledged that she knows and understands the contents of this Affidavit and she has declared that she has no objection to taking the oath, and she regards the oath as binding on her conscience and she has uttered the following words: - "I swear that the contents of this Affidavit are true, so help me God."

COMMISSIONER OF OATHS

FULL NAMES: PAMELA ZANISA MBOWENI

ADDRESS: CNR Madiba & Paul Kruger Street

CAPACITY: Registrar

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2020 -11- 04
P.F MBOWENI
REGISTRAR
GRIFFIER VAN DIE HOË HOF VAN
D-AFRIKA, GAUTENG AFDELING, PRETORIA

AFFIDAVIT

I, the undersigned, TUMELO KEIKANETSWE MOTSWASELE, with the ID NO. 8211210315086, do hereby make an oath and state that in 2012, I was employed as a Judges Secretary to Judge President D. Mlambo at the Gauteng Local Division of the High Court, Johannesburg. I confirm that in 2012, Mr. Brink delivered a formal complaint to the Office of the Judge President. I further confirm that I took receipt of such formal complaint and gave this formal complaint to Judge President D. Mlambo when he arrived in chambers.

Motswasele

DEPONENT

SIGNED and **SWORN TO** before me, at **Pretoria** on this **04** day of **NOVEMBER 2020**, by the Deponent who has acknowledged that she knows and understands the contents of this Affidavit and she has declared that she has no objection to taking the oath, and she regards the oath as binding on her conscience and she has uttered the following words: - "I swear that the contents of this Affidavit are true, so help me God."

COMMISSIONER OF OATHS

FULL NAMES: PAMELA ZANISA MBOWENI

ADDRESS: C/O Mavuso & Paul Kruger Street

CAPACITY: Registrar

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2020 -11- 04
P.F MBOWENI
REGISTRAR
GRIFFIER VAN DIE HOË HOF VAN SUID-AFRIKA, GAUTENG AFDELING, PRETORIA

BRINK'S COMMENTS ON MLAMBO JP'S SECOND RESPONSE TO HIS FIRST GROSS MISCONDUCT COMPLAINT

I, Anthony Brink, affirm:

1. I am an advocate residing at 36 Pearson Avenue, Eshowe, KwaZulu-Natal, and the complainant under section 14 of the Judicial Service Commission Act 9 of 1994 in eight gross misconduct charges against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, and formerly chairperson of the Board of Directors of Legal Aid South Africa ('LASA'), hereinafter 'the respondent'.

2. In these comments on the respondent's second response to my First Complaint, I will show that he has compounded the crime with which I charged him, to wit, 'suborning perjury to defeat the ends of justice', by committing another crime, to wit, lying under oath in contravention of section 6 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963, to misdirect the Judicial Conduct Committee ('JCC') as to the true facts of the matter and thereby pervert its correct determination of my complaint.

3. By letter of 22 February 2021, emailed to me that day, JCC secretary Sello Chiloane conveyed JCC member Dumisani Zondi JA's invitation to comment on affidavits by the respondent and his former secretary made on 4 November 2020, copies of which Chiloane provided me. I annex these affidavits marked 'A' and 'B' respectively. Chiloane's letter is annexed marked 'C'. Paragraph 3 of the letter records that the JCC had requested the respondent to respond again to my First Complaint, and that he did so by submitting these affidavits.

4. I say 'respond again', because the respondent had already answered my First Complaint in paragraph 10 of his original combined response on 7 June 2018 to my eight complaints against him, the first of which (my First Complaint) was filed on 4 June 2017 and acknowledged by the Judicial Service Commission ('JSC') secretary two days later on the 6th. An excerpt containing the core paragraphs of my First Complaint is annexed marked 'D'. The material portion

AB PMC

of the respondent's original response containing his paragraph 10 is annexed marked 'E'.

5. The several lies the respondent told the JCC in his paragraph 10 are identified and refuted in my invited comments on the respondent's original response, so it's unnecessary to do so here again.

6. In his affidavit (annexure 'A'), the respondent alleged:

> in 2012, my then Judges Secretary, Ms. Tumelo K. Motswasele, gave me documents she received from Mr. Brink who had come to my Johannesburg chambers to deliver them.

7. In her affidavit (annexure 'B'), Ms Motswasele confirmed that in 2012 she'd worked as the respondent's secretary at his Johannesburg chambers and that:

> in 2012, Mr Brink delivered a formal complaint to the office of the Judge President. I further confirm that I took receipt of such formal complaint and gave this formal complaint to Judge President D. Mlambo when he arrived in chambers.

8. The allegation that I went to the respondent's chambers in 2012 to deliver a 'formal complaint' is novel in two respects: now the year I'm alleged to have gone there is stated, and my purpose in doing so is alleged. This additional information featured neither in paragraph 51 of the respondent's attorney's affidavit in 2012 giving rise to my First Complaint, nor in the respondent's first response in 2018. The unambiguous implication of the respondent's balder allegation made through his attorney in his answering affidavit about which I'd complained, was that while my labour claim was still pending I'd travelled up to his chambers and disgracefully unprofessionally and objectionably pitched up to remonstrate with him as chairperson of LASA in relation to my claim to my appointment. (He sure didn't suggest that I'd arrived to chat about the weather.) Now the story changes: that I went there to deliver some papers.

9. Contrary to the false allegation made by the respondent through his former secretary, I made no 'formal complaint' to the respondent in 2012, much less did

I (or anyone else on my behalf) personally deliver 'such formal complaint' to his chambers. The very different legal 'documents' that the respondent indeed got from me in 2012, but in a quite different manner, are described below.

10. The reason I'd never have wasted my time making any 'formal complaint' to the respondent in 2012, and never did so, is this. Two years earlier, in November 2010, I'd indeed written a finely detailed and substantiated 60-page 'formal complaint' to the respondent in his capacity as chairperson of LASA's Board, in which I craved and pleaded for his intervention in (a) the obviously corrupt, unauthorised, furtive, off-the-record, illegal cancellation of my recruitment to LASA's top professional post in KwaZulu-Natal, namely its Senior Litigator post at Pietermaritzburg following my due selection for it a year earlier by a panel of LASA's most senior lawyers in the region, falsely explained (I complained to him) eleven months later by then CEO Vidhu Vedalankar, under rising pressure to account, with the stupid blatant lie that LASA hadn't received the budget in 2010/11 to fill the post, and that it had been 'frozen' accordingly – flatly contradicted by LASA's own financial and other records that I later extracted very reluctantly from LASA under the Promotion of Access to Information Act 2 of 2000 ('PAIA'); and further flatly contradicted by totally different stupid blatant lies about 'recruitment challenges' preventing the filling of the post and about the alleged professional incompetence of LASA's six incumbent Senior Litigators as the reason for freezing it, which stupid blatant contradictory lies LASA National Operations Executive Brian Nair told in his 'Report to Board' in November 2011, leaked to me by a sympathetic LASA insider – also totally unsupported by LASA's records, as I established with PAIA requests and then litigation to compel LASA's compliance with them; and (b) LASA's repeated and persistent illegal and unconstitutional refusals to comply with PAIA requests for access to LASA records made in 2010 and 2011 in my investigation of this recruitment corruption – requiring repeated appeals to the PAIA Unit of the South African Human Rights Commission for its intervention to overcome (partially successfully) LASA's determined suppression of records I'd requested, exposing the lies told me about why my appointment had been cancelled.

11. When the respondent's palpably dishonest two-line dismissal of my very extensive and detailed 'formal complaint' to him in November 2010, imploring his remedial intervention, made it shockingly, horrifyingly, sickeningly clear to me that as a senior judge and as LASA Board chairperson ultimately responsible for ethical, legal and constitutional probity in the conduct of LASA's operations, he himself was party to this top-level corruption – and a record forced out of LASA by PAIA litigation in 2016 revealed he was *central* to it; see below – I escalated in February 2011 to the Justice Minister and to the Justice Portfolio Committee of the National Assembly my complaints about the recruitment corruption I'd run into at LASA and about its obstruction of my investigation of it and attempts to cover it up by illegally and unconstitutionally blocking my access to duly requested records. Both high authorities duly instituted separate and independent enquiries into these extraordinarily serious complaints about recruitment corruption and wilful PAIA delinquency at LASA, and required the respondent to answer them.

12. In June 2011, the Portfolio Committee chairperson furnished me with a copy of the respondent's report to him answering my said complaints, and the stunning profusion of lies it contained (as in the report to the Minister that I forced out of LASA with interlocutory discovery litigation two years later) brought home to me that not only was the respondent corrupt, he was moreover an abject criminal liar to whom there was absolutely no point whatsoever in appealing again to rectify the pervasive gross illegality at LASA that I'd encountered at national executive management level.

13. It would have been like reporting a stolen car at the local police station, only to learn that the station commander, pretending to look into his detectives' failure to investigate and solve the case on the clear evidence of the identity of the thief given them, actually headed the criminal syndicate behind the theft; and that in reports about it to the Police Minister and to Parliament, he'd lied his way out of their enquiries into it.

14. The respondent's 'confidential' report to the chairperson of the Portfolio Committee in June 2011 that successfully defrauded him and misled him to close

his enquiry (as he advised me), and the similar report to the Minister in March 2011 that achieved the same corrupt end, are the subject of my Sixth, Seventh and Eighth complaints against the respondent.

15. So after June 2011, it would obviously have been completely futile making any further 'formal complaint' to the respondent – the expression appearing three times in his former secretary's affidavit (annexure 'B').

16. By 2012, I had an action against LASA pending in the Durban Labour Court (LC D529/11), in which I sought an order appointing me to the top professional post for which the selection panel had in glowing terms unanimously recommended me.

17. Most unfortunately for me, I'd surmised on the evidence then available to me (key, crucial explanatory information having been illegally suppressed) that the reason for the illegal backroom abortion of my recruitment was unfair discrimination, and had sued on that wrong basis. I lost the case – *correctly*, as it turned out, because as I learned some years after the dismissal of my labour action from the full, uncensored selection panel's recommendation report that I finally crow-barred out of LASA in April 2016 by suing for it under PAIA (meritlessly opposed all the way to court until moments before argument when LASA surrendered), the obstacle to my appointment wasn't unfair discrimination, it was just everyday jobs-for-pals recruitment corruption, in that the respondent wanted a former judicial colleague of his appointed to the plum job instead of me, namely Mzochitwayo Ngcamu, a long-time acting judge of the Labour Court in which the respondent had also served and later headed – even though he'd been positively disqualified and rejected by the selection panel as a candidate for possible appointment to the Senior Litigator post for lack of right of appearance in the High Court and consequently zero litigation experience on his feet there. (My persistence in pursuing my appointment daunted LASA's top officers from appointing the respondent's crony to the post instead of me – unlike at Mahikeng where a *rejected* candidate was indeed appointed (I'm reliably informed) – but Ngcamu was quickly appointed to other posts in the organisation, whereas, in telling contradistinction, when a year later I was again

duly selected for a lighter post, I was then told, as before, that LASA had decided not to fill the post. And when I tested this claim with PAIA, I found, quite predictably, that no record of any such decision exists. Which is to say, under the respondent's reign as chairperson at LASA, the corruption of recruitment operations became routine.

18. I intended subpoenaing the respondent for cross-examination at the trial of my labour claim on the stupid blatant lies, including the criminal lies, he'd told the Minister and the Portfolio Committee in his 'Confidential Report Re: Adv Anthony Brink' to pervert their enquiries into my complaints of recruitment corruption and malicious non-compliance with PAIA at LASA, lies he'd told supremely confident that as a senior judge he'd be taken at his word and believed without a moment's doubt the veracity of what he told them – as indeed he was; the enquiries were closed precisely on the basis of his untruthfully false responses.

19. Naturally, the most important of his stupid blatant lies told to the Minister and to the Portfolio Committee that I wanted to cross-examine him about was his central lie that budgetary constraints prevented my appointment. In truth, as LASA's financial records show, the critical, *still today vacant* post, created by resolution of the Board back in November 2006 to provide high-level specialist litigation services to the poor, especially to protect and advance their constitutional socio-economic rights, has always been and remains budgeted by LASA and funded by the Treasury via the Third Party Funds division of the Justice Department upon the annual budget vote of the National Assembly. (In 2020, the Auditor-General's top corporate counsel, and a member of the national management executive committee, referred to the Investigations division LASA's deliberate, corruptly motivated, ongoing failure to fill the critical, budgeted and funded vacant post, a serious illegality under the Public Finance Management Act, noted by the Constitutional Court in January 2018 in *Zungu*. The matter is pending. The Investigations division has asked me about progress in the JCC's handling of my complaints.)

20. But because the respondent is a judge, section 25 of the Supreme Court Act required that I obtain the leave of court to get him into the witness stand; sworn in by the trial judge; and be questioned on his stupid blatant lies, including his criminal lies, that he'd told me, the Minister and the Portfolio Committee to discredit my valid complaints about recruitment corruption at LASA and, to cover it up and obstruct its investigation, its illegal and unconstitutional suppression of duly requested records, in which he'd colluded and connived. (My Second to Fifth Complaints to the JCC concern this.) So I brought an application for the grant of such leave, a material excerpt of which I annex marked 'F'.

21. Unlike the Uniform Rules, which require original court processes to be served the sheriff, the more relaxed rules of the Labour Court permitted me to serve my application on the respondent, *inter alia*, by telefax, provided that I verified this on affidavit and filed it at court.

22. So with a view to serving my application on the respondent in this handy manner, I telephoned the High Court at Johannesburg and asked to be put through to the respondent's secretary, explaining that I needed the number for the telefax machine in his chambers to get some papers to him. (I'd have first enquired and established that the respondent was working in Johannesburg and not Pretoria at the time.) As my service affidavit records, I was indeed put through to the respondent's helpful secretary, asked and recorded her name, and asked and recorded the respondent's telefax number that she gave me. Which telefax number I then used to serve my application on the respondent, as the transmission reports annexed to my service affidavit vouch. A copy of my service affidavit covering the successful telefax transmission reports is annexed marked 'G'.

23. There's no question that the respondent was successfully served with my application in this manner and that he indeed received it, because he promptly filed a notice of opposition – understandably not wanting to be cross-examined under oath with the tape recorder running for later transcription of what he said for referral to the National Director of Public Prosecutions, on the many stupid blatant lies he'd told, including those he'd told the Justice Portfolio Committee,

for which he was liable to be criminally convicted and jailed, after being impeached and sacked as a judge. The respondent's notice of opposition is annexed marked 'H'. A material except of his answering affidavit, made by his attorney on his instructions and on his behalf, is annexed to my First Complaint.

24. It's possible that in his fear and loathing of me, both alarmed and infuriated by my unexpected, stupendous temerity in going so unimaginably far as to seek leave to subpoena him, to force him out of his lofty chambers, down into a courtroom, to be cross-examined in open court, under oath, face-to-face, man-to-man, on level ground, on the record, on the stupid blatant lies he'd told me, the Minister, and the Portfolio Committee, and horrified by the fact that I was now closing in on him and threatening very dangerously to hold him to account and expose him to impeachment, dismissal and imprisonment, the respondent jumped to the panicked conclusion that I'd personally travelled all the way from my different home province right up to his very door at court to personally deliver my subpoena application – his professional death warrant, so to say – with a view to literally boxing him in at the Labour Court for a couple of days and forcing him to be grilled over the stupid blatant lies he'd told me, the Minister, and the Portfolio Committee, including his criminal lies, contradicted by LASA's records and further contradicted by the different lies his National Operations Executive had told him and the rest of the Board in his report to it in November 2011.

25. It may well be that in his frantic imagination, and not thinking straight, the respondent's nightmare morphed into his disturbed reality, namely that I'd come hunting for him in his chambers where he felt most safe, above the law, beyond accountability, and immune from justice. Certainly, as my several other complaints prove (and see further below), the respondent has repeatedly demonstrated that he's congenitally incapable of distinguishing fact from falsehood, truth from lies, and that he tells lies freely, even criminal lies, even to the highest authorities, without a qualm, invariably burnished with venom spat down at me, thinking this would enhance their credibility.

26. How and why the respondent could have thought I'd come to serve my application personally is otherwise beyond comprehension, more especially because the telefaxed application papers would have borne those sending telefax number, and date and time codes that even an office clerk with a Standard Six knows are automatically printed at the top of telefaxed pages coming out of a telefax machine receiving a telefaxed document from another telefax machine.

27. As I've said before, I've no idea at all where the Johannesburg High Court is, never having been there for any reason; and I'd hardly have travelled all the way there – involving unnecessary hassle and expense to me – to personally serve my subpoena application on the respondent or his secretary, as rule 4 of the rules of the Labour Court allow, seeing as the rule also permitted me the quick and simple alternative of just telefaxing my application to him and then filing at court an affidavit certifying that I'd done so. Which latter convenient option I chose, as the telefax transmission reports vouch.

28. So the respondent's claim in his affidavit that in 2012 his then secretary gave him 'documents she received from Mr. Brink' squares with the documented fact that on 31 October 2012 I'd telefaxed my subpoena application to his chambers, and that she gave it to him, as evinced by his opposition to the application. But everything else that the respondent told the JCC in his affidavit, under the oath to God that he took with his hand in the air before his own registrar, is a criminal lie. And not just a mistake, as I'll show.

29. The respondent's 'then Judges Secretary, Ms. Tumelo K. Motswasele' cannot have told him that I'd 'come to [his] Johannesburg chambers to deliver' 'the documents' (per the respondent's affidavit), because, as my service affidavit signed two days later records, I'd telephoned her in the morning of 31 October 2012, asking for his telefax number, and then used it to telefax the application papers to him in the afternoon of the same day. And having just spoken to me on the telephone and then having received the application papers from me via telefax a few hours later, the respondent's then secretary would hardly have handed them to the respondent 'when he arrived in chambers' with the false report that I'd physically 'come' there 'to deliver them' before he arrived.

Knowing I'd telefaxed the application, she had no reason to make such a false report, so there's no possibility at all that she said this.

30. Although in her affidavit, surely drafted for her by the respondent, his former secretary's affidavit strongly implies that I personally 'delivered' my application papers to the respondent's chambers – consistent with the respondent's express allegation of this in his own affidavit – and that she 'took receipt' of my papers, implying I handed them over to her there, her language is too ambiguous on its own terms to sustain a statutory perjury charge against her.

31. Still, it's perfectly clear that the respondent intended his then secretary's affidavit to corroborate his false one, namely that I 'had come to [his] Johannesburg chambers to deliver' 'the documents [she'd] received from Mr. Brink' – consistent with his false claim made in 2012, in his attorney's affidavit opposing my subpoena application, about my rocking up to his chambers unannounced, to which he took strong exception. Indeed, in her affidavit she twice uses the word 'confirm' – put in her mouth by the respondent, obviously.

32. That is, the respondent's purpose in getting his former secretary to make her confirmatory affidavit and then in submitting it to the JCC in tandem with his own was to fortify his allegation, made via his attorney in 2012, and then directly by him under oath in 2020, that I'd very improperly and unprofessionally gone up to his chambers while my labour case was on the go.

33. When right after being served with my subpoena application in 2012 the respondent soon afterwards made his false charge in his answering affidavit, deposed to by his attorney, that I'd disgracefully unprofessionally arrived at his chambers, he knew full well that the documents he'd received from his secretary were those very application papers, and not any 'formal complaint'. He knew from the citation heading my notice of application right before his worried eyes that he was the respondent in a new substantive application I'd brought against him (albeit that I used my same labour action case number), and not against LASA. And as long-time labour judge and head of the Labour and Labour Appeal Courts, before taking over as head of the Gauteng Division of the High Court, he

was full well aware that the Labour Court's rules allowed a litigant to himself serve court processes on the other party, personally or by delivering them to his workplace.

34. Rule 4(1) provides, 'A document ... may be served ... (a)(i) by handing a copy of the document to the person', or under subrule (a)(iii), 'by leaving a copy of the document at the place of employment with any person who is apparently at least 16 years old and apparently in authority.'

35. And, as said, he was the respondent cited as in my subpoena application who required to be served – and not LASA, which was representing itself in my labour litigation against it via its in-house corporate legal services attorneys, locally represented in Durban by the LASA Justice Centre there, and accepting all further processes in that litigation.

36. In other words, unless he unbelievably ignorantly didn't know the relatively informal rules of service of the Labour Court that he'd headed until recently, the respondent appreciated that there was nothing improper about my arriving at his chambers 'unannounced' to serve my application on him by leaving the papers with his secretary (had I done so, as he claims I did).

37. But the possibility that the respondent was ignorant of the provisions of rule 4 is excluded by the fact that he considered himself duly served, as shown by the fact that he proceeded to oppose my application and made no claim in his answering affidavit that he hadn't been properly served by me.

38. So the respondent's complaint in his answering affidavit in 2012 that I'd professionally disgracefully called in at his chambers unexpectedly – knowing, but not saying, that I'd just served my subpoena application on him quite properly under the Labour Court rules – was *mala fide* and malicious. That is, not only was his allegation false, the respondent's *motive* in making it was dishonest as well.

39. Given that in my First Complaint I'd 'vehemently denied' the respondent's false allegation, made via his attorney, that I'd 'arrived unannounced in Judge President Mlambo's chambers, a conduct to which the Judge President allegedly

took strong exception' (per Chiloane's letter, annexure 'C'), and moreover since on the respondent's own version he never saw me there, it obviously behoved him to make sure of his facts, before responding to my First Complaint again in 2020, now under oath, by enquiring of his then secretary and making absolutely sure: 'I thought Brink came to my chambers in 2012. Did he really?' Instead, hell-bent on portraying me as a contemptibly unreliable mendacious witness against him, and characteristically reckless of the truth and of the penalty for perjury, the respondent persisted with his false allegation against me, originally made indirectly via his attorney in 2012, and now directly under oath himself in 2020, for which allegation he had zero factual basis outside his frightened and hateful imagination, in which he was ruminating, as always, as to how best this bug buzzing around him could be crushed.

40. He then aggravated his crime by calling in his former secretary to make an affidavit corroborating his false charge against me.

41. In thus painting me as a brazen liar in making my First Complaint, and therefore an unreliable witness against him in making my Second to Eighth Complaints, respondent's transparent objective was to pervert the JCC's determination of them all and thereby escape accountability for his criminal and other gross misconduct.

42. The important thing is that the respondent's lie in 2012 about me about me barging into his chambers and greatly annoying him by doing so is not isolated. His penchant for playing fast and free with the facts, his criminal mendacity and malicious dishonesty, is clearly evinced by the gushing profusion of unstinting lies told to me in 2010 and 2011, to the Minister and to the Portfolio Committee in 2011, to the Labour Court via his attorney in 2012, to the JCC in his original response to my eight complaints in 2018, and again in his second response in 2020 to my First Complaint, now under oath on pain of imprisonment for perjury. In short, considered together, my documented complaints against him, and his first and second responses, yield a mountain of similar fact evidence of a criminal propensity to tell lies and to say whatever he thinks will impress his audience in the moment and get him out of trouble.

43. So in light of the respondent's new mention of 'documents' 'delivered' to him (my subpoena application), and his new mention of 2012 as the year in question, and the light this information shines on the matter, what might otherwise have been excused as a mere mix-up, a wrong impression formed by the respondent in his anxiety at the prospect of being called to court, can't be so simply discounted, because the lies he forcefully tells the JCC on oath in his affidavit about my going to his chambers, in the teeth of my truthful insistence to the contrary as an officer of court deposing under affirmation, are entirely consistent with his repeatedly demonstrated indifference to the truth in aggressively and dishonestly covering up his criminal and other wrongdoing both with lies and with poisonously prejudicial *ad hominem* attacks on me.

44. In the latter regard I'm referring *inter alia* to his first response in 2020, in which he wantonly and viciously defamed me as a 'racist' for matter-of-factly pointing out the similar minor grammatical imperfections – like those in his costs order that he read over national radio against former President Jacob Zuma following his failed review application against the Public Protector – matching those I noticed in the 'memorandum' that I'm satisfied he wrote and slipped to his long-time judicial colleague Basheer Waglay JP, his erstwhile Deputy Judge President and successor as head of the Labour and Labour Appeal Courts, that led to the corrupt, premature dismissal of my petition for leave to appeal the dismissal of my labour case (before I realised my main case had been correctly dismissed for the reason stated above) – without any record in or on the petition file that the other two appeal judges named in the order concurred. (Supported by a photocopy of the 'memorandum' made by the registrar's clerk, my complaint against Waglay JP for betraying his judicial oath, filed with the JCC in mid-2017, and answered evasively in 2018, is still pending.)

45. The respondent's natural habit of making claims entirely unmoored to the facts, if he thinks it will get him off the hook, has a precedent outside this case. According to a report by *City Press* on 12 May 2012, titled, 'I'm a new-generation judge', quoting his self-billing to the JSC at his interview for his current job, 'The only hiccup in his relatively smooth JSC interview was his six outstanding judgments. Mlambo called this a valid criticism, but said the "exuberance of

youth" had caused him to take on too great a caseload.' In truth, he was already in his fifties, not young at all, so this foolish excuse given the JSC for taking the money and not doing the work was patently false. (He'd likely cribbed the heart-warming expression from then Public Protector Thuli Madonsela's speech given six weeks earlier to the South African Women Lawyers Association on 30 March: '[I]n my youthful exuberance I asked her to save a group of young persons on death row ... I had not even obtained my first law degree'.)

46. In his book *'On Bullshit'* published by Princeton University Press in 2005, Professor of Analytical Philosophy Harry Frankfurt made the point (at page 61; paraphrased by Wikipedia) that 'bullshit is speech intended to persuade without regard for truth. The liar cares about the truth and attempts to hide it; the bullshitter doesn't care if what they say is true or false, but rather only cares whether their listener is persuaded.' (Evidently the respondent had no trouble persuading the JSC.) Explaining his motivation for writing the book, the author explained in an interview (online at bit.ly/3lEKhpo): 'Respect for the truth and a concern for the truth are among the foundations for civilisation. I was for a long time disturbed by the lack of respect for the truth that I observed ... bullshit is one of the deformities of these values.' (Especially in the judiciary.)

47. It's highly unconventional for a judge to make a sworn statement under oath, because his personal and professional ethics are universally assumed to be above question, and a judge's word is generally considered the gold standard for veracity. So the respondent's intention in taking this most unusual step in making and submitting his affidavit to the JCC was plainly to put the dispute as to my alleged visit to his chambers to rest and beyond any further doubt – in other words to establish as absolutely incontrovertible facts before the JCC that I'd indeed gone up to his chambers in Johannesburg in 2012, that I'd lied in denying that I'd done so, and that I'd made a false complaint under affirmation against him for protesting that he'd lied about this. And if I could lie so flagrantly in my First Complaint about never having gone to his chambers, my Second to Eighth Complaints were obviously unworthy of serious consideration. This is the respondent's transparent cunning here.

48. The respondent's clear purpose in telling his lie to the labour judge in 2012 about my uninvited, unannounced, disgracefully unprofessional arrival at his chambers was to create a potent negative personal and professional impression of me to severely prejudice the judge as he weighed my application for leave to subpoena the respondent for cross-examination. The lie he told to gun me down personally and professionally was clearly intended to increase his chances of getting my application dismissed, of staying out of the witness box, of evading being held to account, of defeating my main claim to my appointment, and of getting away with his criminal and other gross misconduct committed as Board chairperson of LASA.

49. As said in my First Complaint, the respondent's lie was so appalling, so depraved, that it put me off continuing with my subpoena application, because I judged it too dangerous to bring such a prolific, habitual, vicious liar into court, a Judge President who'd be riding on his friendly collegiality with the trial judge under whose administrative authority he'd previously served, and who'd naturally be disposed to believing him and disbelieving me.

50. The respondent's clear purpose in repeating to the JCC his lie, now directly on oath himself, is to wreck my credibility before the JCC completely. Through his attorney, deposing under oath on his instructions, he said I went to his chambers. Under affirmation in my First Complaint I said I didn't. With a reckless disregard for his legal obligation to tell the truth, he insists under oath himself that I did; and he puts up a confirmatory affidavit by his former secretary intended to clinch the issue against me. In this manner the respondent shows that in his dealing with the JCC, he's more interested in winning the argument against me than telling the truth.

51. In the premises, the respondent's sworn second response in November 2020 to my First Complaint against him, to misdirect the JCC as to the true facts of the matter and pervert its determination of my complaint, discloses his criminal contravention of section 6 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963, which section provides:

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> Any person who, in an affidavit, affirmation, or solemn or attested declaration made before a person competent to administer an oath or affirmation or take the declaration in question, has made a false statement knowing it to be false, shall be guilty of an offence and liable upon conviction to the penalties prescribed by law for the offence of perjury.

52. And I wish the respondent prosecuted and punished accordingly, like any other criminal in our country, more especially since perjury is 'a very serious crime', per the court in *R v Samuels* 1930 CPD 67 at 71.

53. Wherefore I persist, *inter alia*, with my First Complaint.

54. Certain important peripheral matters are addressed in the Appendix hereto, annexure 'J'.

4 PML

Signed at Eshowe on 23 March 2021.

ANTHONY BRINK

4 PML

Signed before me at Eshowe on 23 March 2021 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.

PML 3172465-6 CSC Langa PM

COMMISSIONER OF OATHS

Name: Praise-God Mzamo Langa

Address: 73-79 main street Eshowe

Capacity: Constable

SOUTH AFRICAN POLICE SERVICE
SUPPORT SERVICE
FINANCIAL SERVICES
2021 -03- 24
ESHOWE
KWAZULU-NATAL

AFFIDAVIT

I, the undersigned, DUNSTAN MLAMBO, do hereby make an oath and state that in 2012, my then Judges Secretary, Ms. Tumelo K. Motswasele, gave me documents she received from Mr. Brink who had come to my Johannesburg chambers to deliver them.

DEPONENT

SIGNED and SWORN TO before me, at PRETORIA on this 04 day of NOVEMBER 2020 by the Deponent who has acknowledged that she knows and understands the contents of this Affidavit and she has declared that she has no objection to taking the oath, and she regards the oath as binding on her conscience and she has uttered the following words: - "I swear that the contents of this Affidavit are true, so help me God."

COMMISSIONER OF OATHS

FULL NAMES: PAMELA ZANISA MBOWENI

ADDRESS: c/o Madiba & Prinsloo 76 Meiring Naude Road Lynnwood Manor Pretoria

CAPACITY: Registrar

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2020 -11- 04
P.F MBOWENI
REGISTRAR
GRIFFIER VAN DIE HOË HOF VAN SUID-AFRIKA, GAUTENG AFDELING, PRETORIA

AFFIDAVIT

I, the undersigned, TUMELO KEIKANETSWE MOTSWASELE, with the ID NO. 8211210315086, do hereby make an oath and state that in 2012, I was employed as a Judges Secretary to Judge President D. Mlambo at the Gauteng Local Division of the High Court, Johannesburg. I confirm that in 2012, Mr. Brink delivered a formal complaint to the Office of the Judge President. I further confirm that I took receipt of such formal complaint and gave this formal complaint to Judge President D. Mlambo when he arrived in chambers.

Motswasele

DEPONENT

SIGNED and **SWORN TO** before me, at **Pretoria** on this **04** day of **NOVEMBER 2020**, by the Deponent who has acknowledged that she knows and understands the contents of this Affidavit and she has declared that she has no objection to taking the oath, and she regards the oath as binding on her conscience and she has uttered the following words: - "I swear that the contents of this Affidavit are true, so help me God."

COMMISSIONER OF OATHS

FULL NAMES: PAMELA ZANESA MBOWENI

ADDRESS: CNR Madiba & Paul Kruger Street

CAPACITY: Registrar

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2020 -11- 04
P.F MBOWENI
REGISTRAR
GRIFFIER VAN DIE HOË HOF VAN SUID-AFRIKA, GAUTENG AFDELING, PRETORIA

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22 February 2021

Adv A R Brink
1 Boast Street
Eshowe
KwaZulu-Natal
3815

E-mail: anthonybrink.sa@gmail.com

Dear Adv Brink

RE: COMPLAINTS LODGED BY ADV BRINK

[1] We refer to your complaint lodged against Judge President D Mlambo of the Gauteng Division of the High Court.

[2] We have been directed by Zondi JA, a member of the Judicial Conduct Committee to write to you as follows:

[3] Judge President Mlambo was requested to respond to the allegation in paragraph 9 of the affidavit deposed to by Mr Thembile Mtati, which is an annexure your first complaint, in which it was alleged that you arrived unannounced in Judge President Mlambo's chambers, a conduct to which the Judge President allegedly took strong exception. You vehemently denied this allegation in reply.

[4] Judge President Mlambo has responded to the allegations contained in para 9 of the affidavit by filing affidavits which are now brought to your attention. Copies of the affidavits received from Judge President Mlambo are enclosed herein for your ease of reference.

[5] You are hereby invited to comment on the attached affidavits, if you wish to do so. Should you elect to express any views on the affidavits, it would be appreciated if you could kindly do so by no later than 05 March 2021.

Yours sincerely,

Sello Chiloane
Secretary, Judicial Conduct Committee

FIRST 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, admitted to practice on 12 April 1983. I reside 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 brought 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. I charge the respondent with suborning perjury to defeat the ends of justice, an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act.

4. Although the gross misconduct to be described below was committed by the respondent in his capacity as LASA Board chairperson, and not as a judge, the Judicial Service Commission ('JSC') has jurisdiction to deal with this complaint by virtue of Articles 5 and 6 of the Code of Judicial Conduct and its Notes, which require judges 'always, and not only in the discharge of official duties, [to] act honourably and in a manner befitting judicial office ... in a manner that enhances public trust in, or respect for, the judiciary and the judicial system ... [to] avoid impropriety or the appearance of impropriety in all the judge's activities', and 'at all times, also in relation to extra-judicial conduct, [to] comply with the law of the land.'

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5. On 31 October 2012, I sued the respondent under section 25 of the Supreme Court Act 59 of 1959 for leave to subpoena him for cross-examination at the trial of my claim against LASA in the Durban Labour Court. The nature of the claim and my reason for wishing to cross-examine the respondent will be detailed later in this affidavit.

6. Redacted for relevance to this complaint and annexed hereto marked 'A' is a material excerpt of the 'RESPONDENT'S ANSWERING AFFIDAVIT' opposing my application, deposed to by LASA's lead in-house attorney, Corporate Services Executive Thembile Mtati.

7. Paragraph 4 records that the respondent 'duly authorised' Mtati to make his answering affidavit on his behalf, and that before he did so he'd had 'consultations' with him.

8. The affidavit was saturated with objectively demonstrable perjury, to be treated in separate complaints.

9. Paragraph 51 makes the following allegation:

> The most disturbing, reprehensible and brazen act of disrespect came recently when the Applicant left the KZN province and attended unannounced and without warning at the office of the Respondent in the South Gauteng High Court. The Respondent did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is represented the Applicant's conduct amounts to professional misconduct.

10. This allegation on oath was false in every particular.

11. In truth, I've no idea where the 'South Gauteng High Court' is, much less have I ever set foot in it, never having litigated there or gone there for any

other reason, as any CCTV records will bear out; and the claim that I 'left the KZN province and attended unannounced and without warning at the office of the Respondent in the South Gauteng High Court' is pure perjury.

12. The allegation that the respondent 'did not take kindly to the Applicant's conduct' is further perjury to corruptly amplify and lend credibility to the first.

13. Compounded by the concluding third charge in the paragraph that 'In the face of litigation where Legal Aid SA is legally represented the Applicant's conduct amounts to professional misconduct', these two lies under oath were a criminal concoction calculated to defeat the ends of justice by corruptly prejudicing the Labour Court against me with poisonously inflammatory lying defamation falsely attacking my character and professional integrity.

14. This is precisely the especially wicked crime for which US President Richard Nixon's equally corrupt Special Counsel Charles Colson was disbarred and jailed; see annexed reports marked 'B'.

15. One of my reasons for not pursuing my application for leave to subpoena the respondent after reading this chilling, depraved perjury was my apprehension that it would be too dangerous to bring him to court, because he was evidently capable of saying absolutely anything, no matter how perversely false, confident that the trial judge – until quite recently the respondent's judicial colleague and superior as head of the Labour Court – would take him at his word without question as a senior judge.

16. As to the respondent's specific charge quoted above, I sharply perceived that in a contest in court between the respondent and me as to who was telling the truth and who was telling lies about this, no judge would disbelieve this detailed charge levelled by the just-appointed head of the biggest division of

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the High Court in the country, conveyed by his attorney on oath, against a bare denial proffered by a mere advocate.

17. Indeed, as paragraph 59.2 of the affidavit very correctly calculated with low criminal cunning: 'there is a well-founded presumption in law in favour of the Respondent' and that as 'a senior Judge of the High Court in South Africa ... enjoined by the Constitution of this country ... to uphold it in all his dealings and in his actions towards others', the respondent 'will always act as Judges do' – and not tell criminal lies, animated by fear and loathing as I was closing in (see below), to falsely discredit as an unprofessional lunatic an advocate threatening to call him to account in a law court like any other public servant summoned to the witness stand, to be sworn in and examined on oath under penalty of perjury before a judge experienced and skilled in telling truth from lies, about the illegal things he'd said and done.

18. Briefly stated here, the shocking background to the respondent's false charge against me on oath will make sense of his otherwise inexplicable impeachable misconduct.

19. I'll show that the respondent's false charge is consistent with his past modus operandi in attempting to discredit me with false personal and professional misconduct accusations to distract from the gravity of my complaints about the corruption and lawlessness at LASA that I'd run into – pertinently brought to his attention again and again in finely detailed petitions, but to which he'd turned a blind eye.

20. In November 2009, I was interviewed by a duly constituted selection panel of LASA's most senior lawyers in KwaZulu-Natal for its top legal professional position in the province, its Senior Litigator post at Pietermaritzburg, for which I'd applied and been shortlisted. (There's a twin post at Durban.)

again from 19 March 2012 to 16 June 2014 as a Civil Professional Assistant. Both these appointments were at Empangeni Local Office of Legal Aid SA. Mr. Ngcamu was thereafter appointed as a Labour Court Practitioner in Durban Local Office of Legal Aid SA from 17 June 2014 to 31 July 2017. In all these recruitment processes I had no role to play and the relevant officials of Legal Aid SA executed these appointments. As indicated in paragraph 8.1 above, the Senior Litigator recruitment process began long before Mr. Ngcamu joined Legal Aid SA and in particular, the process of recruitment was stalled before he joined the organisation. Whilst Mr. Ngcamu was apparently interviewed during the first round of interviews, it should be mentioned that I did not form part of such a panel. Furthermore, Mr. Ngcamu was not even recommended for the second round of Senior Litigator interviews during the Provincial selection process.

10. I deny that I conducted myself for "*subornation of perjury to defeat an application under section 25 of the Supreme Court Act for leave to subpoena me, so as to avoid being cross examined at the trial of Brink's labour action against Legal Aid SA (D529/11) on my gross misconduct, including crimes in false reporting and lying on multiple scores to the Justice Portfolio Committee*". Firstly, as mentioned in paragraph 8.7 above, Brink withdrew the subpoena against me and exonerated me and the CEO from any wrongdoing. Secondly, the report to the Justice Portfolio Committee confirmed that the reason for not proceeding with the second round of interviews was budget related which I still maintain.

11. I deny that I "*falsely reported and lied to the Minister of Justice and Constitutional Development (as he was then described) to pervert his enquiry into the CEO's repeated illegal and unconstitutional refusal to comply with PAIA, and thereby cover this up, with the object of covering up my own gross misconduct exposed by the illegally refused records*". The report to the Minister also explains the reasons why the second round of interviews was not proceeded with which related to budgetary constraints. In addition, I submit that there is nothing illegal and unconstitutional in all the refusals to records in accordance with PAIA. According to information at my disposal, all the records requested by Brink and as far as legally permissible in terms of the Act, were duly provided to him. To the extent that Legal Aid SA has refused to provide some records, I'm advised that such refusals are subject to determination by the Courts in various applications brought by Brink.

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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Case No: D529/11

In the matter between

ANTHONY ROBIN BRINK Applicant

and

DUNSTAN MLAMBO JP Respondent

In re the referral under the above case number in the matter between

ANTHONY ROBIN BRINK Applicant

and

LEGAL AID SOUTH AFRICA Respondent

NOTICE OF APPLICATION

TAKE NOTICE that the applicant intends applying to this court on a date and at a time fixed by the registrar for an order in the following terms:

1. The applicant is granted leave to subpoena the respondent to testify at the trial of his claim in this court under case number D529/11;

2. The respondent is ordered to pay the costs of this application, only if it is opposed.

TAKE NOTICE FURTHER that the annexed affidavit of the applicant Anthony Robin Brink will be used in support of the application.

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TAKE NOTICE FURTHER that if the respondent intends opposing this application he is required to notify his intention to oppose within five days of receipt hereof, and to file his answering affidavit, if any, within fifteen days thereafter.

If no such notice of intention to oppose be given, the registrar is requested to set the matter down for hearing as an unopposed application.

Signed at Pietermaritzburg, this 31st day of October 2012

ANTHONY ROBIN BRINK

Adv Anthony Brink,
Applicant
25 Baker Road
Prestbury
Pietermaritzburg 3201
Telefax: 086 672 0776
Telephone: 033 344 2420
Cellphone: 083 779 4174

To:
The Registrar of the Labour Court of South Africa (Durban)
1st Floor, Liberty House
269 Anton Lembede Street
Durban

And to:
The Honourable Dunstan Mlambo,
Judge President of the Labour Court of South Africa
Labour Court, Johannesburg,
6th and 7th Floors, Arbour Square Building
c/o Juta & Melle Streets
Braamfontein
Johannesburg
Gauteng

Personal telefax: 086 602 0124

And to:
Legal Aid South Africa
(Ref: Mr Thembile Mtati)
c/o Durban Justice Centre
Suite 401
4th Floor, Salisbury House
330 Anton Lembede Street
Durban
(Ref: Mr Thulani Sithole)

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

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DUNSTAN MLAMBO JP — Respondent

In re the referral under the above case number in the matter between

ANTHONY ROBIN BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

APPLICANT'S FOUNDING AFFIDAVIT

I, Anthony Robin Brink, solemnly affirm:

1. I am an adult male, 53, an advocate of the High Court of South Africa, residing at 25 Baker Road, Prestbury, Pietermaritzburg, KwaZulu-Natal, and I am the applicant.

2. The respondent is Dunstan Mlambo, Judge President of this court, whose chambers are at the Labour Court, Johannesburg, 6th and 7th Floors Arbour Square Building, corner of Juta and Melle Streets, Braamfontein, Johannesburg, Gauteng.

3. At all material times, the respondent has been chairperson of Legal Aid South Africa ('LASA'), a statutory body established by the Legal Aid Act 22 of 1969, and it's in this capacity that he's cited in this application. For brevity, and to avoid confusion with the principle respondent in the case sometimes mentioned herein as 'the Respondent', I'll

refer to the respondent by his surname. LASA's Board of Directors will be referred to as 'the Board'. To keep this interlocutory application light, I haven't annexed pleadings and affidavits to which I refer, which are in the court file, nor documents I refer to that are in the indexed trial document bundle or its addendum also at court (I've been updating LASA with new paginated pages bundles with refreshed indices) many of which documents are in Mlambo's possession – my three petitions to him and the Board; his correspondence to me; and his 'Confidential ... Report ... Re: Adv Anthony Brink' to Parliament.

4. For the reasons set out below, I require Mlambo's viva voce evidence and his production of documents in his possession or under his control at the trial of my claim against LASA pending in this court under case number D529/11.

5. My claim is for a declaratory order that in violation of my fundamental rights LASA unfairly discriminated against me on political or racial grounds in aborting my recruitment off the record to a top-rank professional post for which I was duly selected and recommended by a professional selection panel in November 2009; an order instating me to the position; damages; and other relief.

6. Mlambo's evidence on oath at the trial of my claim, assayed against the documentary record in the case, including his communications with me, with the Minister of Justice and Constitutional Development, and with the chairperson of the Parliamentary Portfolio Committee on Justice and Constitutional Development will be relevant to determining the extent of his complicity, collusion, or connivance in the violation of my fundamental rights to equality and to information guaranteed by sections 9 and 32 of the Constitution by certain of LASA's national management executives, and in the escalating cover-up that followed – culminating in Mlambo's successful perversion of a Ministerial enquiry into these issues by way of a 'Confidential ... Report ... Re: Advocate Anthony Brink', replete with outright lies, distortion and deceptively false implications, and his equally successful perversion of a separate enquiry into the same issues by the chairperson of the Portfolio Committee by dint of an 'updated' version of this 'Report' some months later. This will be treated below.

7. Mlambo's evidence will also be relevant to determining the extent to which he's been responsible for the unlawful corruption of LASA's recruitment processes – processes

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ordinarily governed and precisely regulated by the Board's Policies and Procedures on Recruitment, Induction, Probation and Relocation and by its Approval Framework. That as a non-executive director of LASA, Mlambo has unlawfully comported himself as a management executive and has interfered and intruded himself in recruitment processes and recruitment decisions concerning the appointment of Senior Litigators is already a matter of record, as I'll show.

8. In due compliance with the requirements of section 25 of the Supreme Court Act 59 of 1959, I've requested Mlambo's leave as Judge President to subpoena him as a judge of this court, but he hasn't responded. Copies of my request mailed to him in February 2012 and proof of post are annexed marked 'A' and 'B'. (In the interests of concision I've omitted from these papers the 'Statement of Facts Beyond Issue' that I enclosed with my letter to Mlambo. Annexure 'C' mentioned below sums them up.)

9. I've brought this application several months later for two principal reasons. First, as this court will readily apprehend I've been loathe to sue Mlambo as one of our country's most senior judges, and the president of the very court in which I'm constrained to seek justice in my case. And second, I've been hoping the case might settle having regard not only to the documented facts glaringly inconsistent with and destructive of the budgetary cover-story advanced to me for not finalizing my appointment in late 2009 (and I've just recently chanced to discover that two years later in November 2011 the Board was told a completely different story, mentioned below), but in view also of the fact that the defence of my claim to my appointment and other relief has not been authorised by the CEO as required by section 10.2.3 (b) of the Board's Approval Framework for claims of the instant scale (between R500 000 and R5 million), and, it seems certain, it has never been reported to the Board for its approval, as the same section requires.

10. That is, the unauthorized, unapproved defence of my claim is being unlawfully conducted under the counter and off the books. (I've brought an application to strike it out accordingly; it's still to be set down by the registrar. I've also reported the matter to the Public Service Commission.)

11. This affidavit is divided into two sections. The first sketches the background facts of the matter giving rise to my claim and to this application – all facts beyond issue, having

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HELD AT DURBAN

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and

DUNSTAN MLAMBO JP — Respondent

In re the referral under the above case number in the matter between

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and

LEGAL AID SOUTH AFRICA — Respondent

APPLICANT'S SERVICE AFFIDAVIT

I, Anthony Robin Brink, solemnly affirm:

1. I am the applicant.
2. As contemplated by rule 4 (1) (a) (iv), I effected service of the application papers on the respondent by telefax.
3. This affidavit provides the particulars required by rule 4 (2) (b) to prove service in this manner.
4. On Tuesday morning, 31 October 2012, I telephoned the respondent's secretary Ms Dumi Motswasele for his personal telefax number, and after enquiring about it she furnished it to me: 086 602 0124.

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5. In the early afternoon of the same day I telefaxed the notice of motion and the founding affidavit with its annexures to the respondent's telefax number given me, in two batches of 18 and 17 pages each.

6. I annex the two successful telefax transmission reports recording that the whole of the transmission was completed in two parts, marked 'A' and 'B'.

Dated at Pietermaritzburg, this 2nd day of November 2012.

ANTHONY ROBIN BRINK

Signed before me at Pietermaritzburg on this 2nd day of November 2012 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he solemnly affirms its contents to be true to the best of his knowledge and belief.

7137329-2
Ntsikelelo Phungula Cst
COMMISSIONER OF OATHS

Name: Ntsikelelo Phungula

Address: 106 Kwakop Rd

Capacity: Constable

SAPS
2012 -11- 02
PIETERMARITZBURG
KWAZULU-NATAL

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HP LaserJet *M1522nf MFP*

Fax Confirmation Report

HP LASERJET FAX

31-Oct-2012 14:09

Job	Date	Time	Type	Identification	Duration	Pages	Result
2044	31/10/2012	13:53:21	Send	0866020124	15:45	18	OK

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Case No: D529/11

In the matter between

ANTHONY ROBIN BRINK — Applicant

and

DUNSTAN MLAMBO JP — Respondent

In re the referral under the above case number in the matter between

ANTHONY ROBIN BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

NOTICE OF APPLICATION

TAKE NOTICE that the applicant intends applying to this court on a date and at a time fixed by the registrar for an order in the following terms:

1. The applicant is granted leave to subpoena the respondent to testify at the trial of his claim in this court under case number D529/11;
2. The respondent is ordered to pay the costs of this application, only if it is opposed

TAKE NOTICE FURTHER that the annexed affidavit of the applicant Anthony Robin Brink will be used in support of the application

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HP LaserJet *M1522nf MFP*

Fax Confirmation Report

HP LASERJET FAX

31-Oct-2012 14:27

Job	Date	Time	Type	Identification	Duration	Pages	Result
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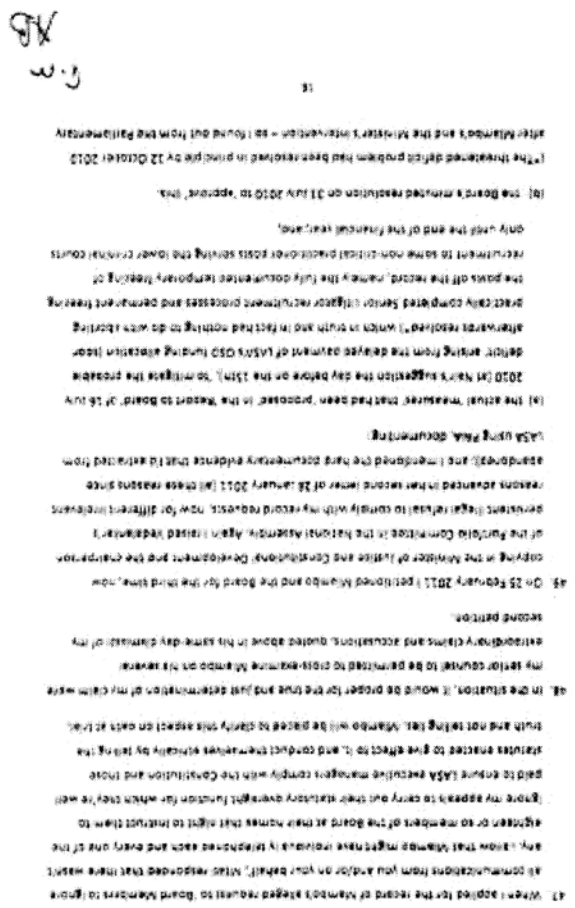

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between:

ANTHONY ROBIN BRINK APPLICANT

And

DUNSTAN MLAMBO JP RESPONDENT

In re the referral under the above case number in the matter between

ANTHONY ROBIN BRINK APPLICANT

And

LEGAL AID SOUTH AFRICA RESPONDENT

NOTICE OF OPPOSITION

TO : THE REGISTRAR
LABOUR COURT DURBAN

AND TO : ADV. ANTHONY BRINK
APPLICANT
25 BAKER ROAD
PRESTBURY
PIETERMARITZBURG
3201
TELEFAX : 086 672 0776
TELEPHONE: 033 344 2420
CELLPHONE: 083 779 4174

AND TO : THE HONOURABLE DUNSTAN MLAMBO
JUDGE PRESIDENT OF THE LABOUR COURT OF SOUTH AFRICA
LABOUR COURT, JOHANNESBURG
6TH AND 7TH FLOORS, ARBOUR SQUARE BUILDING
C/O JUTA & MELLE STREETS
BRAAMFONTEIN
JOHANNESBURG
GAUTENG
PERSONAL TELEFAX : 086 602 0124

S I R S

KINDLY TAKE NOTICE that it is the Respondent's intention to oppose the Applicant's application.

KINDLY TAKE NOTICE FURTHER that the Respondent appoints the address of his attorneys mentioned below for the services of all documents and processes in these proceedings.

DATED at DURBAN this 27 day of NOVEMBER 2012

RESPONDENT'S ATTORNEY

LEGAL AID SOUTH AFRICA
REF: MR. THEMBILE MTATI
C/O DURBAN JUSTICE CENTRE
4TH FLOOR, SUITE 401
SALISBURY HOUSE
330 SMITH STREET
DURBAN
P O BOX 4397 DURBAN 4000
DOCEX 214 DURBAN
TELEPHONE : 3043290 – 3040100
TELEFAX : 3043564 – 3040471
REF: T SITHOLE

APPENDIX

I assume that Zondi JA (and any other JCC member(s) dealing with my gross misconduct complaints) has read my letters to Mogoeng CJ, Zondo DCJ, and JCC secretary Chiloane written in the period November 2019 to February 2021, protesting the JCC's failure to prosecute the complaints and the JSC's failure to comply with my PAIA requests. If not, these important letters are accessible at illegal-aid.co.za/JSC.

In sum, after I wrote to Mogoeng CJ in November 2019, complaining *inter alia* about the JCC's inaction and shocking decision, alleged to me on the telephone by former secretary Bios, that my complaints against the respondent were to be dealt with merely under 17 of the Judicial Service Commission Act governing the disposal of serious but not impeachable misconduct complaints, secretary Chiloane responded in February 2020 with an urgent request for copies of my complaints, the judges' responses and my comments on them, and assured me that they were being attended to at last.

Having heard nothing more from the JCC in the next six months, I wrote to Chiloane in August 2020, but got no reply. Three months after that, I wrote to Zondo DCJ in November. I had trouble getting my letter delivered by the Post Office's courier service, so I wrote to him again in January 2021 enclosing copies of my earlier correspondence. The following month in February, I wrote to Mogoeng CJ again, to report my meeting with former President Jacob Zuma at his request for a briefing on my complaints against the respondent and on the JCC's failure to prosecute them, which he'd learned about.

However, the date on which the respondent and his former secretary made their affidavits addressed in my second response, namely 4 November 2020 – some weeks before my first letter to Zondo DCJ at the end of that month – tells me that contrary to my wrong impression that my complaints weren't being prosecuted (my impression arising from the JCC's failure to keep me informed, and its failure until 17 February 2020 even to acknowledge my further

correspondence), the JCC was indeed onto the case, and had required the respondent to more directly answer my First Complaint against him.

Upon my return home after meeting former President Zuma on 22 February 2021, I found the said affidavits emailed to me by Chiloane. Three days later on the 25th, after completing my letter to Mogoeng CJ to report the meeting – a priority – I opened the attachments and read the affidavits and Chiloane's covering letter, and realised that the JCC was actually onto my complaints against the respondent.

The resolution of my complaints against the respondent and against Waglay JP, has become pressingly urgent for me for several reasons. The respondent and Patrick Hundermark, Chief Legal Executive of Legal Aid SA ('LASA'), have practically destroyed my legal career, put me out of work, and wiped me out financially. Detailed in the 'Retaliation' section of my letter to the Chief Justice in November 2019, they got me dismissed as an acting magistrate in late 2016 and blacklisted from any further acting or permanent appointments, despite the need, I'm told, for my services up here in Zululand.

Moreover, the respondent and Hundermark are trying to get me struck off the roll of advocates for impeaching the respondent's integrity in my labour and subsequent PAIA litigation (as indeed I do in my several gross misconduct complaints against him to the JCC). LASA (actually Hundermark on the respondent's behalf) is currently pressing the Legal Practice Council ('LPC') to decide their complaint against me (signed by then Legal Executive Thembile Mtati), originally made to the Society of Advocates of KwaZulu-Natal ('the Society') in November 2015. After several zig-zagging resolutions (obtained by me via PAIA), the Society ultimately decided in 2018 to await the JCC's decision of my complaints against the respondent before deciding whether or not to apply for my strike-off as sought by the respondent and Hundermark. In November 2018 the LPC took over the Society's disciplinary jurisdiction, and in February 2020 resolved to investigate the complaint against me *de novo*. The LPC's ultimate decision is likely to follow the JCC's, so it's critical that my complaints before it be prosecuted without further undue delay.

Meanwhile I'm unable to rejoin the Society and resume legal practice from my professional base in Pietermaritzburg. With my professional reputation shattered by the pending complaint and under such an ignominious cloud, it's not feasible to practise independently either. So taking the respondent on has put me in professional and financial limbo, and I'm obviously highly motivated and impatient to end this mess as quickly as I possibly can.

Furthermore, I urgently need to vindicate my professional reputation among the newer judges on the KwaZulu-Natal bench, appointed from outside the ranks of my legal colleagues at the Pietermaritzburg Bar who know me and what sort of guy I am. The reason is that I have four PAIA cases pending in that court, and in my appearances there in recent years I've experienced the sort of chilly reception and palpable prejudice that I've never encountered before. And if my PAIA cases are to be tried properly, I need to wash off the muck that the respondent and Hundermark have dumped on me, and in a hurry.

It's really very disgraceful of the JSC to fail to respond to my PAIA requests in the manner of a corrupt public entity with something to hide or someone to protect, so I'd be obliged if Zondi JA (and/or any other member of the JCC handling my complaints against the respondent) instructs that they be responded to at last. As I've repeatedly said in my correspondence, I've another particularly appalling gross misconduct complaint to make against the respondent, brightly illuminating his personal moral and professional ethical character, and to support it I need certain records in the JSC's possession that I've duly requested. I'd like this addressed immediately please.

A comprehensive complaint regarding the respondent's wholesale procedural and ethical corruption of recruitment operations at LASA while he was *non-executive* Board chairman is substantially complete and will be submitted in a month or two; it remains only to assemble the bundle of supporting records, which, being stored in multiple computer folders and boxes of printed papers accumulated over a decade, is a considerable task.

I might mention that I've twelve documented criminal charges pending against former LASA CEO Vedalankar, concerning her role in covering up, including before Parliament, the recruitment corruption with which my complaints against the respondent are largely concerned. These charges are accessible in PDF at illegal-aid.co.za/AG. Criminal complaints inter alia against Hundermark and LASA National Operations Executive Brian Nair and Human Resources Executive Amanda Clark will follow. As said in my comments on the respondent's second response to my First Complaint, the Auditor-General's Investigation division is onto the multiple contraventions of the Public Finance Management Act committed in the recruitment corruption described in my complaints to the JCC, which I reported to the Auditor-General last year.

In his first response to my eight complaints against him, the respondent didn't pick up, even less correct, my mistake about this, but I've repeatedly claimed he was head of the Labour Court in the six-and-a-half year period that my rival applicant for the Pietermaritzburg Senior Litigator post was repeatedly appointed as an acting labour judge, before the interviews for the said post were held in November 2009; in other words, that the respondent got him appointed. In fact they were just judicial colleagues in the Labour Court, and the respondent was only appointed head of it in early 2010. My mistake is partly the JSC's fault: under PAIA I duly requested the record of the respondent's appointment to establish its exact date, not being able to find it anywhere on the internet at the time, and the JSC failed to respond. I knew the respondent was head of those courts, but my assumption about for how long was wrong, and I only discovered this quite recently.

Finally, although it may well be too late for this, I reiterate my own preference for a global settlement and resolution of all claims and complaints; but for as long as I'm kept out in the cold, all my time and energy will naturally continue to be applied to ensuring that the corruption I've encountered at LASA is brought to book and that the corrupt public officers responsible for it are nailed.

My second letter to Zondo DCJ in January 2021 extended my deadline, set in my preceding letter, for going international with my complaints, to the end of March. Since this is in a week's time, I extend it again to the end of April.

So unless a global settlement is reached, if by the end of April I have no written information that the JCC will be putting the respondent and Waglay JP on trial before tribunals, like Hlophe JP was, I'll be calling international diplomatic attention to the high-level corruption of the South African judiciary in the manner described in my letters to Zondo DCJ.

Should the JCC need more time, I'm amenable if asked.

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Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

Dropbox link to Brink's comments on Mlambo JP's second response to his First Complaint

1 message

Anthony Brink <anthonybrink.sa@gmail.com> 24 March 2021 at 16:18
To: Sello Chiloane <Chiloane@concourt.org.za>

Dear Mr Chiloane
I've placed my affirmed comments with supporting records in a Dropbox folder for you to download here:
https://bit.ly/3lTlo9J
The long link is below.
I emailed my comments as an attachment at 3.30 pm, but got an automatic 'Message too large' email bounce notice.
Please ensure that Zondi JA (and any other judge handling my complaints) gets the document pronto.
Particularly in light of my closing paragraphs in the Appendix, annexure 'J'.
The hard-copy original will follow by courier.
Please acknowledge receipt.
Yours sincerely
Anthony Brink

https://www.dropbox.com/s/hokp1byxp9mxx5q/Brink%27s_comments_on_Mlambo_JP%27s_second_response_to_his_First_Complaint.pdf?dl=0

R54

Gmail Anthony Brink <anthonybrink.sa@gmail.com>

Herewith, Brink's comments on Mlambo JP's second response to his First Complaint

2 messages

Anthony Brink <anthonybrink.sa@gmail.com> 24 March 2021 at 15:30
To: Sello Chiloane <Chiloane@concourt.org.za>

Dear Mr Chiloane
My affirmed comments with supporting records are attached.
Please ensure that Zondi JA (and any other judge handling my complaints) gets the document pronto.
Particularly in light of my closing paragraphs in the Appendix, annexure 'J'.
The hard-copy original will follow by courier.
Yours sincerely
Anthony Brink

Brink's_comments_on_Mlambo_JP's_second_response_to_his_First_Complaint.pdf
22573K

Mail Delivery Subsystem <mailer-daemon@googlemail.com> 24 March 2021 at 15:31
To: anthonybrink.sa@gmail.com

Message too large

Your message couldn't be delivered to **Chiloane@concourt.org.za** because it exceeds the size limit. Try reducing the message size and then resending it.

The response from the remote server was:

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552 5.3.4 Message size exceeds fixed maximum message size
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Final-Recipient: rfc822; Chiloane@concourt.org.za
Action: failed
Status: 5.3.4
Remote-MTA: dns; mail.concourt.org.za. (197.245.194.178, the server for the domain concourt.org.za.)
Diagnostic-Code: smtp; 552 5.3.4 Message size exceeds fixed maximum message size
Last-Attempt-Date: Wed, 24 Mar 2021 06:31:24 -0700 (PDT)

---------- Forwarded message ----------
From: Anthony Brink <anthonybrink.sa@gmail.com>
To: Sello Chiloane <Chiloane@concourt.org.za>
Cc:
Bcc:
Date: Wed, 24 Mar 2021 15:30:33 +0200

Subject: Herewith, Brink's comments on Mlambo JP's second response to his First Complaint
----- Message truncated -----

R54

REGISTERED LETTER
GEREGISTREERDE BRIEF

Post Office

(with an insurance option/met 'n versekeringsopsie)

Full tracking and tracing/Volledige volg en spoor

Addressed to/Geadresseer aan

Sello Chiloane
Secretary: Judicial Conduct Commit
188 14th Road Noordwyk
Midrand 1685 Postcode Postkode

The value of the contents of this letter is as indicated and compensation is not payable for a letter received unconditionally. Compensation is limited to R100.00. No compensation is payable without documentary proof. Optional insurance up to R2 000.00 is available and applies to domestic registered letters only.-

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Initial of accepting officer

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Date stamp

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2021-

Datumstempel

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A BOOK COPY

Criminal complaint no. 1: Vedalankar

In two volumes:

Vol. 1: Affirmed criminal complaint

Vol. 2: Supporting documents

TWELVE CRIMINAL CHARGES AGAINST VIDHU VEDALANKAR, FORMER CEO OF LEGAL AID SA

VOLUME 1

Criminal complaint no. 1: Vedalankar

In two volumes:
Vol. 1: Affirmed criminal complaint
Vol. 2: Supporting documents

TWELVE CRIMINAL CHARGES AGAINST VIDHU VEDALANKAR, FORMER CEO OF LEGAL AID SA

VOLUME 1

CRIMINAL COMPLAINT

AGAINST

VIDHU VEDALANKAR, FORMER CEO OF LEGAL AID SOUTH AFRICA

I, Anthony Brink, affirm:

1. I am an adult male, 61, an advocate of the High Court of South Africa admitted to practice on 12 April 1983, and a former prosecutor and magistrate of the District and Regional Courts. My professional background includes several years as a full-time civil trial magistrate and civil litigation as an advocate in the Supreme Court of Appeal and Constitutional Court. I reside at 36 Pearson Street, Eshowe 3815, KwaZulu-Natal. My cellphone number is 083 779 4174 and my email address is anthonybrink.sa@gmail.com.

2. The accused is Vidhu Vedalankar, formerly Chief Executive Officer ('CEO') of Legal Aid South Africa ('LASA'). Her contact particulars are unknown to me now that she's retired, but they can likely be obtained from LASA's national office at 29 De Beer Street, Braamfontein, Johannesburg. The office telephone number of her successor, CEO Mantiti Kola, is 011 877 2000.

3. The facts set out herein will show that on the various occasions mentioned, Vedalankar contravened the following statutory provisions, thereby committing the several serious statutory crimes they proscribe, on each count of which she's liable to be jailed:

- section 9 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963, in lying in an affidavit sworn to be true before a commissioner of oaths;

- section 17(2)(d) and (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, in repeatedly lying, deceptively withholding critically relevant information, and falsely reporting on multiple occasions to the National Assembly's Portfolio Committee on Justice and Correctional Services (as it's now called; hereafter 'the Portfolio Committee');

- section 55(1) read with section 86(2) of the Public Finance Management Act 1 of 1999 ('PFMA'), in failing as delegated accounting officer to 'keep full and

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proper records of the financial affairs of the public entity', per the language of section 55(1) of that Act; and,

- section 55(2) read with section 86(2) of the PFMA, in wilfully misrepresenting LASA's 'state of affairs' in its 'annual report' for 2011/12 and 'its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned', per the language of section 55(2) of that Act.

4. The facts giving rise to these criminal charges against Vedalankar, referenced to supporting documents annexed hereto, are set out, in logical rather than strict chronological order, in the following paragraphs:

COUNT		PAGES	PARA'S
	Background	5–10	5–20
1	Lying in an affidavit on 5 April 2011, in criminal contravention of section 9 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963.	10–30	21–106
2	Failing as delegated accounting officer to 'keep full and proper records of the financial affairs of the public entity' on or about 31 July 2010, in criminal contravention of section 55(1) read with section 86(2) of the Public Finance Management Act 1 of 1999.	30–39	107–45
3	Producing a false document to the Portfolio Committee with intent to deceive it on 17 August 2010, in criminal contravention of section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.	39–42	146–55

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4	Wilfully furnishing the Portfolio Committee with information, or making a statement before it, which is false or misleading on 12 October 2010, in criminal contravention of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.	42–8	156–79
5	Wilfully furnishing the Portfolio Committee with information, or making a statement before it, which is false or misleading on 31 March 2011, in criminal contravention of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.	48–53	180–99
6	Producing a false document to the Portfolio Committee with intent to deceive it on 31 March 2011, in criminal contravention of section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.	53–5	200–9
7	Producing a false document to the Portfolio Committee with intent to deceive it on 31 March 2011, in criminal contravention of section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.	55–7	210–15
8	Wilfully furnishing the Portfolio Committee with information, or making a statement before it, which is false or misleading on 11 October 2011, in criminal contravention of	57–60	216–27

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	section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.		
9	Wilfully misrepresenting LASA's 'state of affairs ... its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned' in her CEO report included in LASA's annual report for 2011/12, in criminal contravention of section 55(2) read with section 86(2) of the Public Finance Management Act 1 of 1999.	60–4	228–42
10	Producing a false document to the Portfolio Committee with intent to deceive it on 9 October 2012, in criminal contravention of section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.	*ditto*	*ditto*
11	Wilfully furnishing the Portfolio Committee with information, or making a statement before it, which is false or misleading on 9 October 2012, in criminal contravention of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.	64–74	243–82
12	Wilfully furnishing the Portfolio Committee with information, or making a statement before it, which is false or misleading on 9 October 2012, in criminal contravention of section 17(2)(e) of the Powers, Privileges and	75–82	283–312

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	Immunities of Parliament and Provincial Legislatures Act 4 of 2004.		

BACKGROUND

5. On 12 November 2009, a duly constituted selection panel of LASA's top lawyers in KwaZulu-Natal interviewed four shortlisted candidates for its two most senior legal professional posts in the province, its long vacant Senior Litigator posts at Pietermaritzburg and Durban. The recruitment processes for the simultaneously advertised posts were conducted in parallel.

6. The posts had been created by resolution of LASA's Board in November 2006 for the delivery of constitutional and other complex specialist litigation services to the indigent in the High Court, Supreme Court of Appeal, and Constitutional Court.

7. One of the interviewed applicants was a former long-time judicial colleague of LASA's Board chairperson at the time, Dunstan Mlambo JP (appointed head of the Labour and Labour Appeal Courts in 2010, and thereafter head of the North and South Gauteng Division of the High Court in 2013). Over a period of about six years prior to the interviews, the two had served together on the Labour Court bench – the said interviewed candidate repeatedly appointed as an acting judge of that court, as well as of the KwaZulu-Natal Division of the High Court. In April 2007, however, the Judicial Service Commission ('JSC') had rejected his application for a permanent appointment on account of his failure to have disclosed to the then Judge President of the said Division his two convictions by the Law Society regarding the irregular conduct of his practice as an attorney, and the fact that it had instituted legal proceedings against him (*per* News24 report, 'Past misconduct haunts judge', 14 April 2007).

8. Notwithstanding his many years of legal professional experience, even as an acting judge of the Labour- and High Courts, the selection panel duly disqualified and rejected his application for appointment as a Senior Litigator for the reason that he lacked right of appearance in the High Court as an attorney

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and accordingly had no litigation experience on his feet there, and for this reason didn't meet the basic qualifying criteria for the post.

9. The selection panel duly recommended me for the Pietermaritzburg post for which I'd applied; and duly recommended the High Court Unit Manager at LASA's Durban Justice Centre for promotion to the Durban one.

10. After my successful interview in November 2009, the recruitment process went strangely silently dead; my enquiries of Human Resources Executive Amanda Clark five months later in April 2010 were repulsed with shockingly hostile, transparently dishonest stonewalling; and my repeated requests for access to LASA's public records under section 18 of the Promotion of Access to Information Act 2 of 2000 ('PAIA'), duly made in my investigation of the obvious irregularity in the peculiar halting of the recruitment process, were persistently furtively refused on obviously spurious, shifting, even fraudulent grounds, all ultimately abandoned under South African Human Rights Commission ('SAHRC') pressure and later at the point of multiple legal processes brought to disgorge the persistently withheld records that I'd duly requested. (LASA's repeatedly illegal and unconstitutional suppression of requested records is closely detailed in a Special Report to the PAIA Unit of the SAHRC that I filed in late 2016, accessible online at illegal-aid.co.za/PAIA.

11. Multiple dishonestly false, radically divergent, contradictory, and mutually exclusive and destructive justifications were eventually advanced by LASA's top officers over time for the abortion of my recruitment, some of which form the subject of this criminal complaint.

12. Repeatedly requested since August 2010, but repeatedly illegally and unconstitutionally refused, I eventually in April 2016 succeeded in clawing out of LASA, by suing for it under section 78 of PAIA, the selection panel's full, unredacted recommendation report delivered to National Operations Executive Brian Nair on 26 November 2009. My claim to this critical document was indefensibly opposed all the way to court, at which point, moments before argument, LASA totally capitulated, abandoned all its defences, and agreed to

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surrender it, along with all other requested documents I'd sued for, and to certify under section 23 any specified documents that didn't exist.

13. The selection panel's full recommendation report, which LASA's national executives had been so strangely reluctant to let me see, revealed at last the said rejected candidate's professional connection with Board chairperson Mlambo JP, and finally made sense of: (i) the peculiar, unauthorised, unrecorded back-room gerrymandering of the qualifying criteria for the post by doubling the High Court experience requirement – but only for the readvertised KwaZulu-Natal posts (for the reason mentioned above, Mlambo JP's colleague still didn't meet them); (ii) LASA's oddly irregular failure to inform Mlambo JP's colleague that his application for the post had been unsuccessful, as required by section 1.5.1 of LASA's 'Policies and Procedures on Recruitment, Induction, Probation and Relocation' ('Recruitment code'); (iii) the odd fact that, unlike the three other interviewed candidates, Mlambo JP's colleague wasn't also told by letter in August 2010 that the KwaZulu-Natal Senior Litigator recruitment process had been cancelled; and (iv) the fact that he was soon afterwards appointed other posts in LASA, the last of which was at the Durban Justice Centre, likely in anticipation of being slipped into the Senior Litigator post after he'd obtained right of appearance and litigated a case or two in the High Court to get the necessary experience for the post.

14. LASA's national office was clumsily candid about its expectation that if kept waiting in the dark long enough, I'd lose interest in pursuing my appointment to the post and abandon my application for it. Quoted below, in April 2010 HRE Clark actually proposed I withdraw my candidacy, after backhandedly confirming I'd been selected and recommended; and in mid-2013 at the trial of my miscarried labour claim (explained just below), I was actually asked why I hadn't concluded from the long silence after my interview that I'd been unsuccessful and walked away.

15. Unfortunately for me the long-suppressed, crucially informative record of the selection panel's Senior Litigator candidate recommendations, with its summaries of each applicant's professional experience – including that of my

rival contender for the post – came to light five years too late. Deliberately kept unaware of Mlambo JP's special relationship with his unsuccessful colleague on the shortlist, I wrongly surmised covert unfair discrimination as the reason I wasn't appointed to the post, and sued in the Labour Court for my instatement on that mistaken ground. And in the result my fundamentally misconceived claim was correctly dismissed.

16. It bears mentioning here that besides Vedalankar's lying on oath and her repeated, routine lying and dishonestly false reporting to the Portfolio Committee detailed herein, among other her crimes, the extraordinary criminal depravity in LASA's top ranks extends even to the perversion of judicial proceedings. My complaint pending before the JSC's Judicial Conduct Committee ('JCC') against Labour- and Labour Appeal Courts head Basheer Waglay JP – Mlambo JP's successor, and former long-time deputy – details how he was slipped a poisonously prejudicial 'memorandum' by some obviously well connected, highly motivated top LASA officer to improperly influence his decision of my petition for leave to appeal the dismissal of my labour claim (before I discovered years later that the actual impediment to my appointment was not unfair discrimination but everyday recruitment corruption in the form of cronyism). Supported by a copy of this 'memorandum' inadvertently left in and later found in the court file, my complaint to the JSC's JCC regarding this brazen act of defeating the ends of justice by the obviously well connected top LASA officer, highly motivated to torpedo my appeal behind the scenes, is accessible online at illegal-aid.co.za/JSC.

17. For the purpose of this criminal complaint, though, it's unnecessary to show that top-level recruitment corruption and its cover-up was the true reason why the Senior Litigator recruitments for Pietermaritzburg and Durban, and later Mthatha, were aborted and why the budgeted and funded vacant posts were left unfilled (still are, illegally; see below). In other words, it's nnnecessary for present purposes to show that the reason Vedalankar (i) made no record of the final backroom abortion of the posts and of the decision to keep them unfilled; (ii) lied on affidavit about it; and (iii) repeatedly lied and falsely reported to the

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Portfolio Committee, as charged herein, was to cover recruitment corruption and the repeated illegal and unconstitutional rejections of my PAIA requests made to investigate it – just that she lied (some lies radically contradictory). In a word, *why* the said three Senior Litigator appointments were cancelled – top-level recruitment corruption and its cover-up – is a not a police matter.

18. Not material to this complaint either is Mlambo JP's role in the criminal cover-up – the subject of eight gross misconduct complaints against him currently pending before the JCC, two of which charge such crimes as suborning perjury and falsely reporting to the Portfolio Committee to pervert a parliamentary enquiry. My complaints, his response and my invited comments on it, as well as a record of the Chief Justice's office's urgent, after-hours request in February 2020 for copies, prompted by my letter to him at the end of last year, are all accessible at illegal-aid.co.za/JSC.

19. The illegal, off-the-record abortion of the recruitments, and the illegal deliberate failure since 2006 – for about fourteen years now – to fill LASA's three remaining vacant Senior Litigator posts and to duly apply the budgeted, approved, voted, transferred and received salary funding for them by employing suitable staff to fill them, was and continues year after year to be *ipso facto* illegal under section 53(4) of the PFMA, as the Constitutional Court confirmed in paragraphs 8 and 9 of *Sibongile Zungu v Premier of the Province of KwaZulu-Natal and Others* [2018] ZACC 1 (22 January 2018), quite irrespective of the several completely different, radically contradictory lies told over time about why the substantially complete recruitments were aborted and the budgeted and funded posts frozen. These contraventions of the PFMA and other material irregularities within the contemplation of sections 1 and 5(1A) of the Public Audit Act 25 of 2004 – illegal but not criminal – are currently being investigated by the Auditor-General's Investigation unit, to which it was referred by his corporate counsel after advising that she'd duly 'studied' it to report on it to the Auditor-General. A copy of my complaint about this is accessible online at illegal-aid.co.za/AG.

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20. For relevance to the charges, all ellipses in statutory provisions quoted herein are mine. My inverted commas signify direct quotation only, not irony, scepticism or derision. Where for concision I've put up material excerpts of supporting documents, I can supply most of the complete documents if required, failing which LASA will have them. For quick and easy reference, I've marked up material passages in the annexed supporting documents. For the same reason, I've continued the serial page-numbering of this affidavit (pages 1–82) on the annexures (pages 83–433), which, due to their multitude (75), I've numbered rather than allocated letters in the usual convention. For easy copying and electronic transmission, a scanned copy of this criminal complaint and its annexures will be made available online at illegal-aid.co.za/NPA.

COUNT 1: LYING IN AN AFFIDAVIT

21. Section 9 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963 provides:

> Any person who, in an affidavit, affirmation or solemn or attested declaration made before a person competent to administer an oath or affirmation to take the declaration in question, has made a false statement knowing it to be false, shall be guilty of an offence and liable upon conviction to the penalties prescribed by law for the offence of perjury.

22. In *R v Samuels* 1930 CPD 67 at 71, the High Court emphasized that 'perjury is a very serious crime'.

23. On 5 April 2011, Vedalankar deposed to an affidavit before a commissioner of oaths in which she confirmed to be true all allegations pertaining to her made by LASA deputy information officer Nair in his affidavit made under section 23 of PAIA, certifying that certain records I'd requested under section 18 of that Act don't exist.

24. Copies of Nair's and Vedalankar's affidavits are annexed, marked '1' and '2' respectively.

25. Essaying into matters beyond the specific information requirements of section 23 of PAIA, Nair's affidavit included bold allegations under oath that were clearly calculated to finally put me off my investigation of the true reason my recruitment had been cancelled.

26. Nair's and Vedalankar's affidavits were delivered to me together. A further confirmatory affidavit by HRE Clark was delivered at the same time, but I've not put it up because it's immaterial to this complaint and will be the subject of a separate criminal complaint against her.

27. Nair's affidavit is dated 8 April 2011, three days after Vedalankar's, which suggests she confirmed the contents of Nair's draft affidavit before it was signed. There's no question, however, that in making her affidavit Vedalankar meant to confirm under oath the allegations she'd made in her earlier correspondence with me, to which Nair pertinently referred in his affidavit.

28. In his paragraphs 8–12, Nair describes a system he'd devised in terms of which an applicant recommended by a selection panel for a Senior Litigator post would be subject to a second interview by *inter alia* LASA's Board chairperson. Consistent with this double-decker interview system he'd improvised, the selection panel that interviewed me framed its recommendation of me as a 'Recommendation for next round of interviews'. Having regard to LASA's internal regulations precisely governing selection and approval procedure for shortlisted applicants for advertised vacant posts, namely its Recruitment code and its Approval Framework, Nair's second round interview scheme, at odds with both these regulations, was obviously illegal in flouting one of the Constitution's 'Founding Provisions', namely 'the rule of law' stipulated in section 1(c). Although this illegality is irrelevant to this complaint, the *de facto* existence of Nair's unauthorised second interview scheme is relevant to setting the factual backdrop to his centrally material allegations in his paragraph 13, which in her confirmatory affidavit Vedalankar corroborated under penalty of perjury as the perfect truth.

29. In his paragraph 13, Nair alleged:

> The second round of interviews was not proceeded with and as such, no candidate or persons were considered for the second round. The decision that led us not to proceed with the second round was fully explained to Mr. Brink in the letters by the Chief Executive Officer dated 18 October 2010 and 28 January 2011.

30. Now indeed 'The second round of interviews was not proceeded with and as such, no candidate or persons were considered for the second round.' And the reason for this is that my 'recruitment was aborted immediately after the first round of interviews' – so Nair himself confirmed on oath, corroborating this very true statement by then Legal Executive Thembile Mtati. Material excerpts of Mtati's affidavit (see paragraphs 13.4 and 107) and Nair's confirmatory affidavit are annexed marked '3' and '4' respectively.

31. Evidently the wrong name came up as the selected and recommend candidate for the Pietermaritzburg post, i.e. mine, not the Board chairperson's friend's, because on learning this, Nair strangely gave 'instructions ... telephonically' that the CVs of all the interviewed candidates be sent up to him including those of the 'two persons ... eliminated early in the selection process and not recommended for the second round of interviews'.

32. A material excerpt of an affidavit by Mtati mentioning Nair's 'instructions ... done telephonically' to send him all four CVs (see Part 2, document 11, paragraph 27) is annexed marked '5'. Nair's mention of it in his evidence in my labour case is recorded in the transcript (page 349, lines 20–1), a material excerpt of which is annexed marked '6'. LASA's truthful pleading about the selection panel's rejection of the two unsuccessful candidates for the KwaZulu-Natal Senior Litigator posts appears in its answer to my pre-trial conference agenda (see paragraph 34.2), material excerpts of which are annexed marked '7'.

33. Consistent with the peculiar redundancy in Nair's letter (my added italics for emphasis) – 'no candidate *or persons* were considered for the second round' – he later gave the game away in my labour action when testifying that in deciding

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who to appoint, LASA wasn't limited to considering the candidate recommended by the selection panel; he and his colleagues (the so-called second round interview panel) were free to consider *any* shortlisted and interviewed applicants for appointment, including a person rejected by the selection panel: 'all four were interviewed ... their CVs were sent to me. Because in deciding who will be in [the] interview for the second round, we look at all four again and not only the person that the first round panellist[s] interviewed or recommended'; the second round panel 'is free to make the decision it wants to make and to interview whoever it wants to interview'; 'we do not only interview the recommended candidates'; 'the panel does not confine itself to only the person that is recommended. The panel, as in the past, [*sic*: has in the past] requested to see other candidates who were interviewed'. (Annexure '6', original pages 349, 350, and 408–10.)

34. As said, immediately after my recommendation, the Pietermaritzburg and Durban Senior Litigator recruitment processes were stopped – but only those; other Senior Litigator recruitments continued.

35. LASA has nine Senior Litigator posts in its staff establishment, based at Pretoria, Port Elizabeth, Cape Town, Johannesburg, Bloemfontein, Mahikeng, Durban, Pietermaritzburg, and Kimberley (transferred to Mthatha, then back; see below). These nine centres are identified in the original advertisement for the posts, annexed marked '8'. Showing the same, LASA's Senior Litigator personnel statistics in March 2012 are annexed marked '9'.

36. The candidates recommended by selection panels for the Senior Litigator posts at Johannesburg, Pretoria, Cape Town and Port Elizabeth were approved on 5 December 2008, and the posts filled. The record of these four candidates' approval is annexed marked '10'.

37. This left five of LASA's nine Senior Litigator posts unfilled: at Bloemfontein, Mahikeng, Kimberley, Durban and Pietermaritzburg.

38. LASA's budget for 2010/11 dated 'February 2010' shows that five Senior Litigator posts were still vacant in that month. A material excerpt of this budget

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is annexed marked '11'. This means that by February 2010, in addition to the Pietermaritzburg and Durban posts, the Bloemfontein, Mahikeng and Kimberley posts still hadn't been filled.

39. Sometime in the period March to June 2010, several months after my recommendation and then the 'immediate' abortion of my recruitment in November 2009 (as Mtati and Nair revealed on oath), appointments were made to the Bloemfontein and Mahikeng Senior Litigator posts. The June 2010 Senior Litigator recruitment statistics show the Mahikeng and Bloemfontein posts had been filled by that month. These statistics are annexed marked '12'.

40. And in March 2010, four oddly silent months after my successful interview, LASA's Legal Services Technical Committee ('LSTC') chaired by Nair resolved to abolish the Kimberley Senior Litigator post and create a new such post at Mthatha, and directed the Regional Operations Executive to 'immediately commence recruitment' for it; and it was immediately advertised in April, and interviewed for in May, following which a suitable candidate for it was selected and recommended.

41. The LSTC's resolution to create the Mthatha post (see section 4.1.7); the advertisement for it; and the selection panel's candidate recommendation for it are annexed marked '13' '14', and '15' respectively.

42. To obstruct my corruption investigation, to maintain the cover-up, and to protect his delinquent colleagues and himself from being taken to law and held to account, LASA Chief Legal Executive Patrick Hundermark is illegally and unconstitutionally blocking my duly made request for access to the records of the Bloemfontein and Mahikeng Senior Litigator appointments, to prevent me ascertaining the exact dates on which these appointments were made in the period March to June 2010 (fundamentally inconsistent with and destructive of the lying cover-story I was told; see below). And also because Hundermark knows, as I do directly from the chairperson of the selection panel that interviewed for the Mahikeng post, that the selection panel's recommended candidate was illegally passed over and a rejected candidate illegally appointed

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instead. The appointee to the Bloemfontein post wasn't the recommended candidate either, because the record (annexure '10') shows that the candidate identified by the selection panel wasn't approved by the so-called second round interview panel. Again, a different person was appointed instead.

43. The filling of the Mahikeng and Bloemfontein posts in the period March to June 2010 and the brisk recruitment for the Mthatha post in the period March to May 2010 show unequivocally that nothing lawful hindered the finalisation of my appointment pursuant to my successful interview in November 2009.

44. In her affidavit, Vedalankar stated:

> ...
>
> 2. The facts which are herein so confirmed are to my knowledge true and correct save where the converse so appears and is so expressly stated.
>
> 3. I have read the affidavit of Mr Brian Nair and agree with and confirm the contents insofar as they apply to me.

45. In sum, Vedalankar confirmed, on pain of being jailed for lying under oath, that, as Nair's affidavit put it, the 'second round was not proceeded with' after my recommendation for the Pietermaritzburg Senior Litigator post for the reason stated in her letters to me 'dated 18 October 2010 and 28 January 2011'.

46. It was in those two letters, Vedalankar swore, that the abortion of my recruitment was 'fully explained' and the reason for the 'decision' could be found.

47. Copies of Vedalankar's October 2010 and January 2011 letters are annexed marked '16 and '17' respectively.

48. Paragraph 6.7 of Vedalankar's October 2010 letter indeed 'fully explained' the abortion of my recruitment (discussed below, it was the first of her different, radically contradictory lying explanations):

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> 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.

49. Nearly all these allegations are demonstrably false. Where one of them had been partly true earlier in the year, albeit irrelevant to the cancellation of my recruitment (unauthorised and unrecorded; see below), it was no longer true when Vedalankar wrote to me, and was in any event no basis for not finalising my appointment as she pretended. Sandwiched between all her other outright lies, Vedalankar's once partly but no longer true allegation – in the context substantially false, and anyway irrelevant – that some 'anticipated funding' (for salary increases, not for salaries for budgeted posts) had not been received (yet), will be dealt with below.

50. Read as a whole, Vedalankar audacious, smooth, mellifluous, and convincing-sounding explanation to me, confirmed under oath in April 2011 as true, was calculated to induce me to understand that LASA couldn't afford to employ me in the post for which I'd been recommended because it hadn't received the salary budget it was expecting for this and therefore didn't have the funds to do so.

51. This financial insufficiency explanation was a blatant lie; and indeed, dealt with below, Vedalankar would later diametrically contradict it by telling the Portfolio Committee totally different, fundamentally inconsistent new lies.

52. In a cogent pointer to the provenance of this false financial insufficiency story, Hundermark persisted with it in affidavits of his own – even after

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Vedalankar and Nair had abandoned it and made up and told new stories (dealt with below).

53. The following facts unequivocally show Vedalankar's initial financial insufficiency explanation for the abortion of my recruitment, which she confirmed on affidavit in April 2011, to have been dishonestly false.

Ad: '*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.*'

54. In truth and in fact, the global 'recession' of 2008 had zero bearing on how much funding the National Assembly allocated LASA and what the Treasury paid it 'for the 2010/11 financial year'. Quite the opposite, LASA's funding *increased* in 2010/11 over the year before, from R848.4 million to R991.9 million, as appears from 'The Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Constitutional Development on the performance of the Department of Justice and Constitutional Development for the 2009/10 financial year, dated 26 October 2010'. I annex the first (identifying) and tenth (relevant) pages of the report, marked '18'. (The said Department, now called the Department of Justice and Correctional Services, will hereafter be referred to as 'the Department', and its responsible minister as 'the Minister'.)

55. Vedalankar's dishonestly irrelevant reference to 'the recession' aptly introduced the rest of her lies, all spun and woven with impressive criminal imagination, ingenuity and intelligence in the characteristically mendacious easy patter of the confident, practised, habitual liar – cunningly working in plenty of false detail to sound convincing, to conceal the truth, and to lend credence to her fake financial explanation given me for why I was not appointed to the top legal professional post for which I'd been duly selected and recommended, instead of my rival applicant for the position, Board chairperson Mlambo JP's long-time judicial colleague.

56. Vedalankar's mention of 'anticipated funding [that] did not materialise' fraudulently implied to me that LASA's budget application for 2010/11, and for

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Senior Litigator salaries in particular (i) drawn by LASA under section 53(1) of the PFMA; (ii) submitted to and approved by the Minister on the advice of the Department's accounting officer under section 53(2); and (iii) voted by the National Assembly, was not fully paid by the Treasury via the Department's Third Party Funds division, and that LASA didn't receive all of it.

57. Contrary to Vedalankar's lie to me about this, LASA received its entire operating budget, including its salary budget for all nine of its Senior Litigator posts, six filled and three vacant. Like all its other recruitment statistics do, those for December 2010, for instance, show all nine posts budgeted for, six of them filled, three of them vacant. These statistics are annexed marked '19'.

58. (They also show that by December, the Mthatha post (the second Senior Litigator post created for the Eastern Cape region) had disappeared from LASA's books and that Kimberley (the second Senior Litigator post for the Western Cape and Northern Cape region) was back on them, and was reported as budgeted and vacant – whereas the June 2010 statistics (annexure '12') shows the new Mthatha post budgeted and vacant, with the Kimberley post gone.)

59. This is why nowhere in any report by LASA to the Portfolio Committee during or for 2010/11; nowhere in any minute of any appearance before, and presentation to, the Portfolio Committee by Vedalankar or other LASA officer in April and October 2010; nowhere in the records of any meetings of LASA's Legal Services Technical Committee and/or Board in 2010 – nowhere in any of these was it ever alleged and recorded that LASA hadn't received all its expected baseline operating budget for 2010/11. Even less was there any complaint, mention or suggestion in any of these records that LASA lacked the funds to fill its remaining three budgeted and funded, long-vacant, critical Senior Litigator posts.

60. It's common cause that these positions at the apex of LASA's legal professional ranks are 'critical', in that LASA has both described and admitted them as such in its legal pleadings. Material excerpts from its original response to my labour claim (see paragraph 48.9) is annexed marked '20'. An excerpt from

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my pre-trial agenda stating facts for admission before trial (see facts 58 and 59) is annexed marked '21', and an excerpt from LASA's answer to it admitting these facts (see paragraph 52.1), is annexed marked '22'.

61. Far from claiming that LASA lacked the budget to fill its remaining one third vacant Senior Litigator posts, Vedalankar twice alleged to the Portfolio Committee in her CEO report for 2011/12 that LASA had employed Senior Litigators as a key achievement in fulfilling and completing its Strategic Plan 2009–12; and in its 'Report on Completion of Strategic Plan 2009–12' presented at the same meeting, LASA alleged this a third time. (This will be dealt with below.) There was nothing said in these reports about LASA not being able to fill one third of its Senior Litigator positions because the budget for their salaries hadn't been provided. And the reason for this is that in truth and in fact it *was* provided, and Vedalankar's claim to me to the contrary, confirmed on oath, was a lie.

62. The only 'anticipated funding that did not materialise' *for a while* in 2010 – but only to the extent that, like the year before, it wasn't received at the same time as LASA's budgeted, approved and allocated baseline funding – was additional funding to pay salary increases for legal professionals under phase 1 of the OSD scheme to financially incentivise the retention of lawyers in the public service. Vedalankar raised this in her letter to the Director-General of the Department on 18 March 2010 and again on 13 April 2010. Her letters are annexures '17-V3' and '17-V4' respectively.

63. Given that LASA had commenced implementing phase 1 of the OSD scheme in expectation of this funding, which it had started receiving the year before, and was accordingly paying increased salaries under the scheme, the non-inclusion of OSD phase 1 funding in LASA's baseline budget indeed threatened to drive LASA into deficit. LASA executive management's Report to Board of July 2010 (annexure '17-V10- Annexure 1') records, however, (in paragraph 1.3) that the Minister assured the Board chairperson that this extra OSD funding would be provided for in the national mid-term budget. And indeed it was; and it was

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transferred to LASA a couple of months later, well before the end of the financial year.

64. Inclusion of this extra OSD provision in the mid-term budget in October 2010 is reflected in then Finance Minister Pravin Gordhan's 'Medium Term Budget Policy Statement 2010' of 27 October 2010, issued by the Treasury. Material excerpts are annexed marked '23'.

65. In its report, 'Adjusted Estimates of National Expenditure 2010', issued in October 2010, the Treasury confirmed: 'An additional R96 million is allocated for phase 2 of the occupation specific dispensation for legally qualified professionals at Legal Aid South Africa.' That is, the Treasury allocated OSD funding for phase 2 of the scheme as well. Material excerpts of this document are annexed marked '24'.

66. On 15 December 2010 LASA received R89 435 000 to cover both its outstanding OSD phase 1 funding as well as funding to implement OSD phase 2. The Department's payment voucher reflecting this is annexed marked '25'.

67. Far from not having received sufficient funding from the Treasury via the Department (i) to employ me in the Pietermaritzburg Senior Litigator post; (ii) to promote LASA's Durban High Court Unit Manager to the Durban post (entailing a slight increase in salary expenditure, from one pay grade to the next); and (iii) to transfer the incumbent Mahikeng Senior Litigator to the Mthatha post for which he'd applied to get closer to his home at Bizana (entailing no increase in salary expenditure), in truth and in fact LASA had all the salary funding it needed.

68. In fact, more than it needed. In 2010/11, the year in which Vedalankar claimed to me (but not to the Portfolio Committee; see below) that LASA couldn't afford to fill its three remaining critical Senior Litigator posts, LASA reported a substantial surplus from operations of R10.8 million, which, added to interest and other income, such as from the sale of assets, gave LASA a total surplus of R31.7 million. The 2010/11 surplus raised LASA's accumulated surplus to R194

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million. A material excerpt of LASA's annual report for 2010/11, giving these figures, is annexed marked '26'.

69. Some of this unspent surplus comprised LASA's salary budget received but unlawfully not spent on filling the three remaining vacant budgeted and funded Senior Litigator posts with the candidates recommended for them, i.e. illegal unauthorised expenditure.

70. Nowhere in its annual report for 2010/11 did LASA claim or suggest that the separate, later payment of OSD phase 1 funding affected LASA's financial ability to employ Senior Litigators for its remaining long vacant posts, or indeed to employ staff in any other posts. In fact, the transient uncertainty over OSD funding for 2010/11 was so considered insignificant that it didn't even merit a passing mention in the annual report. Quite the contrary, as already said, in her CEO report for 2011/12, Vedalankar twice falsely claimed that Senior Litigators had been employed in successful completion of a key component of LASA's Strategic Plan 2009–12, and LASA's Report on Completion of the Strategic Plan repeated this false claim a third time – whereas in truth and in fact, one third of LASA's critical top-level Senior Litigator posts remained vacant. (This is dealt with below.)

71. Contrary to Vedalankar's lie to me about this, LASA's 'baseline funding' wasn't 'cut' by any 'significant amount' or at all; instead it increased, as mentioned above. This is why there was no complaint, no suggestion at all in LASA's said annual report or at LASA's presentation of it that 'anticipated funding ... did not materialise', and that this had 'had the effect of cutting our baseline funding by a significant amount', preventing LASA from filling its three remaining vacant Senior Litigator posts with the suitably qualified and experienced candidates selected and recommended for them.

72. Moreover, by the time Vedalankar wrote to me on 18 October 2010, LASA's OSD phase 1 funding had been securely settled in the national mid-term budget and was on its way – as Vedalankar had just informed the Portfolio Committee

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at her presentation on the 12th a week earlier. 'So we don't have any problem areas that I would like to report on.' (I deal with this below.)

73. To tell me then, as Vedalankar did, that 'anticipated funding ... did not materialise' – deceptively concealing from me that this extra funding (for salary increases, not basic salary budget) had been provided for in the mid-term budget and therefore was about to 'materialise' – was grossly dishonest.

74. Discussed below, Vedalankar compounded this dishonesty in her January 2011 letter, and then falsely confirmed it in her April 2011 affidavit, then changed the story completely before the Portfolio Committee.

Ad: *'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.'*

75. Contrary to Vedalankar's lie to me about this, it was never accepted that LASA's staff establishment needed to be reduced in 2010/11 for lack of budget to fill its vacant posts or for any other reason, and it never was. Quite the opposite, LASA's 'staff establishment' massively *increased* 'in the 2010/11 financial year'. In the 2010/11 first quarter alone, right after Vedalankar's letters to the Director-General enquiring about LASA's OSD funding, the number of budgeted establishment posts increased by a massive 3.3%.

76. 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 at LASA spiked in the first quarter April to June 2010 at 2.3% (1147 to 1173). In the same period, 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 was greater than the increase of 3.1% (2281 to 2352) for the whole of 2009/10.

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77. Drawn from LASA's records, and admitted before the trial of my labour claim, a table of these collected figures is annexed marked '27'.

78. On 14 April 2010, Vedalankar, Nair and Board chairperson Mlambo JP appeared before the Portfolio Committee to present LASA's Budget for 2010/11 and Strategic Plan 2009–12. The minute of the meeting is annexed marked '28'. Although by the date of this meeting Vedalankar had twice written to the Director-General to raise the issue of OSD funding (annexures '17-V3' and '17-V4'), the minute shows that at no point did Vedalankar, Nair or Mlambo JP say or suggest that LASA wouldn't be able to fulfil its Strategic Plan 2009–12 by employing Senior Litigators in its remaining vacant posts, because it hadn't received the funds it had budgeted for this. Five months after the successful Pietermaritzburg and Durban Senior Litigator interviews on 12 November 2009, nowhere did Vedalankar, Nair, or Mlambo JP claim to the Portfolio Committee that LASA couldn't afford to appoint the recommended candidates. Instead, Vedalankar professed to be concerned 'to ensure there was delivery of quality legal services', implying that such 'quality legal services' (especially Constitutional and other complex litigation services) were indeed being delivered.

79. And the reason Vedalankar and the others didn't claim this to the Portfolio Committee (that LASA couldn't afford to fill its three remaining vacant Senior Litigator posts) as she would falsely claim to me a few months later in October 2010 (annexure '16'), is because it wasn't true. Indeed, with respect to Senior Litigator recruitment, LASA's records mentioned above show that as at February 2010 the Bloemfontein and Mahikeng posts were still vacant, and had afterwards been filled by June 2010, while the Pietermaritzburg and Durban Senior Litigator recruitments, substantially complete by November 2009, had strangely stalled – silently in my case, whereas 'in April/May' the candidate for the Durban post was told (as LASA later formally admitted) that the recruitment had been cancelled, no reason given him; so he told me on the telephone, saying he assumed the reason to have been 'internal restructuring' (incorrect; there wasn't any). And whereas my recruitment had been blocked, and with it the

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promotion of the internal candidate for the Durban post, the Mthatha Senior Litigator process proceeded apace, with the decision to create the post taken in March 2010, advertisement of it in April, and a selection and recommendation made in May.

80. It was only on 15 July 2010 – after mid-year, not 'early this year' as Vedalankar dishonestly alleged to me – that 'management' began 'to identify positions which could be frozen'; and these 'positions which could be frozen' were some non-critical, entry-level, bottom-rung, vacant public defender posts serving the district and regional criminal courts, and, if necessary, some even lower para-legal and administrative posts.

81. LASA's own records show categorically that the 'positions which could be frozen' until the OSD issue had been resolved, which 'management' began in mid-July 2010 'to identify', didn't include critical positions such as Senior Litigator posts.

82. Nair's proposal to his fellow executives on the Management Executive Committee in July 2010 to halt recruitment to these lower criminal court posts – to spur the Department into seeing to LASA's OSD funding, as he later frankly testified – is annexure '17-V5'. The Management Executive Committee's 'Report to Board' on 16 July 2010 (annexure '17-V10-Annexure 1') reflects their agreement with Nair's proposal – but as a temporary expedient only, as paragraphs 2.2.(a) and 4.II show.

83. Crucially, paragraph 2.2(b) of the 'Report to Board' distinguished 'critical' posts from the non-critical public defender posts to be frozen, and noted the need to 'prioritise critical positions' for recruitment.

84. The Board's resolution to adopt this proposal, including 'to prioritise critical positions' for filling, is annexure '17-V10'.

85. So contrary to Vedalankar's lies to me about this, falsely confirmed on oath in April 2011, these records show that executive management never proposed and the Board never approved, the indefinite, and in the result permanent

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freezing of recruitment to LASA's three remaining vacant, budgeted and funded, critical Senior Litigator posts, for which suitable candidates had already been selected and recommended. (Indeed, this would have been illegal under section 53(4) the PFMA.)

86. On 28 January 2011, Vedalankar wrote me her second letter (annexure '17') following my second appeal to the PAIA Unit of the South African Human Rights Commission ('SAHRC') for its support under section 83(3) of PAIA in getting her to comply with my PAIA request of August 2010, which in her October 2010 letter she'd now expressly totally refused. (I'd made my first appeal to the SAHRC by telephone in September 2010 after she illegally ignored my August request, deemed a tacit refusal by section 27 of PAIA.)

87. In her January 2011 letter, contemptuous of the public information transparency provisions of the Constitution, viz. section 32(1)(a) of the Bill of Rights, and of her obligations as information officer imposed by PAIA, Vedalankar yet again refused, now on new, different grounds, to comply with my August records request probing the circumstances in which my recruitment had been aborted.

88. Vedalankar likewise totally refused my second request made in December 2010, with which I was testing the allegations she'd made in her October 2010 letter, on the manifestly false basis that it merely 'repeat[ed]' my first request in August 2010.

89. Vedalankar's persistent illegal and unconstitutional refusals of my August and December requests were ultimately reversed under further SAHRC and subsequent litigation pressure. In April 2011, a section 23 affidavit (annexure '1') was provided, and in the course of later litigation, records originally requested under PAIA but repeatedly refused were ultimately surrendered. I recount this in my 'Special Report' to the SAHRC, online at illegal-aid.co.za/PAIA.

90. For her own purposes – not to grant me access to the documents I'd requested; on the contrary, she even rejected and returned my mandatory request fee prescribed by section 22 of PAIA (see her final paragraph) –

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Vedalankar annexed twelve documents to her January letter, claimed to support the allegations made in its paragraph 9.

91. In her January letter, Vedalankar persisted with and embellished the false budgetary explanation she'd fed me in her October 2010 letter, asserting in her paragraph 7: 'the explanation furnished by me to you on 18 October 2010 remains valid and will be added to and clarified where possible where possible as indicated below.' And in her paragraph 8: 'I provide you with further information and reasons that led to the freezing of the Senior Litigator posts at Durban, Pietermaritzburg and Mthatha, in addition to the reasons furnished to you on 18 October 2010.' And in her paragraph 38: 'the cost-cutting measures including but not limited to the Senior Litigator posts.' And in her paragraph 39: 'I, and the Legal Aid SA under my watch, have never sought to make any decisions regarding the Senior Litigator posts in any ground other than the budget constraints which you have rejected.' LASA's own records refute this as a blatant lie. And indeed, both Vedalankar and Nair would later on completely change this 'budget constraints' 'ground' for not appointing me, and at the same time, to create a nice cover-story, not promoting the Durban candidate and not transferring the Mthatha candidate (dealt with below).

92. Vedalankar's January 2011 letter is a stew of objectively contradicted lies; omissions of critical financial information contradicting them; assertions of seemingly relevant but actually irrelevant facts; deceptive half-truths and red-herrings; dishonest reliance on seemingly relevant but actually irrelevant documents claimed to support her contentions, but which didn't, and which even contradicted them; legally ignorant misconceptions and false legal assertions – all of which speaks to the abysmal professional incompetence; the singularly low mental intelligence; the dull incomprehension of first principles of public finance and constitutional information law; and the profound personal amorality of its author, displaying a total lack of ethical principle and a wholly unscrupulous contempt for the truth, for the law, and for the Constitution and its values, and generally egregious personal and professional corruption in going about garrulously elaborating and padding with more lies the fake poverty excuse fed

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me in October 2010 for the criminally illegal, unrecorded, backroom abortion of my appointment, and, in the cover-up, the abortion of two other appointments to similar critical posts.

93. Which false excuse pleaded by Vedalankar in her October 2010 letter – repeated in her January 2011 letter, and falsely confirmed in her April 2011 affidavit – Vedalankar dropped, substituted, and radically contradicted two years later in October 2012 by telling the Portfolio Committee totally different, contradictory, mutually exclusive and destructive new lies (dealt with below).

94. For the purposes of this criminal complaint, namely that on 5 April 2011 Vedalankar falsely confirmed her dishonestly false budgetary insufficiency explanation for the abortion of my recruitment, advanced in her October 2010 and January 2011 letters to me, I'll deal here only with the principle lies told in her January letter, and not with the myriad subsidiary lies it contains. (For instance, as elsewhere in her letter, virtually every statement in her extensive paragraph 9 is demonstrably false.)

95. In her paragraph 27, Vedalankar stated; 'Obviously by November 2010, after the Memorandum by the COO, it was evident that there would be no funding coming from the DoJ.' In truth and in fact, contrary to Vedalankar's shameless lie to me about this to maintain her fraudulent pretence that LASA hadn't received sufficient budget from the Department to employ me, LASA had just six weeks earlier on 15 December 2010 received R89 453 000 million from the Department, *inter alia*, to fund salary increases under phase 1 and 2 of the OSD scheme. That is, the Department's payment voucher (annexure '25') shows 'funding ... from the DoJ' had indeed 'com[e]'.

96. The 'Memorandum by the COO' (annexure '17-V6', second and third pages) soliciting proposals for belt-tightening measures was internally emailed by COO Makokoane on 30 September 2010 (annexure '17-V6', first page), two months *after* Vedalankar's and Nair's illegal, off-the-record decision to finally cancel the three substantially complete recruitments to LASA's budgeted and funded Pietermaritzburg, Durban and Mthatha Senior Litigator posts.

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97. Having regard to the month that Makokoane circulated his 'Memorandum' – September 2010 – and the month Vedalankar alleged in her October 2010 letter that she and Nair aborted my recruitment, and two others – July 2010 – 'the Memorandum by the COO' was obviously completely irrelevant, yet Vedalankar dishonestly wove it into her financial paucity lie to pump it up.

98. Moreover, although the 'Memorandum by the COO' suggested the 'freezing of all vacant posts' as one of the possible cost-cutting measures to reduce public expenditure at the request of Cabinet on 18 August 2010, and also because LASA hadn't yet received its OSD allocation for salary increases, events quickly overtook it in the opposite direction.

99. Just days after the 'Memorandum by the COO' in September 2010, LASA's OSD funding allocation was included and secured in the national mid-term budget, as Vedalankar told the Portfolio Committee on 12 October 2010 (annexure '17-V8'), and the Treasury documents referenced above confirm (annexures '23' and '24').

100. With this development, rather than 'the freezing of all vacant posts', exactly the opposite happened. The brake was lifted on the Board-approved freeze on 30 July 2010 on recruitment to some of LASA's vacant, non-critical, lower criminal court public defender posts, and in the third quarter October to December 2010, legal staff recruitment sharply increased and peaked for the year at 2.5%, from 1193 to 1223 (see annexure '27'). But the three substantially complete recruitments for the Pietermaritzburg, Durban and Mthatha Senior Litigator posts remained on permanent ice.

101. Such is the extraordinary deceitfulness and dishonesty of Vedalankar's January 2011 letter, perfectly typical of the culture of brazen mendacity that I've encountered in my engagement with LASA's national executives and other top officers over the past decade – one of whom tried putting the SAHRC off from assisting me access LASA's records, illegally and unconstitutionally denied me, by telling it the lie that whereas 'one candidate got the Durban post' I'd 'somehow gotten the impression he [I] had gotten the Pietermaritzburg post. ...

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Adv Brink received a latter not explaining why he was rejected.' As if my 'impression' from HRE Clark's email (annexure '17-V12') that I'd been selected and recommended (later confirmed by the recommendation report: annexure '17-V7') was wrong, and that actually I'd been 'rejected' – falsely implying I was just wasting everyone's time. Turned up with a broadly framed PAIA request addressed to it, the SAHRC's telephone note of this false information given it is annexed marked '29'.

102. The juxtaposition and unambiguous logical flow of Vedalankar's sentences – '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.' – was clearly contrived to generate the impression that Senior Litigator posts had been 'identif[ied]' 'early this year' as 'positions which could be frozen', and that 'the NOE and CEO took the decision' later on to freeze these 'identif[ied]' posts accordingly.

103. But LASA's own records show that Senior Litigator posts were never 'identif[ied]' for freezing 'early this year' or at any other time. They also show that besides the two KwaZulu-Natal Senior Litigator recruitments, which were halted when I was recommended instead of Mlambo JP's long-time judicial colleague, other Senior Litigator recruitment continued. Mentioned and vouched above, the Bloemfontein and Mahikeng posts were filled, and the Mthatha post was energetically recruited for.

104. The truth of it is that my recruitment was 'immediately' aborted and the Pietermaritzburg and Durban posts frozen when Nair discovered that I'd been selected and recommended, and that Mlambo JP's former judicial colleague had been unexpectedly disqualified and rejected. Indeed, quoted above, he said as much under oath.

105. There's no question that the Pietermaritzburg, Durban and Mthatha Senior Litigator have been frozen *de facto*, and that they've been kept vacant for many years. (Irrelevant to this criminal complaint, the illegality of this under the

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PFMA is currently being investigated by the Auditor-General). As LASA's records show, however, the rest of Vedalankar's statement is dishonestly false.

106. In the premises, Vedalankar 'made a false statement knowing it to be false' 'in an affidavit' on 5 April 2011 'made before a person competent to administer an oath' and thus criminally contravened section 9 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963 for which she is 'liable upon conviction to the penalties prescribed by law for the offence of perjury', namely imprisonment.

COUNT 2: FAILING TO KEEP RECORDS OF LASA'S FINANCIAL AFFAIRS

107. Under section 1 of the PFMA, '"accounting authority" means a body or person mentioned in section 49'.

108. Section 49 provides:

> (1) Every public entity must have an authority which must be accountable for the purposes of this Act.
> (2) If the public entity–
> (a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity[.]

Accordingly, LASA's accounting authority is its Board.

109. It bears emphasizing that section 50(1)(b) of the PFMA requires that:

> The accounting authority for a public entity must act with fidelity, honesty and integrity and in the best interests of the public entity in managing the financial affairs of the public entity.

110. Section 56(1)(a) provides:

> The accounting authority for a public entity may ... in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity[.]

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111. Note 30 of the Approval Framework records that on 24 November 2007 the Board duly 'delegate[d] to the Chief Executive Officer all the powers entrusted or delegated to the accounting authority in terms of the Act'. A material excerpt from the Approval Framework is annexed marked '30'.

112. Section 55(1)(a) of the PFMA prescribes:

> The accounting authority for a public entity ... must keep full and proper records of the financial affairs of the public entity.

113. Section 86(2) of the PFMA provides:

> An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.

114. On 15 July 2010, eight months after my successful interview back on 12 November 2009 for LASA's Senior Litigator post at Pietermaritzburg, I wrote to Vedalankar enquiring about the extraordinary delay in approving my appointment.

115. HRE Clark had backhandedly confirmed that I'd been selected and recommended by insolently suggesting in a deliberately opaque email on 30 April 2010 in response to my repeated enquiries five strangely silent months after my interview, that I abandon my application for the post: '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.' (Annexure '17-V12'.)

116. It was clear from this that I'd beaten out my rival applicants; that I'd been selected from these other shortlisted and interviewed candidates; and that I'd been recommended as the most suitable candidate for the post, because had the selection panel rejected me and chosen someone else, I wouldn't have had any live application to 'withdraw'. Even as Clark dishonestly implied my interview had been unsuccessful: 'Applying for a job is done at the applicant's own risk. Being called to an interview is not a guarantee of being appointed to the

position.' (*En passant*: The only so-called 'inside information from [my] brother' (per Clark's unpleasant accusation in her email, projecting her and her colleagues' corruption onto me) that I'd 'obtain[ed]' – *before my interview* – was the open fact that the candidate recommended after the previous interviews for the post in 2008 hadn't been approved.)

117. On 3 August 2010, Nair answered my letter to Vedalankar in July, alleging that:

> the recruitment process to finalise the appointments for all vacant Senior Litigator posts were put on hold due to various reasons. I can now confirm that we will not be proceeding with the filling of any of these posts.

A copy of Nair's letter is annexed marked '31'.

118. Nair thus unambiguously implied that after suitable candidates had been selected and recommended for the posts, duly authorised officers at LASA had duly decided, first to suspend and then to later finally abort the approval and appointment process for the selected and recommended candidates; to cancel the substantially complete recruitment processes for the posts; and to leave 'all vacant' Senior Litigator posts unfilled.

119. Had Nair's allegations been true, records of such major operational and financial decisions would obviously have existed, for as Cachalia JA pointed out pungently a couple of months later in November 2010 during the Presidency's argument in the Supreme Court of Appeal ('SCA') opposing the *Mail & Guardian*'s PAIA claim for access to the Zimbabwe 2008 national election report commissioned by the President:

> Surely there's ... a note, there's a minute. Government does not operate like a glorified spaza shop ... In the absence of any paper trail must we just accept that [public officers] are people of standing and they will never mislead, just like [US Secretary of State] Colin Powell never misled the Security Council?'

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[*In lying that Iraq had weapons of mass destruction to justify the American invasion.*]

Annexed marked '32' is a copy of the news report recording the SCA's lamentable observation that in the real world sometimes public officers also tell lies.

120. Consistently with the record-keeping requirements of section 55(1) of the PFMA (since 'Government does not operate like a glorified spaza shop'), section 12 of LASA's Code of Ethics and Conduct requires:

> Accurate and reliable records of many kinds are necessary to meet the LEGAL AID BOARD's legal and financial obligations and to manage the affairs of the LEGAL AID BOARD. The LEGAL AID BOARD's books and records should reflect all business transactions ... and the employees responsible for accounting and record-keeping functions are expected to be diligent in enforcing proper practices. [*The 'Legal Aid Board' is LASA's former name.*]

A material excerpt from this Code is annexed marked '33'.

121. On the other hand, had Nair lied to me in his letter (as I'd correctly surmised), and in truth and in fact no competent, authorised person or committee at LASA had duly taken such major business decisions (as I'd correctly surmised) then obviously no records of such alleged decisions would have existed.

122. And if indeed no such records existed (as I'd correctly surmised), then if I specified them in a records request made under section 18 of PAIA, section 23 would require LASA's information officer to certify it. This is because section 23(1) provides:

> 23 Records that cannot be found or do not exist
>
> (1) If–
>
> (a) all reasonable steps have been taken to find a record requested; and

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

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

(ii) does not exist,

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

123. With this provision in mind, I tested the truth of Nair's allegations to me with a PAIA request delivered on 30 August 2010 for access, *inter alia*, to:

> 13. All records, including but not limited to email, reports and notes, pertaining to the decision to 'put on hold ... the recruitment process to finalize the appointments for all vacant Senior Litigator posts' (– per Nair's letter to Brink).
>
> 14. All records, including but not limited to email, reports and notes, pertaining to the decision to finally abort the 'recruitment process' and not 'be proceeding with the filling of any of these posts' (– per Nair's letter to Brink).

Material excerpts of my request are annexed marked '34'.

124. As CEO, Vedalankar was LASA's information officer *ex officio* under the definition of 'information officer' in section 1 of PAIA.

125. To obstruct my investigation and exposure of Nair's lies to me, and to hinder my discovery of the corrupt reason for the cancellation of the Pietermaritzburg Senior Litigator post recruitment, and with it the Durban post simultaneously advertised and recruited for, and some months later the Mthatha post (which corrupt reason I was only able to discover in April 2016 via determinedly prosecuted PAIA litigation, indefensibly opposed all the way to court before LASA's complete capitulation), Vedalankar ignored my request for these records,

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thus tacitly refusing me sight of them under the deeming provisions of section 27 of the Act.

126. Since her refusal to allow me access to LASA's public records – or more to the point her refusal to certify that indeed they didn't exist – violated my fundamental right to public body information guaranteed by section 32(1)(a) of the Constitution, I telephoned the PAIA Unit of the South African Human Rights Commission ('SAHRC'), asking it to exercise its powers under section 83(3) of PAIA to '(c) ... assist any person wishing to exercise a right contemplated in this Act' and '(d) recommend to a public or private body that the body make such changes in the manner in which it administers this Act as the Commission considers advisable'. Indeed, the SAHRC intervened and got Hundermark's undertaking that my request would be responded to.

127. On 18 October 2010, Vedalankar now responded to my records request by expressly refusing to comply with it (annexure '16').

128. Immaterial to this criminal complaint, Vedalankar's several spurious, indeed fraudulent, grounds advanced for totally refusing me the requested records, later substituted with other spurious grounds for refusing them, also later abandoned, and her refusal to certify that the above specified records didn't exist, are canvassed in my 'Special Report' to the SAHRC in November 2016, accessible online at illegal-aid.co.za/PAIA.

129. In paragraphs 6.7 and 7.3 of her October letter refusing my PAIA request, Vedalankar alleged the following:

> In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.
>
> ...
>
> The NOE and CEO took the decision that all senior litigator posts that were vacant would be frozen. Therefore, the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.

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130. It's beyond issue that indeed 'the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen' *de facto*, in that these budgeted and funded, critical, top-echelon legal professional posts indeed remain unfilled and vacant a decade after suitable candidates were selected and recommended for them in November 2009 and May 2010. (As mentioned above, LASA's recruitment statistics no longer reflect Mthatha as vacant, but the original Kimberley post instead.)

131. Completely different, radically contradictory false versions have been advanced by Vedalankar and by different LASA officers to different authorities at different times, about *when* and *why* the posts were 'frozen', some of which different, contradictory lies are indicted in this complaint. Where other LASA officers have told them on oath or to the Portfolio Committee, their lies will be the subject of separate criminal complaints against them to follow.

132. Having regard to the relevant provisions of (i) LASA's Approval Framework, (ii) LASA's Legal Aid Guide, (iii) the PFMA; and (iv) the Constitutional Court's judgment in *Zungu* on 22 January 2018, the gross illegality of Vedalankar's and Nair's 'decision' to freeze the posts, among other the facts and circumstances aggravating Vedalankar's criminal contravention of the PFMA, is dealt with below.

133. When in October 2010 Vedalankar now expressly refused my August PAIA request, I turned again to the SAHRC to assist me obtain her lawful compliance with it, and, as mentioned shortly below, it came in again.

134. Correctly surmising that she'd lied to me, I tested the veracity of Vedalankar's allegations in her October letter quoted above with a second PAIA request on 15 December 2010, *inter alia* for:

> 10. The resolution passed by "management" ... in relation to the claim: "In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen."
> [*my ellipsis for relevance*]

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Material excerpts from my request is annexed marked '35'.

135. On 28 January 2011, Vedalankar totally refused my second PAIA request as well, on the untruthfully false basis that it merely 'repeated' the first. (As said, she gave me certain documents, not to meet my request, but for her own purposes, namely 'To demonstrate' her various contentions.) Her refusal is annexure '17'.

136. Eventually, under further SAHRC pressure – I'd again pleaded for its support – to lawfully and properly comply with my PAIA requests of August and December 2010, Vedalankar delegated Nair to respond to them, as well as to my third PAIA request made in March 2011, and to this end designated him deputy information officer under section 17 of PAIA (annexure '1-BN1').

137. In compliance with section 23 of PAIA in regard to the non-existent records I'd specified, Nair truthfully confirmed on oath on 8 April 2011 (annexure '1', paragraph 14), as he was forced to do, that:

> no written record exists of the decision taken in July 2010 by the NOE in consultation with the CEO and HRE to freeze the senior litigator post.
> [*The 'post' in question, being at Pietermaritzburg, for which I'd applied and been selected and recommended.*]

138. Albeit perjuriously reiterating Vedalankar's false budgetary insufficiency excuse and adding new lies of his own (to be dealt with in a separate criminal complaint against him), Nair truthfully confirmed again (in his paragraph 15) that the said records I'd requested don't exist:

> [T]he uncertain funding difficulty resulted in a decision being taken by Legal Aid South Africa executives to delay and eventually freeze the recruitment of certain positions including the vacant senior litigator positions. For the sake of completeness, I further mention that no written record of this decision exists.

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139. In her confirmatory affidavit (annexure '2'), Vedalankar certified on oath that the contents of Nair's affidavit as far as she was involved were true. That is, Vedalankar confirmed on oath that no record exists of her and Nair's decision to freeze the three vacant Senior Litigator posts, including the Pietermaritzburg post for which I'd been duly chosen, as claimed in her October 2010 and January 2011 letters to me (annexures '16' and '17').

140. In short – and this is the nut of it – on her own sworn version Vedalankar made and kept no record of her decision taken with Nair to finally abort the finalisation of the Pietermaritzburg, Durban and Mthatha Senior Litigator appointments, and to permanently freeze recruitment to the three vacant, critical, budgeted and funded, specialist legal professional posts at the top of LASA's staff establishment.

141. I say *finally abort*, because it's evident from Vedalankar's email to Nair on 29 July 2010 (annexure '1-BN3'), sent after reading my letter to her that month, in which I was enquiring about the peculiar delay in my appointment, that she had no idea at that point about the corrupt silent unrecorded cancellation of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments by Nair, even as the Mahikeng and Bloemfontein ones had proceeded. In plain speech, near the end of July 2010, eight months after Nair's 'immediate' abortion of my recruitment in November 2009, she wasn't yet in the loop; she hadn't yet been told.

142. As LASA's duly delegated accounting officer at the time (in July 2010, having been delegated in November 2007, per Note 30 of the Approval Framework (annexure '30')), Vedalankar's final abortion of the said Senior Litigator recruitment processes and her permanent freezing of the posts without making any record of these major operational and financial decisions contravened section 55(1) of the PFMA, a serious crime under section 86 for which she's liable to be jailed for five years – more especially in light of the particular aggravating circumstances in the case that distinguish it from a mere technical failure to comply with the record-keeping requirements of the PFMA, non-compliance with which, unlike many other forms of serious financial

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misconduct contemplated by the Act justifying dismissal, is additionally sanctioned by criminal penalties.

143. The reasons Vedalankar made and kept no record of her decisions taken with Nair to abort the substantially complete Pietermaritzburg, Durban and later the Mthatha Senior Litigator recruitments, and to freeze these critical, budgeted and funded, top-level legal professional posts, were that her and Nair's decisions to do so (i) were corruptly motivated; (ii) were illegal for manifold reasons; (iii) defied the express wishes of both the Justice Minister and of the Portfolio Committee; and (iv) obstructed critical legal service delivery in KwaZulu-Natal and in the Eastern Cape to the massive prejudice of the indigent in those provinces, deprived of access to specialist legal professional services to protect and vindicate their 'Constitutional rights and socio-economic rights', as LASA's current Strategic Plan 2015–20 puts it, and thereby 'give content to the Constitution through impact litigation' and 'develop jurisprudence on social justice matters'.

144. I canvass these aggravating circumstances extensively in Part One of my affirmed complaint to the Auditor-General, and request that it be read as part of this criminal complaint in aggravation of this count. For optimal clarity and legibility, I annex the final draft before signature, marked '36'. As said, a scanned copy of the signed and attested document that I delivered, currently under investigation, is accessible online at illegal-aid.co.za/AG.

145. In the premises, in failing as LASA's delegated accounting officer 'to keep full and proper records of the financial affairs of the public entity' Vedalankar criminally contravened section 55(1) of the PFMA, read with the penalty provisions of section 86(2), for which she's liable to be jailed for five years.

COUNT 3: FALSE REPORTING TO THE PORTFOLIO COMMITTEE

146. Section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 provides:

> 2 A person who –

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...

(d) with intent to deceive a House or committee, produces to the House or committee any false, untrue, fabricated or falsified document; ...

...

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.

147. On 17 August 2010, Vedalankar signed her CEO report for 2009/10, a copy of which is annexed marked '37'.

148. Just two weeks earlier 'in July 2010 after the Board meeting', as LASA pleaded for the true information of the judge in my labour case (annexure '22', paragraph 33.2), which meeting was held on the 31st as the minute reflects (annexure '17-V10'), Vedalankar and Nair had on the last day of July 2010 finally cancelled the substantially complete Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments for which suitable candidates had been selected and recommended, and had decided to leave the three critical posts unfilled, as stated her October 2010 letter (annexure '16', paragraphs 6.7 and 7.4–5): (1) without the authority to do so under the Approval Framework and therefore *ultra vires* and illegally; (2) off the record and therefore criminally illegally under section 55(1)(a) of the PFMA; (3) illegally under section 55(3) and (4) of the PFMA, as the Constitutional Court later pointed up in the *Zungu* case in January 2018; (4) illegally deviating from the Board's Strategic Plan 2009–12 for LASA without Board approval, as required by the section 1.1 of the Approval Framework, and obstructing its implementation; (5) contrary to the express wishes of the Minister (annexures '17-V8' and '17-V10-Annexure 1'); (6) contrary to the repeatedly expressed wishes of the Portfolio Committee (annexure '36', paragraph 41); and (7) contrary to the express resolution of the Board that day, 31 July 2010 (annexure '17-V10'), passed at the instance and recommendation of the management executive committee – including Vedalankar and Nair – recorded in their Report to Board (annexure '17-V10-

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Annexure 1') to prioritise recruitment to LASA's critical posts, such as Senior Litigator posts, while temporarily freezing recruitment to some lower criminal court public defender posts until the issue over the payment of OSD phase 1 funding had been resolved (canvassed in the said Report to Board).

149. Having committed these multiple gross illegalities, some criminal under the PFMA, later falsely justified to me in her 18 October 2010 letter on financial grounds (later abandoned and substituted with other false justifications; see below), Vedalankar obviously didn't tell the Portfolio Committee about any of this criminal recruitment corruption in which she'd now made herself directly complicit. Not only did she sign her October letter, she also emailed it to me herself – copying in Board chairperson Mlambo JP. A copy of her covering email is annexed marked '38'.

150. On the contrary, more than keeping silent about this criminal recruitment corruption, Vedalankar positively claimed in her CEO report: '2009/2010 is the first year of our 2009–12 Strategic Plan period. ... Overall we are on target to make the strategic shift that we mapped for this period.'

151. And whereas she'd shortly afterwards lie to me in her October letter that LASA was too skint to fill its Senior Litigator posts – for lack of OSD phase 1 funding, as she'd falsely elaborate in her January 2011 letter – the only mention of OSD funding in her CEO report was in relation to OSD phase 2, and even then the biggest problem it caused was just the sadness it caused LASA's lawyers: 'The non-implementation of Phase 2 of the Occupation Specific Dispensation for our legal professionals due to lack of funds continues to impact negatively on staff morale.' Nothing about the delayed payment of OSD phase 1 preventing LASA from filling its three remaining vacant budgeted and funded Senior Litigator posts

152. Vedalankar's claim, 'We have operated an economic budget with more than 99% of our budget being spent thus ensuring maximum delivery to our clients' similarly deliberately misled the Portfolio Committee to believe that LASA was duly spending its legal professional salary budget in compliance with section

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55(3) and (4) of the PFMA, whereas in truth and in fact she and Nair had acted illegally to prevent 'our budget being spent' on three Senior Litigator salaries 'thus' seriously obstructing 'maximum delivery to our clients.'

153. In this manner, Vedalankar deliberately misinformed the Portfolio Committee about LASA's progress in the first year of its implementation of the Strategic Plan 2009–12. Nothing prevented her and Nair's co-approval under section 8.2.2(b) of the Approval Framework of my and the Durban candidate's appointments before the end of the financial year on 31 March 2010, following our unanimous recommendations by the selection panel in November 2009.

154. Vedalankar's corrupt object in misinforming the Portfolio Committee in her report of 15 August 2010 was to conceal her and Nair's final illegal derailment six weeks earlier of a key component of LASA's Strategic Plan 2009–12 – later emphasized as such in her CEO report for 2011/12 (see below) – namely the employment of Senior Litigators for 'working on complex matters in the higher courts.'

155. In the premises, Vedalankar criminally contravened section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

COUNT 4: LYING TO THE PORTFOLIO COMMITTEE

156. Section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 provides:

> 2 A person who –
>
> ...
>
> (e) whether or not during examination under section 15, wilfully furnishes a House or committee with information, or makes a statement before it, 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.

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157. On 12 October 2010, six days before she dishonestly falsely claimed to me in her letter on the 18th that LASA hadn't received sufficient budget to fill its Senior Litigator posts at Pietermaritzburg, Durban and Mthatha and therefore couldn't afford to hire me, and that the three posts had consequently been frozen, Vedalankar appeared before the Portfolio Committee to present LASA's annual report for 2009/10 and its first quarter report for 2010/11.

158. As usual, the Portfolio Committee had called the meeting with Vedalankar and other LASA representatives in the exercise of its oversight responsibility over LASA imposed by section 55(2)(b)(ii) of the Constitution to ensure that LASA's operations were being duly conducted in compliance with all applicable laws.

159. The Parliamentary Monitoring Group ('PMG') made an audio recording of the meeting and posted it online, and I promptly transcribed Vedalankar's presentation. My transcript is annexed marked '39'.

160. The original hyperlink (pmg.org.za/node/23447) that I used to access the recording is no longer live, but the accuracy of my transcript isn't in dispute, because in her January 2011 letter Vedalankar herself relied on my transcript of what she said, duly describing it as 'Extract of audio recording of my presentation to Portfolio Committee on Justice on 12 October 2010' and annexing a copy (annexure '17-V8').

161. The transcript records that the Portfolio Committee directed Vedalankar to provide a general overview of LASA's affairs, rather than talk to the particulars of its annual report for the financial year 2009/10 ending 31 March 2010, and its first quarter report for the three-month period ending 30 June 2010; and, material to this criminal complaint, the transcript reflects that Vedalankar provided the Portfolio Committee with information pertaining to subsequent financial and related developments.

162. Vedalankar informed the Portfolio Committee that:

> in terms of the overall performance that we are on track on all

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components of our Business Plan and we are confident that we will deliver this Business Plan in this financial year also. So we don't have any problem areas that we would like to report on.

163. Vedalankar didn't tell the Portfolio Committee, as she told me a week later, that LASA lacked the budget to 'deliver' on one of the major 'components of our Business Plan', namely to appoint nine Senior Litigators at various seats of the High Court, of which six such posts had been filled, and to fill the remaining three vacant posts with the candidates selected and recommended for them.

164. Vedalankar's claim to the Portfolio Committee that 'in terms of the overall performance ... we are on track on all components of our Business Plan and we are confident that we will deliver this Business Plan in this financial year also' was dishonestly false. Quite the contrary, filling LASA's Senior Litigator posts wasn't on track at all, nor was service delivery under the Business Plan going to take place, because according to her letter to me a week later on 18 October (annexure '16'), she and Nair had frozen recruitment to a third of the posts – indefinitely, per her paragraph 7.5: 'Should we decide to unfreeze these positions in the future, the positions will be duly advertised and you will be at liberty to submit your application for any of the positions.'

165. Considered especially with her next very true allegation 'So we don't have any problem areas that we would like to report on' – inasmuch as no lawful impediment prevented LASA's implementation of its budgeted and financed Business Plan, in conformity with its Strategic Plan 2009–12 to hire Senior Litigators – Vedalankar's false allegation that 'in terms of the overall performance ... we are on track on all components of our Business Plan and we are confident that we will deliver this Business Plan in this financial year also', deceptively conveyed to the Portfolio Committee and misled it to understand that LASA was duly creating posts and filling them in accordance (i) with its approved, transferred and received budget, (ii) with its Business Plan, and (iii) with its Strategic Plan, and that a major component of the Strategic Plan, later repeatedly highlighted by Vedalankar as such, namely to employ Senior

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Litigators, was being duly implemented, when in truth and in fact it wasn't 'on track' because it had been criminally obstructed and derailed.

166. These allegations that Vedalankar made to the Portfolio Committee deceptively concealed from it the fact that three substantially complete Senior Litigator recruitments had been illegally cancelled off the record – by her and Nair in July 2010, according to her letter of 18 October 2010 – to the tremendous prejudice of the poor (i) in KwaZulu-Natal, completely denied complex constitutional and other specialist litigation services for nearly five years at that stage since the creation of the Pietermaritzburg and Durban Senior Litigator posts in November 2006, and (ii) in the Eastern Cape, denied a second Senior Litigator at Mthatha to share the Port Elizabeth Senior Litigator's huge burden of having to service all four distant High Courts in that geographically vast province (per the Regional Operations Executive's cogent motivation for the post to be created).

167. In truth and in fact, dishonestly concealed by Vedalankar from the Portfolio Committee, there were indeed very serious 'problems areas' to 'report on', namely her and Nair's unauthorised, off-the-record and therefore criminally illegal abortion of three substantially finalised critical Senior Litigator recruitments, and their unauthorised, off-the-record, criminally illegal freezing of the posts, illegally deviating from LASA's Strategic- and Business Plans to appoint Senior Litigators to handle specialist constitutional and other complex litigation for the indigent, and obstructing service delivery in this regard.

168. Had Vedalankar told the Portfolio Committee, as she would tell me a week later on 18 October, that in July 2010 she and Nair had cancelled three Senior Litigator appointments because LASA lacked the funds to complete a key component of its Strategic Plan 2009–12, namely the employment of nine Senior Litigators at seats of major High Court divisions around the country to render the just-mentioned high-level litigation services to the poor, the Portfolio Committee would certainly have intervened to remedy this.

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169. The reason Vedalankar didn't tell the Portfolio Committee – as she was about to tell me a week later – that in July 2010 she and Nair had finally cancelled my and two other Senior Litigator appointments because LASA couldn't afford to hire us, is that her justification of this to me, confirmed under oath in April 2011, was an outright lie. (The silent thought in Vedalankar's mind would have been: 'we would like' not 'to report on' those gross illegalities, because they'll get us dismissed and jailed.)

170. Vedalankar's further reason for deceptively not telling the Portfolio Committee about her and Nair's backroom abortion of the recruitments and decision to freeze the three posts is that it was illegal on its own terms. LASA's Approval Framework gave Vedalankar and Nair no so such power to materially deviate from the Strategic Plan without Board approval (required by section 1.1), and more importantly their unrecorded decision was both illegal and criminal under sections 53(4) and 55(1)(a) of the PFMA respectively.

171. Aggravating Vedalankar's criminal deception of the Portfolio Committee is her true report made later in her address (i) that 'the Minister' had expressly stated 'he didn't want' any posts frozen pending provision made for, and transfer of, LASA's OSD funding allocation, and that meanwhile 'we needed to continue with the business'; and (ii) that provision for this extra funding for salary increases had just been included in the national mid-term budget: 'it was in the mid-term adjustment', as she put it, in 'the mid-term adjustment budget'.

172. That is, over and above being unauthorised, unrecorded, unlawful on multiple scores, as well as criminally illegal, Vedalankar's and Nair's off-the-record decision to cancel the three Senior Litigator appointments in question and to freeze recruitment to the budgeted and funded vacant posts defied the Minister's express wishes that no posts at LASA be frozen, and that LASA should 'continue with the business' of implementing its Business Plan pending allocation and receipt of OSD funding for legal staff salary increases.

173. In the context of the rest of her address, Vedalankar's mention of the Minister's wishes will have created the clear false impression in the minds of the

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Portfolio Committee's members, as it was deceitfully contrived to do, that no vacant posts at LASA had been frozen, even though doing so had been considered, and LASA was going about the business of filling them in accordance with its Business- and Strategic Plans.

174. What aggravates Vedalankar's deception of the Portfolio Committee further is that, as she well knew and explicitly told it, provision for OSD funding 'was in the mid-term adjustment' after 'the Minister ... had assisted', so there was zero financial reason of any shape or form for her and Nair to justify not concluding the appointments of the three Senior Litigator candidates selected and recommended for LASA's critical, budgeted and funded Pietermaritzburg, Durban and Mthatha posts. The fact of this secured funding provision was all the more reason for Vedalankar to have deceived the Portfolio Committee by not mentioning her and Nair's abortion of the three remaining critical Senior Litigator appointments and their freezing of the posts.

175. The full minute of the 12 October 2010 meeting is annexed marked '40'. It reveals that neither Vedalankar nor any other LASA officer claimed (as was about to be claimed to me) that LASA had had to abort three substantially complete Senior Litigator recruitments and freeze the three vacant posts for lack of salary funding to fill them. On the contrary, the minute records that the Portfolio Committee was falsely told that LASA 'had managed to achieve its targets', and that 'LASA had no problem with regards to recruiting lawyers' and that 'civil matters were expected to grow, as there was now added capacity.' Where other LASA officers told these lies to the Portfolio Committee, Vedalankar didn't correct them; instead, she tacitly associated herself with them and with their criminal deception of the Portfolio Committee.

176. Vedalankar herself 'listed under the challenges that would be undertaken by the organisation' the fact that 'LASA was still struggling with the load where civil matters were concerned.' Deceptively dishonestly, she obviously didn't volunteer to the Portfolio Committee that one of the reasons for this is that two-and-a-half months earlier, at the end of July, she and Nair had illegally aborted

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the recruitment of three Senior Litigators to alleviate 'the load where civil matters are concerned'.

177. Vedalankar's deception of the Portfolio Committee with her false information and omission of critically material information, also her complicity in other LASA officers' misinformation, was clearly calculated to defeat its constitutional oversight function and evade being held to account for her unlawful and criminal contraventions of sections 53(4) and 55(1)(a) of the PFMA in aborting, off the record, without authority under the Approval Framework, against the wishes of the Minister and of the Portfolio Committee, three substantially complete Senior Litigator recruitments and freezing recruitment to the three remaining critical budgeted and funded posts, thereby unlawfully obstructing and preventing the implementation of the Board's Strategic Plan presented to the Portfolio Committee on 14 April 2010 (annexure '28'), and obstructing and preventing critical specialist litigation service delivery to the poor in KwaZulu-Natal and in the Eastern Cape.

178. Considered as a whole, Vedalankar's address to the Portfolio Committee on 12 October 2010, calculated to frustrate and defeat the Portfolio Committee's constitutional oversight function over LASA, as it did, was 'false and misleading' within the contemplation of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.

179. In the premises, Vedalankar criminally contravened the said section, for which 'false and misleading' information, she's liable to be jailed for two years.

COUNT 5: WILFULLY MISLEADING THE PORTFOLIO COMMITTEE

180. On 31 March 2011, Vedalankar appeared with other LASA officers before the Portfolio Committee for the 'Legal Aid presentation: Strategic plans, Annual Performance Plan and budget 2011/12'. The minute of the meeting is annexed marked '41'.

181. Early in 2011 (I didn't record and don't recall the exact date), I'd telephoned Portfolio Committee member Hon John Jeffery MP (now Justice Deputy

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Minister; hereafter 'Jeffery') – having obtained his cellphone number from his son, a close friend of my own two sons, all of whom had grown up together in Pietermaritzburg and then in Cape Town – and complained about the obviously irregular abortion of my recruitment; the obvious lies Vedalankar and Nair had told me about it; their repeated and persistent illegal and unconstitutional refusals of my PAIA requests made to investigate the lies they'd told me as they strained to keep the lid on the corruption I'd run into.

182. In short, at the time of the meeting on 31 March 2011, Jeffery was alive to the fact that three Senior Litigator appointments had been irregularly cancelled and the posts irregularly frozen.

183. In her address:

> Ms Vidhu Vedalankar, Chief Executive Officer, LASA, noted that the Annual Performance Plan (APP) also referred to as the Business Plan, expanded on the strategies. ... This document ... established the links between the objectives and the programmes. ... She said that LASA wanted to increase its civil matters by 10% from the previous year. She conceded that targets for civil work had not been achieved in the past ... LASA sought to increase the capacity of its legal practitioners through training.

184. Portfolio Committee member 'Mr S Swart (ACDP) noted that LASA had a high standard. He though that the "impact legislation" [*sic*: litigation] in civil matters was commendable.'

185. 'Ms Rebecca Hlabatau, Chief Financial Officer, LASA ... noted that over the past seven years, LASA had spent around 99% of its budget, and the as-yet-unaudited figures for the financial year ended 31 March 2011 indicated it would spend about 99.6%. LASA had nine years of unqualified audit reports, with unqualified reports with no matters of emphasis for the past five years.'

186. 'Mr Jeffery enquired about the vacancy rate, generally, and at professional assistant level.' Crucially, by 'the vacancy rate ... at professional assistant level',

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Jeffery was referring very specifically to the irregular vacancy rate in regard to LASA's Senior Litigator posts, about which I'd complained directly to him on the telephone. As its own records show, LASA itself refers to Senior Litigators as 'PAs' (Professional Assistants). Annexed marked '42' is a material excerpt from LASA's 'Additional MTEF Allocation for FY07/08 – Budget Proposals'. Under the heading 'Strengthening Senior Litigation Capacity', the last page makes provision for a 'National Total' of '9' 'PAs', i.e. nine Senior Litigators.

187. Responding to Jeffery's question about 'the vacancy rate, generally, and at professional assistant [a.k.a. Senior Litigator] level':

> Ms Vedalankar replied that in 2010/11, LASA had set a target of 96% of all posts filled, although it had then held back on filling some of the vacancies because of the uncertainty of obtaining OSD funding in Phase 1, which if not recovered, would have put the LASA into deficit. OSD was now settled in the baseline figures, and she thanked the Committee for its support in this regard. LASA now had 96% of all posts filled.

188. The unambiguous burden of Vedalankar's answer to Jeffery's question was that after delaying recruitment to some posts – including Senior Litigator posts, to which Jeffery had pertinently referred by LASA's other name for them, Professional Assistants – because of the OSD phase 1 uncertainty, now resolved, normal recruitment had resumed and LASA had now filled 96% of all its posts with the salary budget provided for them, in fulfilment of its original recruitment target for the financial year – including its erstwhile vacant Senior Litigator posts, the filling of a third of which LASA had delayed during the OSD phase 1 funding uncertainty, but now that it was over it had now filled.

189. Dishonestly contrived to pervert Jeffery's enquiry as the Professional Assistant/Senior Litigator recruitment rate with which he stated he was specifically concerned – after I'd alerted him to Vedalankar's and Nair's illegal abortion of my and two other Senior Litigator recruitments – Vedalankar's answer was absolutely false in relation to the Senior Litigator post vacancies on

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multiple scores, which is to say Vedalankar told the Portfolio Committee a multitude of criminal lies.

190. *First*, LASA never 'held back on filling' any Senior Litigator posts. LASA's records (annexures '17-V5' and '17-V10-Annexure 1'), including Vedalankar's correspondence with the Director-General (annexure '17-V4') show that freezing these critical, top professional echelon posts was never contemplated. The only posts ever considered by Vedalankar (annexure '17-V4', third paragraph), by Nair (annexure '17-V5'), and by the Management Executive Committee collectively (annexure '17-V10-Annexure 1') for *temporary* freezing until the OSD phase 1 uncertainty had been resolved (annexure '17-V10-Annexure 1', section 4.II) were some non-critical lower criminal court public defender posts serving the District and Regional Courts.

191. Vedalankar's clear implication to the Portfolio Committee that LASA 'held back on filling' Senior Litigator posts on account of the OSD phase 1 uncertainty was absolutely untrue.

192. In truth and in fact, she and Nair had illegally cancelled three substantially complete Senior Litigator recruitments for reasons unconnected with any financial consideration. (Indeed, discussed below, both she and Nair would later drop the false financial alibi and replace it with others.)

193. *Second*, Vedalankar's statement – 'OSD was now settled in the baseline figures, and she thanked the Committee for its support in this regard. LASA now had 96% of all posts filled.' – dishonestly falsely implied that LASA had since met its original recruitment target by filling all the posts it had intended to fill at the beginning of the year, before the OSD uncertainty arose, including its remaining vacant Senior Litigator/Professional Assistant posts.

194. Vedalankar's clear implication to the Portfolio Committee, namely that, with the resolution of the OSD phase 1 uncertainty, LASA had now filled it vacant Senior Litigator posts, was absolutely false.

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195. In truth and in fact, three of LASA's nine budgeted and funded Senior Litigator posts had been permanently frozen, off the record, without authority under the Approval Framework, in defiance of the Board's resolution that critical posts be prioritised for recruitment, in defiance of the Portfolio Committee's repeatedly stated concern that critical posts in the Justice cluster be filled, in defiance of the Minister's express wish that LASA not freeze any posts and that it continue recruiting to fill its vacant posts, and criminally and otherwise illegally under the PFMA.

196. Nowhere in her presentation – neither in her main address, nor in reply to Jeffery's question about 'the vacancy rate' – after the Portfolio Committee had complimented LASA for its impact litigation (conducted by Senior Litigators), and after Hlabatau had assured it that LASA was duly spending its budget – did Vedalankar inform the Portfolio Committee that in July 2010 she and Nair had aborted the recruitments of the three candidates recommended for LASA's three remaining Senior Litigator posts at Pietermaritzburg, Durban and Mthatha, and that they'd permanently frozen the budgeted and funded posts, and that LASA was deliberately illegally not spending one third of its Senior Litigator salary budget on filling them.

197. Vedalankar deceptively failed to inform the Portfolio Committee that one of the major reasons 'that targets for civil work had not been achieved in the past' was precisely that she and Nair had illegally obstructed the recruitments of three Senior Litigators to perform civil impact litigation to which the Portfolio Committee had specifically referred and – kept uninformed of the true facts – had been impressed by.

198. Vedalankar further deceptively failed to inform the Portfolio Committee that even as 'LASA sought to increase the capacity of its legal practitioners through training', she and Nair had illegally hindered this by blocking the appointments of three Senior Litigators to provide it. Among the responsibilities of Senior Litigators, according to the advertisement for the posts (annexure '8') was to 'Assist with in-house legal training sessions' and 'Develop the litigation

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expertise within the LAB by providing individual mentoring and coaching to legal staff.

199. In the premises, Vedalankar wilfully misled the Portfolio Committee in criminal contravention of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

COUNT 6: FALSE REPORTING TO THE PORTFOLIO COMMITTEE

200. Not only did Vedalankar deceptively fail to inform the Portfolio Committee at the 31 March 2011 meeting about her and Nair's criminally illegal, unauthorised, off-the-record abortion of the Pietermaritzburg, Durban and Mthatha recruitments and freezing of these critical Senior Litigator posts, she positively misinformed it by producing to it a 'false, untrue, fabricated or falsified document' 'with intent to deceive' the Portfolio Committee (in the language of section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, quoted in paragraph 147 above), to wit LASA's false 'Annual Performance Plan (APP) also referred to as the Business Plan', as she put it, for 2011/12. Material excerpts of it are annexed marked '43'.

201. Under the heading, 'Talent acquisition and retention', section P26-10 of LASA's 'Business Plan 2011/12' falsely stated: 'No longstanding vacancies'.

202. In truth and in fact, contrary to this blatant lie told to the Portfolio Committee in this 'Business Plan 2011/12', as at 31 March 2011 (the date of the meeting at which Vedalankar presented it), LASA's critical Pietermaritzburg and Durban Senior Litigator posts had been vacant for four-and-half years since the creation of the posts by resolution of the Board in November 2006, at the instance of executive management, Vedalankar and Nair included. The Report to the Board motivating that the posts be created is annexed marked '44'. The Board Secretary's confirmation that the proposal was approved and that salary funding be budgeted for the new posts is annexed marked '45'. An excerpt from LASA's budget application for funding for the nine new Senior Litigator posts is annexure '42'. (It shows that a post at Nelspruit was originally intended; in the

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event, a second post for KwaZulu-Natal was created at Pietermaritzburg instead.)

203. Indeed, just three months before this criminally false information to the Portfolio Committee – 'No longstanding vacancies' – to cover up the criminally illegal, unrecorded, unauthorised, abortion of the Pietermaritzburg, Durban and Mthatha recruitments and freezing of the posts, LASA's December 2010 recruitment/vacancy/budget statistics truthfully show that the Pietermaritzburg and Durban Senior Litigator posts were vacant (annexure '19'). Also the original Kimberley post. And the posts are still vacant. All this exposing the flat-out lie contained in the false Business Plan 2011/12 that Vedalankar produced to the Portfolio Committee.

204. The original author of this lie, 'No longstanding vacancies', told to the Portfolio Committee in the 'Business Plan 2011/12', which Vedalankar specifically vaunted to it, was the 'Responsible Executive', 'HRE' Clark (annexure '42'). (Clark will be the subject of a separate criminal complaint for it.)

205. The Portfolio Committee, indeed the National Assembly, was successfully defrauded: 'All members expressed their congratulations both on the achievements and the report' (annexure '41'), including such 'achievements' falsely alleged as having 'No longstanding vacancies' (annexure '43'). The official transcript of the 'Proceedings of the Extended Public Committee' two months later on 7 June 2011 chaired by 'House Chairperson Mr C T Frolick' to debate the 'Appropriation Bill', 'Vote No 24 – Justice and Constitutional Development' records that 'The Justice and Constitutional Development portfolio committee, as in previous years, has been impressed by Lasa's presentation of its strategic and annual performance plan' – including the impressive lie in LASA's 'annual performance plan' for 2011/12, i.e. its 'Business Plan 2011/12', about 'No longstanding vacancies'. 'The ANC supports Lasa's goal of expanding its civil work and impact litigation despite the financial constraints that it faces in this regard. Therefore, the ANC supports Lasa's aim to reach the rural poor.' (The 'financial constraints' limited LASA's wish to increase the number of its civil posts, not fill existing posts.)

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206. On account of Vedalankar's deceptive failure to disclose this, the National Assembly's Extended Public Committee was unaware that LASA's proclaimed 'goal of expanding its civil work and impact litigation' had been obstructed – entirely in KwaZulu-Natal and substantially in the Eastern Cape – by Vedalankar's and Nair's illegal backroom abortion of three substantially complete recruitment processes to fill LASA's remaining three budgeted and funded Senior Litigator posts at Pietermaritzburg, Durban and Mthatha with the suitably qualified and experienced lawyers recommended for them to meet its 'goal of expanding its civil work and impact litigation'.

207. In sum, the Extended Public Committee declaimed:

> One of the shining stars is clearly Legal Aid SA, whose presentation greatly impressed many members. ... [It] serves as an inspiration to other organs and departments that service delivery can be effectively provided. Well done Judge Mlambo and your team! [Applause.]

208. Had Vedalankar informed the Portfolio Committee about her and Nair's criminally illegal, unauthorised, off-the-record abortion of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments and freezing of the critical posts, obstructing LASA's 'goal of expanding its civil work and impact litigation', the National Assembly's Extended Public Committee would certainly not have clapped its hands for this profoundly corrupt organisation and its lawless, criminally mendacious top officers as a model of probity and good governance for other public entities and departments to emulate.

209. In the premises, Vedalankar criminally contravened section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

COUNT 7: FALSE REPORTING TO THE PORTFOLIO COMMITTEE

210. Quoted in paragraph 147 above, section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004

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criminally sanctions with two years imprisonment the production to the Portfolio Committee of a 'false, untrue, fabricated or falsified document' 'with intent to deceive' it.

211. The heading of the minute of LASA's meeting with the Portfolio Committee on 31 March 2011 (annexure '41') reflects that Vedalankar and her colleagues also presented 'LASA's budget 2011/12'. Material excerpts of this budget are annexed marked '47'.

212. Section 2.2 of its Executive Summary alleged to the Portfolio Committee that that at 'regional and justice centres', the 'recruitment rate was increased to 100% in the 2011/12 financial year.' And again in section 4.1: 'The recruitment level was also increased from 97% in [the] 2010/11 financial year to 100% in 2011/12.'

213. This claim was absolutely false. The 'recruitment level' had not been 'increased to 100% in the 2011/12 financial year', as dishonestly alleged to the Portfolio Committee. Vedalankar and her colleagues at the meeting, who produced LASA's Budget 2011/12 to the Portfolio Committee, with its Executive Summary repeatedly making this false claim, well knew that three substantially complete recruitments to LASA's remaining three vacant Senior Litigator posts at the top of LASA's legal professional staff establishment had been illegally aborted off the record, and the budgeted and funded critical posts deliberately left unfilled with the intention of keeping them filled indefinitely (until I'd abandoned my pursuit of my appointment).

214. That is, the 'recruitment level' hadn't been 'increased to 100% in the 2011/12 financial year', because in truth and fact: (i) the said three critical posts were vacant (the vacancies concealed by the lie about 'No longstanding vacancies' told in the false Business Plan 2011/12 (annexure '43'); and (ii) Vedalankar and Nair intended keeping the budgeted and funded vacant – illegally under section 53(4) of the PFMA – as indeed they did, because the budgeted and funded posts remain vacant to this day. (Frustrating their corrupt designs, I didn't walk away, and more than a decade later I continue to pursue my appointment to the top

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professional post for which I was unanimously recommended instead of Mlambo JP's former long-time judicial colleague.)

215. In the premises, Vedalankar criminally contravened section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

COUNT 8: MISLEADING THE PORTFOLIO COMMITTEE

216. Quoted in paragraph 157 above, section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 criminally sanctions wilfully furnishing the Portfolio Committee with information, or making a statement before it, which is false or misleading, with two years imprisonment.

217. On 11 October 2011, Vedalankar, Hundermark and other LASA officers appeared before the Portfolio Committee to present LASA's annual report for 2010/11. The PMG made an audio recording of the meeting and posted on its website. A transcription of material portions is annexed marked '48'.

218. As mentioned above, I'd complained directly to Jeffery *inter alia* about Vedalankar's and Nair's abortion of my recruitment to the Pietermaritzburg Senior Litigator post and the obvious lies they'd told me about it.

219. I'd also copied to 'The chairperson of the Portfolio Committee on Justice and Constitutional Development, Luwellyn Landers MP, and all committee members' my letter to the Board of 29 July 2011 announcing that I'd now sued for my instatement to the Pietermaritzburg Senior Litigator post and pleading for a conciliatory resolution of my claim. My letter is annexed marked '49'.

220. In short, at the 11 October 2011 meeting Jeffery was aware that LASA's remaining three out of nine budgeted and funded Senior Litigator posts had been irregularly left unfilled due to recruitment malfeasance; and he accordingly raised his concern about whether LASA was using its own lawyers to conduct impact litigation – which 'specifically our Senior Litigators' did, as Hundermark confirmed (see below) – or whether private counsel were being briefed to do it,

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'because ... you don't seem to be spending the money allocated to impact litigation' – just as I'd complained to him.

221. Jeffrey asked:

> I just have a question on the impact litigation. I see there was a booklet in the bag you gave us on impact litigation, and I think it's a good concept, but the booklet refers to a number of cases, I sort of just wanted to find out: was LASA involved in these cases referred to in the booklet, but that's from 6.1 on page 14 of the booklet, I mean in terms of, in what way, was it LASA employees or was it Judicare effectively because I see that the, if I'm understanding it correctly on page 101 of your report, you don't seem to be spending the money allocated to impact litigation, so if you can give clarity on that, thanks Chair.

222. Instead of 'giv[ing] clarity on that', Vedalankar prevaricated in reply, elliptically reiterating her lying budgetary insufficiency excuse for not appointing the candidates recommended for LASA's three remaining Senior Litigator posts – the lie she'd told me in October 2010 (annexure '16'), repeated in January 2011 (annexure '17'), confirmed on oath in April 2011 (annexure '2'), and repeated to the Portfolio Committee on 31 March 2011:

> Now we run quite a tight operation as you can see and it's very hard for us and what we will do is so that we don't jeopardise our service delivery we won't cut in [inaudible; *semble*: recruitment] all we do is manage our recruitment level so that we don't overspend in terms of what we have, so that is where we, we hold recruitment levels until we can get some additional funds [inaudible] as you can see our recruitment levels are high at 96%, we were intending to increase it to 98% because we are able to recruit but now that we have this we will probably keep it at around 97%, so that is one way just of managing it without, without jeopardising the service delivery, but in terms of our discussions with treasury and the rest of what else

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we can do, let's start with that because that's one sector with Jerry [inaudible].

223. Having regard to Jeffery's express concern that 'you don't seem to be spending the money allocated to impact litigation', Vedalankar's answer implied: (1) that she and her executive management colleagues were duly recruiting staff to fill LASA's budgeted and funded posts, including seasoned litigation lawyers to fill LASA's vacant Senior Litigator posts to conduct impact litigation; (2) that LASA was duly spending its budgeted revenue, including funds allocated and transfered for impact litigation by employing Senior Litigators to conduct it; (3) that in recruiting lawyers to fill LASA's budgeted and funded vacant posts, including expert litigation lawyers to fill its Senior Litigator posts to conduct impact litigation, 'we don't jeopardise our service delivery' by making illegal, unauthorised, unrecorded decisions to obstruct the delivery of impact litigation services in KwaZulu-Natal and in the Eastern Cape; (4) that the expenditure of budgeted revenue was duly being managed 'without jeopardising the service delivery' of impact litigation, *inter alia*, conducted by Senior Litigators; and (5) LASA was strapped for funds with which to recruit staff to fill its posts, including its Senior Litigator posts created for the delivery of specialist complex impact litigation services.

224. In truth and in fact, and contrary to Vedalankar's criminally false implications to the Portfolio Committee: (1) LASA wasn't duly recruiting Senior Litigators to fill all its posts for these, in that she and Nair had illegally aborted three substantially complete Senior Litigator recruitments and had illegally left one third of LASA's Senior Litigator posts vacant: three out of nine of them; (2) LASA wasn't spending all its budgeted revenue received on employing Senior Litigators to conduct impact litigation for the just mentioned reason; (3) she and Nair had indeed deliberately and very seriously 'jeopardise[d] service delivery' by aborting the appointments of three Senior Litigators; (4) budgeted revenue wasn't being duly being managed 'without jeopardising the service delivery' of impact litigation conducted by Senior Litigators; (5) no financial impediment whatsoever existed to prevent her and Nair from co-approving under section

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8.2.2(b) of the Approval Framework the appointment of the three candidates selected and recommended for the budged and funded vacant Pietermaritzburg, Durban and Mthatha Senior Litigator posts.

225. In his turn to answer Jeffrey's question, Hundermark confirmed that it was 'specifically our senior litigators' based at Justice Centres at seats of the High Court that 'do the impact litigation'.

226. Being complicit in the corruption of Senior Litigator recruitment and its cover-up at LASA, Hundermark obviously didn't truthfully disclose to the Portfolio Committee that LASA deliberately wasn't 'spending the money allocated to impact litigation' by illegally deliberately keeping three budgeted and funded Senior Litigator posts vacant, thus preventing 'our senior litigators' from being able to 'do the impact litigation' in KwaZulu-Natal at all, and hampering its delivery in the Eastern Cape, where just one Senior Litigator at Port Elizabeth was having to service all four High Courts in that geographically huge province. To maintain the corruption cover-up, Hundermark deceptively concealed from the Portfolio Committee this non-delivery of critical specialist legal professional services in which it had expressed it special interest. (Hundermark's criminal deception of the Portfolio Committee and his subsequent perjuries will be the subject of a separate criminal complaint and a complaint to the Legal Practice Council for his strike-off as an attorney.)

227. In the premises, by misleading the Portfolio Committee in the above manner, Vedalankar criminally contravened section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

COUNT 9: WILFULLY FAILING TO FAIRLY PRESENT IN LASA'S ANNUAL REPORT ITS STATE OF AFFAIRS, ITS BUSINESS, ITS FINANCIAL RESULTS, ITS PERFORMANCE AGAINST PREDETERMINED OBJECTIVES, AND ITS FINANCIAL POSITION AS AT THE END OF THE FINANCIAL YEAR CONCERNED

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COUNT 10: FALSE REPORTING TO THE PORTFOLIO COMMITTEE

228. Section 55(2)(a) of the PFMA prescribes:

> The annual report and financial statements ... must ... fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned.

229. Section 86(2) of the PFMA provides:

> An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.

230. Quoted in paragraph 147 above, section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 criminally sanctions with two years imprisonment the production to the Portfolio Committee of a 'false, untrue, fabricated or falsified document' 'with intent to deceive' it.

231. On 9 October 2012, Vedalankar appeared before the Portfolio Committee at the presentation of LASA's annual report for 2011/12 and its 'Report on Completion of Strategic Plan 2009–2012' in its 'Annual Performance Report 2011–12 Briefing of Portfolio Committee on Justice and Constitutional Development 9 October 2012'. The minute of the presentation is annexed marked '50'.

232. In her 'Chief Executive Officer's Statement' included the annual report, Vedalankar alleged: 'Senior Litigators employed are working on complex matters in the higher courts.' Again, in her discussion of 'the completion of our three-year Strategic Plan period 2009–12', she claimed: 'To a large extent we were able to make the strategic shift that we mapped for the 2009–12 Strategic Plan (SP) period as indicated below ... We employed Senior Litigators who are working on complex matters and matters in higher courts.'

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233. Vedalankar's 'Chief Executive Officer's Statement' in which she made these claims to the Portfolio Committee is annexed marked '51'.

234. LASA's 'Report on Completion of Strategic Plan 2009–2012' alleged a third time: 'Senior Litigators employed are working on complex matters and matters in higher courts'. A material except is annexed marked '52'.

235. These statements about the employment of Senior Litigators were intended to imply to the Portfolio Committee and to induce its members to believe that LASA's Strategic Plan 2009–12 regarding the recruitment of Senior Litigators to handle complex constitutional and other specialist litigation and to mentor LASA's legal staff in conducting it had been successfully implemented and completed.

236. Indeed, Vedalankar's claim in her CEO 'Statement' at the head of the annual report that 'Senior Litigators employed are working on complex matters in the higher courts' was immediately preceded by her statement: 'Our specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts and children's matters is in place and practitioners are continuously trained in handling these specialist matters.' The 'Report on Completion of Strategic Plan 2009–12' falsely alleged likewise, under the heading making the false claim, '2009–12 period legal services delivery shift achieved'.

237. In truth and in fact, contrary to Vedalankar's dishonestly false CEO 'Statement' to the Portfolio Committee about this, falsely repeated in the 'Report on Completion of Strategic Plan 2009–12', such 'specialist capacity' wasn't 'in place', inasmuch as three out of LASA's nine budgeted and funded Senior Litigator posts were still unfilled, then six years after the creation of the nine posts by resolution of the Board in November 2006. As a result of recruitment corruption and a disintegrated attempt to cover it up, KwaZulu-Natal had – and still has – no such 'specialist capacity' at all, and the Eastern Cape's 'specialist capacity' was and remains seriously constrained – now ten years after the selection and recommendation of suitable candidates for appointment to the Pietermaritzburg, Durban and Mthatha Senior Litigator posts.

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238. For the same reason, Vedalankar lied in her CEO 'Statement' in implying that LASA's legal 'practitioners are continuously trained in handling these specialist matters' in KwaZulu-Natal, as in other provinces. In truth and in fact, as a result of recruitment corruption and its cover-up, KwaZulu-Natal has no Senior Litigators to 'train' them at all, i.e. to 'Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff', as envisaged in the advertised job description (annexure '8'); to 'provide support for practitioners in more complex matters', as the respondent's Annual Report 2009/10 puts it – a material excerpt of which is annexed marked'53'; and for 'protecting the rights of women and children ... In very complex matters, our Senior Litigators provide support and advice to practitioners that need it', per LASA's press release in March 2012, annexed marked '54'.

239. As mentioned above, Note 30 of the Approval Framework (annexure '30') records that the Board, as LASA's accounting authority under section 1 of the PFMA, duly 'delegate[d] to the Chief Executive Officer all the powers entrusted or delegated to the accounting authority in terms of the Act' on 24 November 2007 under section 56(1)(a).

240. Having regard to her claims to me in her correspondence in October 2010 and January 2011, confirmed on affidavit on 5 April 2011, Vedalankar well knew that in making substantially false and deliberately misleading claims about LASA's employment of Senior Litigators and its specialist legal professional capacity being 'in place', LASA's 'annual report' did not 'fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned', per the language of section 55(2)(a) of the PFMA.

241. In the premises – by dishonestly misrepresenting 'the state of affairs of [LASA], its business, its financial results, its performance against predetermined objectives [set out in its Strategic Plan 2009–12] and its financial position as at the end of the financial year concerned' in LASA's 'annual report and financial statements' for 2011/12, so as to mislead and defraud LASA's constitutional oversight authority, the Justice Portfolio of the National Assembly, and induce it

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to wrongly believe that (i) LASA's Strategic Plan 2009–12 regarding the employment of Senior Litigators had been implemented and that such specialist legal service delivery capacity was now 'in place', (ii) LASA had filled its vacant posts, especially its critical posts, and (iii) LASA was applying its Senior Litigator budget to the employment of Senior Litigators – Vedalankar criminally contravened section 55(2)(a) of the PFMA, for which under section 86(2) she's liable to be jailed for five years.

242. In the premises further, Vedalankar's untruthfully false reporting to the Portfolio Committee in the Report on Completion of Strategic Plan 2009–12 criminally contravened section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

COUNT 11: LYING TO THE PORTFOLIO COMMITTEE

243. Quoted in paragraph 157 above, section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 criminally sanctions wilfully furnishing the Portfolio Committee with information, or making a statement before it, which is false or misleading, with two years imprisonment.

244. On 9 October 2012, Vedalankar appeared before the Portfolio Committee to present LASA's annual report for 2011/12, mentioned in the preceding Count. The minute of the meeting is annexed marked '55'.

245. The minute records that 'Mr Jeffrey asked about the discrepancy between staff and number of posts in terms of their expenditure in their budget for each'.

246. For the following several reasons, Vedalankar well understood Jeffery to be alluding to LASA's illegal failure to have filled its remaining vacant, budgeted and funded Senior Litigator posts with the suitably qualified and experienced lawyers selected and recommended for them, and its illegal failure to have duly applied the millions of rands it was receiving annually from the Treasury to paying their salaries. That is, Vedalankar well appreciated that Jeffery was

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alluding to her and Nair's illegal abortion of the three Senior Litigator recruitments for Pietermaritzburg, Durban and Mthatha, and to their illegal freezing of the posts – a matter about which I'd complained directly to Jeffery on the telephone in 2011.

247. *First*: I'd brought this to the attention of the chairperson of the Portfolio Committee on 25 February 2011, by copying him my third petition to the Board, and he'd responded by requiring Mlambo JP and Vedalankar to account. The Portfolio Committee chairperson's letter to Mlambo JP about this is annexed marked '56'. Mlambo JP's covering letter under which he delivered his response is annexed marked '57'.

248. Vedalankar didn't herself respond as the Portfolio Committee chairperson had required of her, but in his evidence in the Labour Court in mid-2013, Nair testified that he gave her the response he'd ghost-written for Mlambo JP, to pass on to him to give the chairperson of the Portfolio Committee (annexure '6', pages 352–4). And the response that Nair drew and Vedalankar passed on to Mlambo JP to sign and submit repeated the budgetary insufficiency lie. A material excerpt of this response is annexed marked '58'. The many demonstrably false allegations made in it are the subject of a gross misconduct complaint against Mlambo JP pending before the JSC's JCC, accessible online at illegal-aid.co.za/JSC.

249. *Second*: Vedalankar also knew that Jeffery was aware of her and Nair's unlawful failure to finalize LASA's successful, substantially complete recruitments to its Pietermaritzburg, Durban and Mthatha Senior Litigator posts, because the year before on 31 March 2011 he'd specifically enquired about 'the vacancy rate ... at professional assistant [Senior Litigator] level' and on 11 October 2011 pointedly raised the fact, which I'd reported to him, that LASA wasn't 'spending the money allocated to impact litigation' – the job 'specifically of our Senior Litigators', as Hundermark confirmed at the meeting.

250. *Third*: Refusing to comply with a PAIA request I made in April 2019 testing the veracity Vedalankar's claims to the Portfolio Committee at this meeting on

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9 October 2012, Hundermark confirmed that in responding to Jeffery's query, Vedalankar's reference to 'those positions' was precisely to LASA's three remaining vacant Senior Litigator posts. My request and Hundermark's refusal of it, in order to obstruct my corruption investigation and to aid and abet Vedalankar's evasion of accountability for her criminal lies to the Portfolio Committee, are annexed marked '59' and '60' respectively.

251. The minute of the meeting records Vedalankar response to Jeffery's enquiry as follows:

> In terms of the discrepancy with the posts and employees, it was very clear in the report. They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.

252. LASA's annual report to the SAHRC for 2010/11 under section 32 of PAIA included a similar lie: 'the decision to freeze the [Pietermaritzburg Senior Litigator] post due to change in business needs budget.' The false report is annexed marked '61'.

253. In my labour case, LASA in-house attorney Mtati likewise swore regarding the Mahikeng Senior Litigator, recommended for transfer to the new Mthatha post, that 'after the interview of the Applicant in KZN [Brink] had taken place', it was 'later decided not to also proceed with this transfer as it had become important to divert the funds budgeted to a different project' (annexure '3', page 28). Requested under PAIA, no record of any such decision has been forthcoming. Which is to say the allegation was casually perjured in the usual LASA manner.

254. Had Vedalankar told the Portfolio Committee the truth and not a criminal lie in claiming that 'those positions could not be filled' (i.e. LASA's remaining three vacant budgeted and funded Senior Litigator posts) with the result that 'they adjusted the budget', in other words deviated from the Board's Strategic Plan and from executive management's Business Plan based on it, and reallocated the budget for the three posts to another cost centre, section 1.1 of the Approval Framework (annexure '30') would have required the Board's 'Final

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approval'; section 1.2 would have required that the Board 'be consulted (before)' executive management changed the Business Plan; and section 2.3 governing 'Reallocation of budget – Operational expenditure' and more specifically 'Reallocation of budget in excess of 8% between cost centres' would have required Board approval, seeing as one third, 33.3%, of the Senior Litigator salary budget was involved.

255. But in Nair's April 2011 affidavit (annexure '1', paragraph 36), confirmed by Vedalankar (annexure '2'), Nair stated (justifying it spuriously) that 'The Board was ... not informed of the decision.' That is, the Board wasn't even told about his and Vedalankar's deviation from the Strategic Plan by deciding off the record to indefinitely, and in the result permanently, freeze recruitment to three vacant Senior Litigator posts, comprising one third of LASA's Senior Litigator establishment, much less was it 'consulted (before)' changing the Business Plan to employ Senior Litigators in all nine posts for them, including the thrice-advertised Pietermaritzburg and Durban posts. (The first recruitment process had failed, and the critical posts were then twice again advertised. The first advertisement is annexure '8'; the second and third advertisements are annexed marked '62' and '63'.) Nor was the Board asked to approve the reallocation of a third of the budget for this key component of the Strategic Plan 2009–12, right after it had just approved (annexure '17-V10') executive management's 'Report to Board' in July 2010 (annexure 17-V10-Annexure 1') proposing that *recruitment to such critical posts be prioritised* (section 2.2(b)).

256. Only in November 2011, well over a year after Vedalankar's and Nair's final illegal off-the-record abortion of the three Senior Litigator recruitments and their freezing of the posts allegedly for financial reasons, was the Board told under mounting pressure about this decision. Except that in his 'Report to Board', stating this in a buried note, Nair fabricated new, totally different false reasons for not filling the posts. Leaked to me by a sympathetic insider at LASA, Nair's November 2011 'Report to Board' is annexed marked '64'. He admitted authoring it at the trial of my labour claim (annexure '6', page 359). I'll revert to this.

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257. Contradicting and refuting Vedalankar's criminal lie to the Portfolio Committee, LASA's own financial records show that in truth and in fact there's never been any 'change in business needs budget' concerning the Pietermaritzburg Senior Litigator post and those at Durban and Mthatha; and they show that LASA never 'adjusted the budget' because 'those positions could not be filled', or for any other reason.

258. On the contrary, since their creation by Board resolution in November 2006, LASA has applied and continues applying to the Department every year, and has received and continues receiving millions of rands from the Treasury every year in salary funding for all nine of its Senior Litigator posts, including its three now very long vacant Pietermaritzburg, Durban and Mthatha/Kimberley posts. A sample of these Senior Litigator salary budget applications for the financial years 2010/11 to 2014/15 are bundled and annexed marked '65'.

259. I'm unable to put up any payment vouchers because although I've duly requested them under PAIA, Hundermark is suppressing them illegally and unconstitutionally to hinder my exposure of the corruption I've uncovered at LASA, in which he's complicit, on the fullest available evidence.

260. But in stating 'They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget', Vedalankar conceded that the budgeted Senior Litigator salary funds were indeed received. LASA in-house attorney Mtati did likewise in deposing that 'after the interview of the Applicant in KZN [Brink] had taken place' in November 2009 (annexure '17-V7') and the interview of the Mahikeng Senior Litigator had taken place in May 2010 (annexure '15') to consider his transfer to the just created Senior Litigator post at Mthatha, it was 'later decided not to also proceed with this transfer as it had become important to divert the funds budgeted to a different project' (annexure '3', page 28).

261. Contradicting and refuting Vedalankar's criminal lie to the Portfolio Committee that 'They had allocated a certain amount of funds [*true*] but they knew that those positions could not be filled [*false*] so they adjusted the budget

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[*false*]', LASA confirmed truthfully in my labour case (as indeed LASA's financial records vouch) that 'there was no re-allocation of any budget between costs centres', i.e. the budget for the allegedly frozen Senior Litigator posts was not transferred to any other cost centre. Annexure '7' is a material excerpt of LASA's pleading in this regard (see paragraph 2.6).

262. Diametrically contradicting and abandoning the original budgetary insufficiency lie she'd repeatedly told me, including under oath in April 2011, Vedalankar implicitly truthfully confirmed in her response to Jeffery's query that LASA had indeed received the salary funding that the National Assembly had allocated for all its budgeted posts, both filled and vacant, including its three remaining vacant critical Senior Litigator posts at Pietermaritzburg, Durban and Mthatha/Kimberley – only, according to Vedalankar's criminally false information to the Portfolio Committee, some unspecified insurmountable difficulty, which 'they knew', prevented the due expenditure of this budgeted salary funding that LASA had received from the Treasury via the Department on hiring suitable candidates to fill the posts, so, for this unspecified reason which 'they knew' LASA had resolved to divert and apply this unspent salary budget for the top posts to another cost centre.

263. It's certain for two reasons that Vedalankar couldn't have meant and in fact didn't mean that after LASA received its salary budget for the employment of three Senior Litigators at Pietermaritzburg, Durban and Mthatha, some intractable problem prevented LASA filling these three posts, leading it to adjust its *next* budget for the *following financial year*, so as to make provision only for six incumbent Senior Litigator salaries, and no longer nine such salaries including for three vacant posts. It's certain, *first* because Vedalankar didn't claim to the Portfolio Committee that the three long-vacant Senior Litigator posts had been abolished, and they haven't been; and *second* because in the following years LASA continued budgeting for salary funding for all nine Senior Litigator posts in its staff establishment, as LASA's budget applications for the financial years 2010/11 to 2014/15 show (annexure '65'). (I would have requested and put up more such budgets, running on to the current financial year, but to

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aid and abet in the corruption cover-up, Hundermark is reflexively refusing to comply with my PAIA requests on the dishonestly false basis that they're all a deliberate obvious waste of LASA's time, and therefore hit by section 45, allowing the refusal of 'manifestly frivolous or vexatious requests'.)

264. Nor could Vedalankar have been referring to LASA's Legal Services Technical Committee's resolution in March 2011 to abolish the long vacant, unnecessary Kimberley Senior Litigator post (reportedly no demand for it), and to create a new such post at Mthatha (where it was sorely needed for several cogent reasons motivated by the Regional Operations Executive), and to transfer the salary budget from the old post to the new. Vedalankar couldn't have been referring to this because in the result, although the new Mthatha post was immediately recruited for and a suitable candidate selected for it, the budget wasn't actually transferred. LASA's occupancy and vacancy statistics show the budgeted and funded Kimberley post still vacant in December 2010 (annexure '19'). That is, LASA's budget for the Kimberley Senior Litigator post wasn't 'adjusted'.

265. Also, Vedalankar mentioned a number of 'positions': *plural* – just like Nair did in his 'Report to Board' of November 2011 (annexure '64'), dishonestly falsely claiming (among his other lies) that 'recruitment challenges' prevented the filling of LASA's three remaining vacant Senior Litigator posts at Pietermaritzburg, Durban and Mthatha, whereas in truth and fact three eminently qualified and experienced candidates had been selected and recommended for the three respective posts.

266. The records show that only 'recruitment challenges' preventing any Senior Litigator recruitment were in respect of the Kimberley post. No suitable applicant was attracted by first advertisement for it, along with the other eight posts, in October 2007 (annexure '8'), nor by the readvertisement of the post in May 2009. A copy of the latter is annexed marked '66'. The result is that in November 2009, the Regional Operations Executive, mentioning this problem (mentioning also an unsuccessful internal, third advertisement) and the fact that there'd never been a need for the post at Kimberley, motivated for the transfer of

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the post to another centre where it might be 'required'. His motivation is annexed marked '67'. In February 2010, Nair's Legal Services Technical Committee invited applications for the transfer of the post to any region needing it. The minute is annexed marked '68'. In March 2010, the Eastern Cape motivated for its transfer to Mthatha. The motivation is annexed marked '69'. And later that same month on the 24th the LTSC agreed; resolved to abolish the Kimberley post and create a new one at Mthatha; and ordered that the new post be advertised immediately (annexure 13'). As indeed it was the following month in April (annexure '14'). And successfully interviewed for in May (annexure '15').

267. But to the Portfolio Committee, as Nair did to the Board, Vedalankar lied that LASA had been challenged in recruiting for the vacant Senior Litigator posts in question: at Pietermaritzburg, Durban and Mthatha despite the selection and recommendation of suitable candidates to fill the posts at thiose centres.

268. Besides that (i) LASA had indeed, in truth, budgeted for salary funding for all its vacant and occupied posts, as it was bound to do under section 53(4) of the PFMA; and, (ii) as truthfully implied by Vedalankar, such salary funding had indeed been allocated by vote of the National Assembly and paid to LASA by the Treasury via the Third Party Funds division of the Department for the financial year in question, like all other years, every other statement Vedalankar made to the Portfolio Committee, quoted here, was a lie told to deceive it.

269. *First*, 'the discrepancy with the posts and employees' was not 'very clear in the report' at all; even less did it clearly state or indicate that 'They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.' In truth and in fact, there was nothing at all in the annual report about any problems filling any of LASA's posts and about adjusting the budget, much less was it 'very clear in the report'. Here was Vedalankar stupidly dishonestly improvising and telling a bare-faced lie to the Portfolio Committee to put it off pursuing Jeffery's enquiry, which she well understood concerned the illegal abortion of the substantially complete recruitment processes for the three remaining vacant Senior Litigator posts and

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LASA's illegal failure to fill the posts using the budgeted funding that LASA had received for them, year after year.

270. *Second*, in truth and in fact, nothing prevented the filling of any budgeted and funded vacant posts, especially the Senior Litigator posts at Pietermaritzburg, Durban and Mthatha, for which three suitable candidates had been selected and recommended. It certainly wasn't any lack of salary funding received from the Treasury via the Department, because LASA's financial records show that the posts have always been and remain budgeted and funded.

271. Although inessential to this criminal charge, the true unlawful reason why the substantially complete recruitment processes for the three posts was aborted off the record, and the three posts indefinitely 'frozen' off the record, was to maintain a recruitment cover-up by illegally keeping them unfilled year after year on the false basis originally alleged to me that LASA hadn't received the expected budget to fill the posts. This is the true reason the posts hadn't been filled and why Vedalankar lied to the Portfolio Committee to cover it up.

272. To gin up her basic lie that 'those positions could not be filled so they adjusted the budget', and to make it sound more convincing, Vedalankar told the Portfolio Committee an additional lie: 'they knew' this, when in truth and fact, 'they' (she, Nair and her national office colleagues) didn't; 'they knew' very well that nothing stopped the posts being filled with the eminently qualified and experienced candidates selected and recommended for them – nothing besides recruitment corruption and its criminal cover-up

273. Contrary to Vedalankar's criminal lie to the Portfolio Committee about this, in truth and in fact there were no vacant posts in its staff establishment that LASA found impossible to fill – and particularly not its remaining three unfilled Senior Litigator posts for which selection panels had interviewed and recommended suitable candidates for the Pietermaritzburg and Durban posts in November 2009 and for the Mthatha one in May 2010.

274. Although Vedalankar didn't specify the reason 'they knew that those positions could not be filled', it's likely she had in mind the new lying cover-story

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Nair had concocted to replace the old obviously unsustainable budgetary insufficiency one, which new lie, among others, he told in his 'Report to Board' in November 2011 (annexure '64'), namely that 'recruitment challenges' prevented the filling of the posts.

275. Consistently with this new lie – 'they knew that those positions could not be filled' – Nair falsely alleged in an affidavit he made in my PAIA litigation against him in the Eshowe Magistrate's Court (opposition to it finally abandoned at court at the point of argument) that the Senior Litigator post for which I'd applied had been 'aborted for operational reasons', not financial reasons as originally alleged to me. Material excerpts of his affidavit are annexed marked '70'. (The profusion of criminal lies Nair told in the cover-up will be treated in a separate criminal complaint against him and in a complaint to the Legal Practice Council for his strike-off as an advocate.)

276. In telling the Portfolio Committee these criminal lies of hers, Vedalankar's intention was to misinform and mislead it to pervert its enquiry into LASA's illegal failure to have spent its funding allocation by the National Assembly in accordance with its budget, by falsely claiming that a valid albeit unstated reason existed for not filling its remaining long vacant Senior Litigator posts.

277. By telling her criminal lies to the Portfolio Committee, Vedalankar successfully frustrated its exercise of its constitutional oversight function over LASA and prevented it remedying the serious illegality of which I'd complained to Jeffery the year before.

278. The minute reflects that, knowing the truth, Jeffery very correctly didn't accept and believe the lies Vedalankar told him (i) to pretend that LASA was duly spending its salary budget and (ii) to conceal her and Nair's criminally illegal, unauthorised, off-the-record final decision in July 2010 to abort the three substantially complete Senior Litigator recruitments for Pietermaritzburg, Durban and Mthatha and to freeze the posts. Aware that she was lying, and correctly insisting otherwise, 'Mr Jeffery said that the expenditure could not be 99% with the [post occupancy] figures that they had.'

279. The minute further records that 'Ms Vedalankar said she would send the information to the Committee' – in addition to the 'very clear' information alleged to have been contained 'in the report' – to persuade Jeffery, and to overcome his well-justified disbelief of her lying claim that 'They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.'

280. Seeing as she repeatedly told lies on other scores in her address – including that the Portfolio Committee had been sent LASA's quarterly reports, which lie she retracted and then apologised for when Jeffery challenged it – and she'd previously lied to the Portfolio Committee as detailed above, it's highly likely that Vedalankar's undertaking to 'send the information to the Committee' was false, and was given with no intention of honouring it and only to escape the pinch of Jeffery's enquiry threatening to expose her criminal and otherwise illegal off-the-record abortion of the three Senior Litigator recruitments in question and her freezing of the posts (no record of the decision; *ultra vires* her powers; an unauthorised deviation from the Business Plan and Strategic Plan; and criminally illegal under the PFMA).

281. If Vedalankar did 'send the information' to the Portfolio Committee after the meeting, there will be a record of this. (I'm unable to access it myself or have it confirmed under section 23 that no such record exists, because, as mentioned above, to obstruct my corruption investigation and to protect Vedalankar from being held criminally accountable for her lies to the Portfolio Committee on the fullest available evidence, Hundermark has illegally and unconstitutionally denied my duly made request for access to relevant records in this regard.)

282. In the premises, to frustrate and defeat the Portfolio Committee's constitutional oversight function and to maintain the cover-up of the criminally illegal abortion of the Pietermaritzburg, Durban and Mthatha recruitments and freezing of the posts, Vedalankar wilfully furnished the Portfolio Committee with false and misleading information, and thereby criminally contravened section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

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COUNT 12: LYING TO THE PORTFOLIO COMMITTEE

283. At the 9 October 2012 meeting, besides telling the Portfolio Committee her new different lies about why the remaining vacant three Senior Litigator posts hadn't been filled so as to cover the top-level recruitment corruption in which she was involved – the old lie being that LASA *hadn't received* sufficient budget, the new lie being that because LASA had trouble filling them it 'adjusted' the budget it *had received* for them – Vedalankar also told the Portfolio Committee several criminal lies to cover her and Nair's repeated illegal and unconstitutional refusals to comply with my PAIA requests to obstruct my investigation of this corruption.

284. Among my persistent complaints to the SAHRC's PAIA Unit about Vedalankar's and Nair's illegal and unconstitutional refusals of my first three PAIA requests made in 2010 and 2011, I'd protested also that LASA's had made false annual reports for 2010/11 and 2011/12 under section 32 of PAIA to conceal this.

285. Had LASA duly reported its handling of my PAIA requests in 2010 and 2011 to the SAHRC under section 32, the Portfolio Committee would have been alerted via the SAHRC's section 84 reports for 2010/11 and 2011/12 to Vedalankar's and Nair's illegal refusals of my PAIA requests and to their repeated violation of my fundamental right to information in determinedly suppressing LASA's business records that I wished to examine in my investigation of the circumstances in which my recruitment had been aborted and the true reason for it.

286. LASA's repeated false annual reporting under section 32 was therefore a further extremely serious additional layer of the cover-up, contrived to obstruct and defeat the Portfolio Committee's constitutional oversight function over LASA.

287. Finding that indeed neither section 32 report complied with the detailed reporting requirement of the section and did not reflect LASA's unlawful refusals

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of my requests, the SAHRC reported this to the National Assembly in its section 84 report for 2011/12:

> A case in point [of false section 32 reporting by public bodies is] where a complainant [Brink] brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA's 2010/11 section 32 report despite the fact that the requests were made in that financial year. ... The Commission engaged with LASA and remains concerned about the accuracy of section 32 reporting by LASA.

A material excerpt of the report is annexed marked '71'.

288. At LASA's said October 2012 meeting with the Portfolio Committee, its annual report was presented by Board member Jan Maree. In full knowledge of the true facts, having received and acknowledged my first petition to the Board of 30 November 2010 protesting and substantiating exactly the opposite, the minute (annexure '55') records Maree's outright lie told to the Portfolio Committee that LASA had achieved '100% ... compliance with the Promotion of Access to Information Act'. A material excerpt of my petition (paragraphs 17–43) regarding Vedalankar's illegal and unconstitutional total refusal of my first PAIA request in August 2010, in which petition I laid bare her spurious, indeed fraudulent grounds for refusing it, is annexed marked '72'. Maree's acknowledgment of receipt of this petition is annexed marked '73'.

289. Quite correctly the Portfolio Committee didn't believe attorney Maree's criminal lie to it about LASA's '100% ... compliance with' PAIA. On the contrary, its members repeatedly voiced their concern over LASA's *non-compliance* with the Act.

290. Immediately after Vedalankar's address, Jeffery cut straight to the SAHRC's PAIA report:

> Mr Jeffery (ANC) said ... it was the Committee's job to make sure they did oversight. He was curious about a Promotion of Access to

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> Information Act (PAIA) report that was released that stated the South African Human Right Commission was unhappy with LASA and their cooperation in terms of PAIA.

291. Since the SAHRC's section 84 report mentioned only LASA's defective annual section 32 reporting, not its substantive non-compliance with my first three PAIA requests (the 'unlawfulness' of which the SAHRC had noted in June 2011), Jeffery clearly had in mind my telephonic complaint to him about Vedalankar's and Nair's repeated refusal to comply with my PAIA requests. And as her reply revealed, Vedalankar understood perfectly that Jeffery was indeed referring to her and Nair's persistent illegal obstruction of my constitutionally guaranteed right of access to LASA's public records, in service of a top-level criminal corruption cover-up.

292. The Portfolio Committee chairperson also raised the SAHRC's adverse PAIA report regarding LASA – the only matter of concern to him that he raised during the presentation: 'The Chairperson told the [LASA] delegation that they would arrange for Legal Aid to view the PAIA report.'

293. When Vedalankar tried silently evading the SAHRC's negative report, pertinently raised by Jeffery as well as by the chairperson, the latter called her to account: 'The Chairperson said that he wanted to know about the PAIA report.'

294. With the corrupt intention of discrediting the SAHRC's adverse PAIA report on LASA, with the ultimate purpose of concealing her and Nair's repeated and persistent illegal refusals of my PAIA requests to obstruct my investigation and refutation of the fake budgetary insufficiency excuse she'd repeatedly fed me, including under oath, about why my appointment had been aborted, Vedalankar responded with a string of lies:

> Ms Vedalankar said she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgment about this.

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295. In truth and in fact, contrary to Vedalankar's criminal lies to the Portfolio Committee, the SAHRC's report was perfectly true. LASA had indeed repeatedly failed to comply with its reporting obligations prescribed by section 32; and its false and defective, non-compliant reporting of its unlawful refusals of my PAIA requests about which I'd complained is apparent on the face of LASA's section 32 reports for 2010/11 and 2011/12, having regard to the specific, detailed information the section required. The 2010/11 report is annexure '61', and the 2011/12 report (containing no mention of Nair's unlawful response in April 2011 to my third PAIA request the month before, in which he illegally and unconstitutionally refused me access to several duly requested records, on spurious grounds later abandoned) is annexed marked '74'. (The multiple specific respects in which the 2010/11 report failed to comply with section 32 are enumerated in my Special Report to the SAHRC, accessible online at illegal-aid.co.za/PAIA.)

296. At the Portfolio Committee's next meeting with the SAHRC shortly afterwards on 3 December 2012, Jeffery raised Vedalankar's repudiation of the SAHRC's allegedly 'untrue' section 84 report concerning LASA's non-compliance with section 32:

> Mr Jeffery asked for more detail on the compliance monitoring audits. The Commission complained about Legal Aid South Africa (LASA) on page 29 of the report, yet when this point was raised with LASA, it had responded that it was not happy with the SAHRC report, and disputed the findings.

297. SAHRC deputy information officer and PAIA Unit head Dr Fola Adeleke forthrightly rejected Vedalankar's false repudiation of the report and confirmed that it was correct:

> Mr Adeleke answered the question of LASA disputing the SAHRC's report. He said that LASA could not dispute the finding, because the Commission had shown the PAIA report that they had omitted. The PAIA request was sent to LASA, and it was requested to report

> on it. However, LASA maintained that this request should have been done during the last reporting period, whereas SAHRC held the view that this fell within the current reporting period.

298. In response to Adeleke's information to the Portfolio Committee that the SAHRC had pertinently called on LASA to report its handling (in April 2011) of my PAIA request (in March), which it had shown it, but that LASA had refused to do so (which is exactly what happened), 'Mr Jeffery said that the detail was useful and the Committee should get more information and put it to LASA.' It's clear from this that Jeffery remained dissatisfied that Vedalankar's repudiation of the SAHRC's section 84 report was truthful.

299. A material excerpt from minute of the meeting is annexed marked '75'.

300. Apart from being false and misleading on multiple scores, Vedalankar's statement to the Portfolio Committee, 'Legally one could not use PAIA when one was in court', made to discredit the SAHRC's report of LASA's false annual reporting under section 32, was irrelevant and no answer to the SAHRC's reported findings that LASA had repeatedly failed to comply with its reporting obligations under section 32.

301. It's clear that in answering in this particular way Vedalankar had in mind my PAIA requests, which she and Nair had persistently illegally and unconstitutionally refused, and about which she knew I'd repeatedly complained to the SAHRC. That is, Vedalankar was well aware that the SAHRC was alluding in its section 84 report to my repeated complaints to it about her and Nair's persistent illegal and unconstitutional refusals of my PAIA requests, i.e. their *primary substantive non-compliances* with them, and not just to LASA's (her, as information officer) repeated *non-compliances with its (her) secondary reporting obligations* under section 32 in making its (her) annual reports as information officer. The SAHRC's section 84 report to the National Assembly inexplicably didn't deal with her and Nair's substantive non-compliance with PAIA, only with LASA's false and misleading reporting afterwards to conceal this.

302. Vedalankar's answer, 'Legally one could not use PAIA when one was in court', was dishonestly false and calculated to mislead the Portfolio Committee on two scores.

303. *First*, when I made my first three PAIA requests in August and December 2010 and March 2011, I wasn't yet 'in court', and only went to court later that year in July 2011, as I mentioned in my letter to the Board that month (annexure '49'), claiming my instatement to the top legal professional post for which I'd been unanimously selected and recommended.

304. *Second*, even had I been 'in court' when I made my PAIA requests, which I wasn't, any documents thus irregularly obtained would have been potentially admissible with the special leave of the judge under section 7(2) of PAIA. That is, a requester being 'in court' is no justification under PAIA for refusing access to a requested record.

305. Not having yet been 'in court' when I made my record requests in question, neither of Vedalankar's October 2010 or January 2011 letters raised this spurious justification for refusing them. Nor did Nair raise this in his April 2011 affidavit or covering correspondence.

306. When I did institute action in the Labour Court later on in July 2011, and the pleadings closed with the filing of LASA's response to my statement of claim, I duly followed the court's discovery rules to access documents I needed for trial – against great resistance and with considerable difficulty; but LASA's telling secrecy and reluctance to share its public records, and the round after round of legal processes to which I had to resort to overcome this, isn't relevant to this criminal complaint.

307. Vedalankar's dishonest motivation for lying that I was 'in court' when I made my PAIA requests, when I wasn't, was to falsely justify to the Portfolio Committee her and Nair's illegal and unconstitutional refusals of my PAIA requests, so as to obstruct my investigation of the corrupt, criminally illegal circumstances in which my recruitment had been cancelled.

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308. Vedalankar's claim that 'there was going to be an official judgment about this' ('this' being her claim that 'one could not use PAIA when one was in court') was pure invention to mislead the Portfolio Committee and pervert its enquiry. The law on the use of documents obtained via PAIA in legal proceedings after they have commenced is clearly set out by section 7 of PAIA. No such issue in my labour action was before court for decision, as Vedalankar falsely implied to the Committee. It was a crowning lie contrived to put the Committee off taxing her any further about her and Nair's repeated non-compliance with the Act to hide duly requested documents in furtherance of their cover-up of the recruitment corruption I was investigating. And the minute of LASA's presentation shows that Vedalankar's final lie achieved this.

309. Vedalankar's criminal lies to the Portfolio Committee to cover LASA's non-compliance with PAIA successfully derailed its enquiry into her and Nair's repeated and persistent, illegal and unconstitutional violation of my fundamental right of access to LASA's public records, and enabled her and Nair to escape being held to account for it.

310. In other words, at her appearance before the Portfolio Committee, Vedalankar lied her way out of the trouble, namely LASA's repeated false reporting to the SAHRC to cover her and Nair's illegal and unconstitutional refusals to allow me access to duly requested records to obstruct my investigation of the most serious, criminal corruption at the top of LASA's governing and executive management ranks, in which she as CEO, her next-in-command Nair, and Board chairperson Mlambo JP were all directly implicated.

311. And by deliberately misinforming and misleading the Portfolio Committee with her lies and thereby perverting its enquiry, Vedalankar prevented it carrying out its constitutional oversight function over LASA imposed on it by section 55(2)(b)(ii) of the Constitution, thus criminally obstructing and defeating the crucial oversight machinery set in place by the Constitution to check corruption and malfeasance in the public service generally and at LASA particularly.

AB S.P. Z 965

312. In the premises, Vedalankar criminally contravened section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

Signed at Eshowe on 12 June 2020

ANTHONY BRINK

Signed before me at Eshowe on 12 June 2020 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and who affirms its contents to be true to the best of his knowledge and belief.

SGT SP ZIBANE
7023796 4
COMMISSIONER OF OATHS

Name: SIHENDILE PRUDENCE ZIBANE

Address: 79 MAIN STREET ESHOWE 3815

Capacity: SERGEANT

SOUTH AFRICAN POLICE SERVICE
CRIME INVESTIGATION SERVICE
2020 -06- 12
ESHOWE
KWAZULU-NATAL

Criminal complaint no. 1: Vedalankar

In two volumes:
Vol. 1: Affirmed criminal complaint
Vol. 2: Supporting documents

TWELVE CRIMINAL CHARGES AGAINST VIDHU VEDALANKAR, FORMER CEO OF LEGAL AID SA

VOLUME 2

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TWELVE CRIMINAL CHARGES AGAINST VIDHU VEDALANKAR, FORMER CEO OF LEGAL AID SA

VOLUME 2

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

In the matter between:

ANTHONY BRINK **Applicant**

and

THE LEGAL AID SOUTH AFRICA **Respondent**

AFFIDAVIT IN TERMS OF SECTION 23 OF THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

I, the undersigned,

BRIAN NAIR

do hereby make oath and state that:

1. I am an adult male person employed by Legal Aid South Africa, a statutory body established under Legal Aid Act 22 of 1969, having its principal place of business at 29 De Beer Street, Legal Aid House, Braamfontein, Johannesburg.

2. The information contained herein is, save where otherwise stated by me or where the content clearly indicates the contrary, within my personal knowledge, and to the best of my belief, both true and correct.

3. I am the National Operations Executive of Legal Aid South Africa, responsible for all functions and personnel delivering legal representation to indigent persons.

4. I am equally the person responsible to make all appointments to certain positions in terms of our Approval Framework. The positions referred to herein also include that of Senior Litigator.

5. I confirm that I am the Deputy Information Officer duly delegated by the Information Officer in terms of section 17 of Promotion of Access to Information Act 2 of 2000. I therefore and in compliance with section 17(3) annex my written authority (as annexure BN1) in terms of which I depose to this affidavit.

6. I am accordingly in the best position to respond to a number of requests raised by Mr Anthony Brink.

7. Hereunder, I respond to all the concerns or accusations that Legal Aid South Africa may not have fully responded to Mr Brink's previous requests. I follow his sequencing of the 20 (twenty) points he refers to in his Memorandum to the Human Rights Commission dated 3 March 2011.

FIRST REQUEST, AUGUST 2010

PART 1

Reply to paragraph 1-2

8. The National Operations Executive, in consultation with both the Chief Executive Officer and the Human Resource Executive, agreed that the process of recruitment for Senior Litigators will include a second round of interviews. This

decision was taken verbally in April 2008. Since then the second interview panel has sat on three separate occasions to consider prospective candidates.

9. It was agreed that the second interview panel will consist of identified National Office executives. This decision was guided and informed by the seniority of the senior litigator position.

10. The Chairperson of the Board was also invited to participate in this panel.

11. The second interview panel would consider all candidates recommended from the first round of interviews to the second round of the interviews. The second interview panel would however not be bound to support the recommendation of the first interview panel. It is confirmed that the second panel had previously refused to support a candidate that was recommended by the first panel for this same position that is under dispute.

12. If after the second round of interviews a recommendation is made, the Regional Operations Executive in charge would finalise the appointment only after the National Operations Executive and the Chief Executive Officer agree with the recommendation.

PART 2

Reply to paragraph 9

13. The second round of interviews was not proceeded with and as such, no candidate or persons were considered for the second round. The decision that led us not to proceed with the second round was fully explained to Mr. Brink in the letters by the Chief Executive Officer dated 18 October 2010 and 28 January 2011. I specifically refer to attachments "V1", "V3" to "V6", "V8" and "V10" in the letter dated 28 January 2011 from the Chief Executive Officer to Mr. Brink, clearly

indicating that the reason to freeze the positions of Senior Litigator was due to fiscal pressures.

14. For the sake of completeness, I further mention that no written record exists of the decision taken in July 2010 by the NOE in consultation with the CEO and HRE to freeze the senior litigator post.

PART 3

Reply to paragraph 10

15. There were no time frames set to finalise the recruitment process for the senior litigator positions. It was always anticipated that the process will be completed within a reasonable time. However, as communicated in our earlier submissions/ letters to Mr. Brink dated 18 October 2010 and 28 January 2011, the uncertain funding difficulty resulted in a decision being taken by Legal Aid South Africa executives to delay and eventually freeze the recruitment of certain positions including the vacant senior litigator positions. For the sake of completeness, I further mention that no written record of this decision taken exists except annexures "V1" to "V12" which have already been furnished to Mr. Brink.

PART 4

Reply to paragraphs 11-12

16. The decision was taken by me in consultation with the Chief Executive Officer and the Human Resources Executive. The background leading to the decision was explained to Mr. Brink on letters and annexures referred to on paragraph 15 above. For the sake of completeness, I further mention that no other written record of this decision exists.

PART 5
Reply to paragraph 16

17. No records of discussions exist where Mr. Brink was mentioned after August 2009 by the Management Executive Committee.

PART 6
B: OTHER RECORDS

Further reply to paragraph 1:

18. I am advised that there are no other records that exist save for what was previously provided to Mr. Brink.

Further reply to paragraph 28

19. I annex hereto a copy of my email instruction to the ROE which is marked "BN2".

Further reply to paragraph 32

20. As far as I could ascertain, this information was communicated verbally by the ROE to the JCEs at both Durban and Pietermaritzburg JCs. I am also informed that copies of the regret letters were forwarded to both the JCEs.

PART 7

RECORDS

Further reply to paragraph 3 and

21. I am not aware of any such written communications.

PART 8

Further reply to paragraph 13

22. I confirm that no such written records exist.

Further reply to paragraph 14

23. I confirm that no such written records exist as the decision was taken by me in consultation with Chief Executive Officer and the HRE.

Further reply to paragraph 15

24. I confirm that the documentation relating to the reasons were sent to Mr. Brink in the letter by the CEO dated 28 January 2011.

PART 9

Further reply to paragraph 16

25. To the best of my knowledge, I can confirm that no such correspondence exists.

Further reply to paragraph 26

26. I confirm that regret letters were sent to two other applicants for the senior litigator positions. However, such information cannot be disclosed to third parties without their consent.

PART 10

Further reply to paragraph 17-18

27. I can confirm that the request by the CEO for me to provide Mr. Brink with a response was done per e-mail. Copy thereof is attached marked "BN3".

PART 11

Further reply to paragraph 25

28. I refer you to the reply to part 6 with specific reference to paragraph 19 above.

PART 12

Further reply to paragraph 33

29. I confirm that no written records of this decision exist. For the sake of completeness I refer you to paragraph 16 above.

PART 13

Further reply to paragraph 35

30. I confirm that a search was conducted on our internal email system and there are no records found where Mr. Brink's name was discussed or appears prior to his request for information except for an email from one Jeremy Brink containing your CV sent by the Pietermaritzburg JCE and which was further forwarded to Vela Mdaka.

PART 14

Further reply to paragraphs 1-3

31. I submit with respect that the documentation supplied to Mr Brink by the CEO in her letter of 28 January 2011 contains all the relevant information requested.

PART 15

Further reply to paragraph 4

32. There are no written records of the relevant discussions between myself and the CEO.

PART 16

Further reply to paragraph 5

33. I confirm that the consultation with the HRE on this matter was done verbally.

PART 17

Further reply to paragraph 6-8

34. The documentation forwarded to Mr Brink by the CEO in her letter of response dated 28 January adequately covers, I submit, all the information requested in these paragraphs.

PART 18
Further reply to paragraph 9

35. I confirm that no written record of this decision exists. For the sake of completeness I refer to paragraph 16 hereinabove.

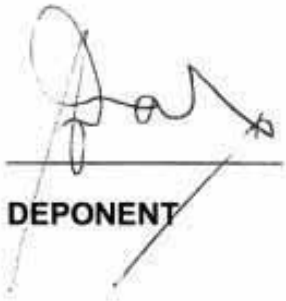
PART 19
Further reply to paragraph 10

36. The decision taken by me, in consultation with the Chief Executive Officer and Human Resources Executive, is in accordance with the Approval Framework and within the powers delegated to the executive. There is no need, in terms of the above Framework, for the executive to refer to the Board in this regard. The Board was therefore not informed of the decision.

PART 20
Further reply to paragraph 11

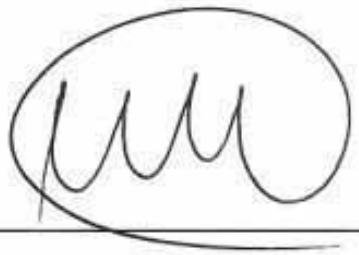
37. I confirm that all regret notifications were communicated by the relevant Regional Human Resources Managers. However, such information can only be disclosed upon consent by the relevant third parties being granted.

Signed at Braamfontein on this ...8th... day of April 2011



DEPONENT

Signed and sworn before me at Braamfontein this ...8th... day of April 2011 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).



COMMISSIONER OF OATHS:

FULL NAMES: MOLATELO MAKHURA

CAPACITY: COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA

ADDRESS: 7th FLOOR BRAAMFONTEIN CENTRE
23 JORISSEN STREET
TELEPHONE (011) 403-2765

BN1

R55
1

Legal Aid
South Africa

best 2009/10 EMPLOYERS SOUTH AFRICA

1ST March 2011

Mr Brian Nair
National Operations Executive
Legal Aid South Africa

Dear Brian

APPOINTMENT AND DELEGATION AS DEPUTY INFORMATION OFFICER FOR LEGAL AID SOUTH AFRICA

I hereby, and in my capacity as the Chief Information Officer and in compliance with section 17(6), appoint you to act as the Deputy Information Officer for Legal Aid South Africa with effect from 1st March 2011. Your appointment shall be valid until withdrawn by the Chief Information Officer or Chief Executive Officer.

Regards

V V Vedalankar

Vidhu Vedalankar
Chief Executive Officer and Chief Information Officer

Your voice. For justice.

From: Brian Nair
Sent: 16 August 2010 08:57 AM
To: Vela Mdaka
Cc: Bertus Appel
Subject: FW: Senior Litigator Position: Pietermaritzburg

Hi Vela

As discussed, please find our response letter to Mr Brink. Also ensure that you inform your HR section to regret all persons who attended senior litigator interviews for both PMB and Durban as we will not be proceeding this these recruitment.

Thanks

Regards

Brian Nair
National Operations Executive

Legal Aid South Africa

Tel: 011 877 2006
Fax: 011 877 2222
www.legal-aid.co.za

From: Nadeen Long
Sent: 04 August 2010 01:55 PM
To: arbrink@iafrica.com
Cc: Brian Nair
Subject: Senior Litigator Position: Pietermaritzburg

Dear Mr Brink

Attached hereto please find a response to your letter dated 11 July 2010.

Thank you.

Regards

Nadeen Long
Executive PA to Brian Nair
National Operations Executive
Legal Aid **South Africa**
Tel: 011 877 2006
Fax: 011 877 2225
E-mail: NadeenS@legal-aid.co.za

DN3

-----Original Message-----
From: Vidhu Vedalankar
Sent: 29 July 2010 02:33 PM
To: Brian Nair; Amanda Clark
Subject: FW: Complaint against the HRE & an interview process

Hi Brian

Please see attached letter
I am not sure what is happening with these senior litigator appointment but we need to finalise the process and advise the persons interviewed of the outcome.

Please will you look into this and discuss with Mandi and then discuss with me.

Regards

Vidhu Vedalankar
CEO

Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

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

In the matter between:

ANTHONY BRINK **Applicant**

And

THE LEGAL AID SOUTH AFRICA **Respondent**

CONFIRMATORY AFFIDAVIT

I, the undersigned;

VIDHULEKHA NARDEV VEDALANKAR

Do hereby make an oath and state;

1. I am a major female and employed as a Chief Executive Officer for Legal Aid South Africa. I am the Chief Information Officer and duly authorised to depose to this confirmatory affidavit.
2. The facts which are herein so confirmed are to my knowledge true and correct, save where the converse so appears and is so expressly stated.

3. I have read the affidavit of Mr. Brian Nair and agree with and confirm the contents insofar as they apply to me.

Signed at Braamfontein on this 5th April day of 2011.

DEPONENT

With the relevant provisions of Annexure A of the rules governing the administration of an oath or affirmation No. R. 1258 of 21 July 1972 as amended by G.N.R. 1648 of 19 August 1977 (as amended) having been complied with:

The deponent has acknowledged that he understands the contents of this declaration, has no objection to taking the prescribed oath and considers the prescribed oath to be binding on his conscience and that he has uttered the words "*So help me God*".

COMMISSIONER OF OATHS

ADDRESS:

MOLATELO MAKHURA
COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA
7th FLOOR BRAAMFONTEIN CENTRE
23 JORISSEN STREET
TELEPHONE (011) 403-2765

R55
3

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY, ROBIN BRINK — Applicant

and

DUNSTAN MLAMBO JP — Respondent

In re:

ANTHONY BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

THEMBILE VUYO MTATI,

do hereby make oath and swear that,

1136 983

13.4. his recruitment, together with that of the other candidates recommended for the second round of interviews, was aborted immediately after the first round of interviews.

14. I shall deal with the reasons why the recruitment of senior litigators was not proceeded with later in this affidavit.

15. For completeness, I annex hereto the regional panel's recommendation in respect of the Applicant and mark same as **DM2**. What was recommended in this annexure is quite clear, and it is certainly not that the Applicant be appointed to the position applied for. The Applicant has made it his mission to misinform the Court and misrepresent the truth in his campaign against the Respondent by alleging that he was recommended for appointment to the said post and the Respondent was instrumental in thwarting his chances of being appointed to the said post.

16. The second round of interviews with the national office was never continued with simply because at the same time as the recruitment processes took place, Legal Aid SA was busy preparing for its budget for 2010 – 2011.

17. It transpired to Legal Aid SA around November – December 2009, that the Department of Justice and Constitutional Development ("the Department") had delayed to honour its commitment to advance money for Legal Aid SA's affairs, including the money Legal Aid SA was relying upon to appoint professional staff, including, but not limited to, senior litigators. This money was required by Legal Aid SA to recruit and retain suitably qualified professionals at a market related rate and was known as Occupation Specific Dispensation funds ("the OSD").

81..9.1 The Northern Cape Province is a very big province comprising of former Cape of Good Hope Province.. It had, all along its own budgeted funds for Senior Litigator to cater for the vast area.

81.9.21 Invitations for application for this post were constantly not being responded to until the LSTC decided to recommend to Legal Aid SA executive that the position be transferred internally from Kimberly Justice Centre to Mthatha Justice Centre in the Eastern Cape Province. See herein the resolution of the said meeting annexed hereto as **DM13**

81.9.3 Invitations were again called and indeed Mr Skibi applied and was shortlisted for second round of interviews in Johannesburg.

81.9.4 This was after the interview of the Applicant in KZN had taken place.

81.9.5 Legal Aid SA later decided not to also proceed with this transfer as it had become important to divert the funds budgeted to a different project.

R55
3

105 **AD PARAGRAPH 58.**

105.1 I deny the correctness of the contents of this paragraph.

105.2 I submit that the executives, who have the necessary and personal knowledge of this matter will be able to answer all the questions raised by the Applicant. After all, this is their terrain and the Board or the Respondent had nothing to do with the recruitment process in issue herein save to approve cost cutting measured adopted as indicated hereinabove.

106 **AD PARAGRAPH 59.**

106.1 I deny the correctness of the contents of this paragraph.

106.2 I submit that the Applicant has failed to make out a case for the relief sought and that his application should fail and he be ordered to pay the costs of this application such costs be at a punitive scale.

CONCLUSION

107 I wish to annex hereto confirmatory affidavits of the CEO Ms Vidhu Vedalankar, and Mr Brian Nair and mark them as annexures **DM14** and **DM15.**

108 I respectfully that the Applicant's application herein and the main action is informed by no desire to vindicate any of his rights but the

need to exact vengeance, to embarrass and to insult people who took a decision that he does not like.

WHEREFORE, it may please this Court to dismiss this application accordingly.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at Johannesburg on this 16 January 2013. The regulations contained in the Government Notice No. 1258 dated 21st July 1972 (as amended) and Government Notice No. 1648 dated 19th August 1977 (as amended) having been complied with.

COMMISSIONER OF OATHS

Mabhoko Mathole Attorneys
Commissioner of Oaths
Ex Officio
Mansion House, 132 Market Street
Cell: 082 680 5982 Fax: 086 690 3648
Email: mabhoko@webmail.co.za

DM15

R55
4

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY, ROBIN BRINK Applicant

and

DUNSTAN MLAMBO JP Respondent

ARBEIDSHOF
PRIVAATSAK/PRIVATE BAG X54370
DURBAN 4000
2013 -01- 18
1ST FLOOR LIBERTY HOUSE
269 ANTON LEMBEDE STREET, DURBAN 4000
LABOUR COURT

In re:

ANTHONY BRINK Applicant

and

LEGAL AID SOUTH AFRICA Respondent

CONFIRMATORY AFFIDAVIT TO RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

BRIAN NAIR,

do hereby make oath and swear that,

1141 988

1. I am the National Operations Executive of the Legal Aid South Africa (hereinafter "Legal Aid SA") with offices at 29 De Beer Street, Braamfontein, Johannesburg.

2. I have read the answering affidavit of **THEMBILE VUYO MTATI** and confirm everything that has been said so far as it relates to me.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at Johannesburg on this ..... January 2013. The regulations contained in the Government Notice No. 1258 dated 21st July 1972 (as amended) and Government Notice No. 1648 dated 19th August 1977 (as amended) having been complied with.

COMMISSIONER OF OATHS

Mabhoko Mathole Attorneys
Commissioner of Oaths
Ex Officio
Mansion House, 132 Market Street
Cell: 082 680 5982 Fax: 086 690 3648
Email: mabhoko@webmail.co.za

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Case No: D529/11

In the matter between

ANTHONY ROBIN BRINK Applicant

and

LEGAL AID SOUTH AFRICA Respondent

DISCOVERY OF DOCUMENTS IN TERMS OF RULE 35(3) OF THE RULES OF COURT IN RE THE PRE-TRIAL MINUTES OF 25 JANUARY 2013

I, the undersigned,

THEMBILE VUYO MTATI

do hereby state under oath that:

1. I am an adult practicing attorney employed as a Corporate Service Executive by the Respondent and I am duly authorised to depose to this affidavit.

2. The facts stated herein are within my personal knowledge, unless stated otherwise, and are to the best of my belief both true and correct.

3. In compliance with paragraph 4 of the parties' Pre-trial minutes held at Durban on 25 January 2013 and following the Applicant's Proposed Pre-Trial Agenda dated 25 January 2013, I wish to submit as follows:

STH

3.1 That I have in my possession or under my control the documents requested by the applicant, which I herewith discover and furnish to the Applicant as required by him in his proposed pre-trial agenda, set out in **Part 1** of the attached schedule.

3.2 That I do not have and never had in my possession documents set out in **Part 2** of the attached schedule.

3.3 That in **Part 3,** I object to provide/discover all the identified records in terms of Uniform Rule of High Court 35(2) (b) on the basis that same are irrelevant to the Applicant's case.

3.4 That in **Part 4,** I further object to commenting or answering all paragraphs identified therein containing questions, interrogatories, remarks, observations, queries, or requests for further particularity, and/or requests for information.

DEPONENT

THUS SWORN AND SIGNED BEFORE ME AT BRAAMFONTEIN ON THIS THE 11TH DAY OF MARCH 2013. THE DEPONDENT HAVING ACKNOWLEDGED TO ME THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS DECLARATION, AND THAT HE HAS NO OBJECTION IN TAKING THE PRESCRIBED OATH AND WHICH HE CONSIDERS TO BE BINDING ON HIS CONSCIENCE.

COMMISSIONER OF OATH

FULL NAMES : SIMON THUNGWANI
DESIGNATION : LT COLONEL
ADDRESS : 16 EMPIRE ROAD, PARKTOWN

SUID-AFRIKAANSE POLISIEDIENS
PROVINSIALE KOMMISSARIS
PROVINCIAL COMMISSIONER
GAUTENG
11 MAR 2013
GAUTENG
LEGAL SERVICES
PROVINCIAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE

PART 1

Document Number	Paragraph	
1	22	A clear original PDF Approval Framework is attached, **DOC1**
3	23	(i)The first page from which LA4 is excerpted is attached, including the full record showing the dates. All reports of Board are reports of the Chief Executive Officer irrespective of the originator. **DOC 3**
9	26	The covering email of Mdaka to Brian is attached, **DOC 9**
35	29(a)	The motivation is attached, **DOC 35(a)**
38	31	No written minute by selection panel but the document attached shows the note made by Brijlal noting the reply to the applicant's answer to the Justice Centre of his choice, **DOC 38**
Other new documents required		
43		Notification of the Board that Brink's claim for instatement to the post is defended, See an extract minutes of 26 November 2011 item **9.5.1** attached as **DOC 43**
46		Extract minutes of the Board on 26 November 2011 under **9.4.6** is attached **DOC 46**

PART 2

Document Number	Paragraph	
3(vi)	23	No such written record exists.
5	24	No posts were cut and therefore no such records exist.
6	25	No such records exist and even if such records existed, they would be in possession of third party, namely Department of Justice.
11	27	The instructions were done telephonically, and therefore no written record exists
12	28	No such record exists
35(b)	29	No such record exists. The documents were in the Respondent's possession and have been lost in transit between Mthatha and Johannesburg.
35(c)	29	No such record exists. The documents were in the Respondent's possession and have been lost in transit between Mthatha and Johannesburg.

Can we just clarify that last sentence:

"This panel does not have to recommend..."

What, what does that mean? --- [No audible reply].

In your view, I do not want to... (Inaudible). My Lord, the second round of interviews was not a rubber stamp (indistinct) was recommended as a suitable candidate from the first round of interviews.

In fact, a specific requirement of the second panel was that all candidates who were interviewed or shortlisted for the first round, their CVs had to be sent... (intervenes)

COURT: Sorry, it was that all candidates were... (intervenes) --- All candidates who were shortlisted for the first round of interviews... (intervenes)

Ja. --- Their CVs also had to be sent to the, so that the second round panellists could consider if there was anyone else they would be interested to interview. And that is the reason why in the earlier letter we saw today the HR Managers and Vela and the Regional had sent what was stated as four CVs. The practice of the second, Ja, the... (intervenes)

So four had been interviewed, they were the only candidates interviewed for the first level? --- Yes, so all four were interviewed, My Lord, their CVs were sent to me. Because in deciding who will be in interview for the second round, we look at all four again and not only the person that the first round panellist interviewed or recommended. I can also confirm, My Lord, that on previous occasions the second round panel did not always support the recommended candidates from the first

round and often came to a contravene recommendation.

MR DU TOIT: Right, and in paragraph... (intervenes)

COURT: Sorry.

MR DU TOIT: Sorry.

COURT: (Indistinct) at 6.4 you are saying this panel, you mean the first panel, this panel refers to the first one or the second? --- In 6.4, My Lord, it refers to the second panel; those are the panellist of the second.

The second panel does not have to recommend? --- Does not have to rubber stamp any decision or recommendation made from the first, by the first panel. It has, it is free to make the decision it wants to make and to interview whoever it wants to interview.

MR DU TOIT: At 6.5 the following is said:

> "The recommendation of the second stage of interviews are finalised by the responsibility Executive in terms of section 8.2.2.b of the Legal Aid SA Approval Framework. As per this approval framework, the relevant Regional Operations Executive, in the case of Durban, Pietermaritzburg, the positions of ROE for KwaZulu-Natal together with the LOE and the CEO approve the founding appointment. The approval framework is approved by the Board of Legal Aid SA from time to time. It was last approved on 27 February 2010. The relevant extract of the approval framework is hereby made available and attached for ease of reference."

Well, that is just setting out the procedure. Do you agree with that? --- Yes.

your candidature for the senior litigator in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as you allege at all."

Now, if you look at the right-hand page, 187, that is a, I think it has been described as a photo shot, but I am not quite sure that that is the right expression. --- Document properties.

Of the document properties, it comes from a computer as we can see. And it says there:

"Author: Brian N."

Oh, sorry:

"VDV, VDV."

Sorry:

"VDV."

Sorry, I am confusing it with the other one. It is:

"VDV."

Correct. And did you author this letter? --- No.

Okay. Then we have at page 209, we have a letter to the applicant by Judge Mlambo in this italic script. Did you author this letter? Did you have anything to do with it? --- No.

And then can we go to page 1012, and here I would like you to have your finger at 1012 and 505 of the (indistinct). Now, this is a report to the Minister by Judge Mlambo and on the basis of the Photostat which appears at 1015. Do you see that? --- (Inaudible).

Sorry, yes, on the basis of the Photostat which appears at 1015, do you see that? --- Yes.

Okay, this is the one I could not read and the other one, but this one does Brian N, I think? --- Yes.

All right. It is suggested that you drafted this report, is that correct? --- I confirm that I did the initial draft.

Now, we note that there was no signature at page 1014? --- (Indistinct).

Let us go to page 505 where another version of this document appears. --- Got it.

Are the two documents the same? --- My Lord, I can confirm that the documents are not the same (inaudible). There has been some additions and amendments in different paragraphs.

The document at 505, if you look at 507 in fact bears the signature which I think we can identify as that of Judge Mlambo? --- Correct.

Can we just turn to page 506 and you can perhaps point out something there. You see in the middle of the page there is a paragraph starting:

"A Brink subsequently referred a dispute."

Do you see that? --- Correct.

Does that appear in your draft? --- No.

COURT: You said it is A Brink subsequently referred?

MR DU TOIT: Ja.

COURT: So that is not in the draft, that will be above paragraph 3. Oh, I see.

MR DU TOIT: Do you know who authored that paragraph, who drafted

that paragraph? --- My Lord, when I did the draft I would have sent it to the CEO for her to discuss further with our Chairperson. So I cannot say for sure who actually (indistinct) it, but it was certainly not me. There are also other changes.

Are there? --- Yes, if you look at background under paragraph, under background, the second paragraph, second sentence. In my initial draft I had:

"Whilst the initial reason of this panel (indistinct) sitting was caused by delays..." (intervenes)

COURT: You said the second, under paragraph 1, the second paragraph? --- Second paragraph, second sentence.

Oh, second paragraph, second sentence, the reason for freezing? --- No, we are dealing with background. Second paragraph, second sentence starts with:

"Whilst."

Yes. Yes. ---

"Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting in time suitable for all members of the panel, other pressing financial..."

If you look at that part that I read, in the version that was signed by Judge:

"Whilst the initial reason for the panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel [and then this is in addition] of which the Chairperson of the Board of Directors is one."

under my watch have never sought to make any decisions regarding the senior litigated posts on any ground other than the budget constraints which you have rejected."

Now, you cannot speak for Mrs Vedalankar, but you can speak for:

"Legal Aid under my watch."

And as far as you are concerned, does this correctly reflect your view? --- Absolutely.

Now, look at page 869. Now, if you look at page 871, there is a little Photostat of a computer panel and it attributes this to Gudu, M. But in fact, who wrote this report? --- My Lord, I did. I was the author of this.

Yes.

COURT: You were the author? --- Yes.

Okay.

MR DU TOIT: And that in particular in the third paragraph on page 869, you say:

"A two-stage interview process was implemented in order to identify candidates for the appointment. Six senior litigators were called in our recruitment processes. The other three posts have remained vacant due to recruitment changes. We have since decided not to fill the main positions until we are reassured that our objectives determined for this position is being achieved by the current incumbents."

Now, it is the accusation against you is that you are here

And a date, you see that? --- And what recommendation, may I ask the applicant, do you think this is referring to?

Look at the heading. --- For the second round of interview?

Yes. --- But there was no dispute that there was going to be a second round to look... (intervenes)

That is not what we are talking about... (intervenes) --- If... (intervenes)

We are talking about whether you needed to sign for approval or disapproval of the recommended candidate for a second round interview. You agree that you were required according to this form and (indistinct)? --- My Lord, this was a regional initiative; they would have compiled that form. So if they actually but a box to say recommended or not recommended, it did not mean that it was a requirement of the organisation. But I confirm to the Court that it was my intention to call a second round interview when I could coordinate a date and time that all members would be available. And as I indicated to the Court yesterday, I immediately realised that that would only be possible sometimes in February.

COURT: If I understand you, once you shall have, you would have coordinated the dates, what would you do? You would then send the email you received to them... (intervenes) --- Yes.

With the attachment? --- Yes.

And then what? --- Because Your, My Lord, would recall I did indicate that we only, we do not only interview the recommended candidates. The panellists can look at all people who were interviewed

at the first round and they can say, "We would also like to see X, Y and Z".

So at what stage is the decision taken? Is it taken by correspondence or is it taken on the date of hearing on those allocated days that you people have agreed on? In other words, when you send the emails, is it so that the members would say, "Look, we want all four", in which case you then tick your box and say all four are recommended for the second level? Or you, I do not know... (intervenes) --- It is... (intervenes)

How would that happen, how... (intervenes) --- I would send it to the five panellists and say, "Please advise who you would like to see", and then you put, you create a small template and you see where there is consensus... (intervenes)

So... (intervenes) --- And eventually you propose, "Okay, we have seen X, Y and Z, all agreed", then they say yes... (intervenes)

That is by correspondence, that is what I am asking? --- Email, it is sent through... (intervenes)

By email, Ja. --- Yes.

For correspondence. --- Yes.

Okay, so by email that is done? --- Yes.

And then what is your role thereafter, do you tick any boxes... (intervenes) --- Once... (intervenes)

In light of... (intervenes) --- No.

That or you do not do anything? --- Once that is done, I will inform the HR Department to coordinate the interview, to get the

logistics of this.

Okay.

MR BRINK: It is your evidence then that your second level or second round interview panel is at large to interview a candidate found unsuitable, rejected by the selection panel of your senior legal professionals in the region? And not, the same follows, and it is also at large not to interview the recommended candidate found under the requirement code to be the most suitable for employment, for appointment? --- My Lord, I have indicated in the past that we, the panel does not confine itself to only the person that is recommended. The panel, as in the past, requested to see other candidates who were interviewed. The panel has also in the past as is stated in the evidence, we have also rejected recommended candidates of first (indistinct). That has already been stated in the evidence.

Stated in the evidence and I have it written down that previously the second panel often, often did not support the recommendation of a selection panel. Now, I know the case of Kalu, who else? --- [No audible reply].

Or is he the only one? --- [No audible reply].

Is that the truth of the matter? --- My Lord, immediately I know of Mr Kalu and if my memory serves me correctly I think there was one other person that was recommended as possible, as possibly appointable that we did not like. This would have happened in 2008 in the first round of interviews, in the first time (indistinct). I do not know have specific names or places.

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

[redacted]e matter between

[redacted]THONY, ROBIN BRINK — Applicant

[redacted]d

[redacted]EGAL AID SOUTH AFRICA — Respondent

RESPONDENT'S REPLY TO APPLICANT'S PRE-TRIAL ISSUES RAISED AT A PRE-TRIAL CONFERENCE HELD ON 26 OCTOBER 2011

ISSUES THE RESPONDENT UNDERTOOK TO REVERT ON IN TERMS OF THE PRE-TRIAL MINUTE DATED 26 OCTOBER 2011

1. AD CONFIRMATION OF THE DATA AND PERCENTAGE CALCULATIONS OF LASA'S STAFF COMPLEMENT

1.1. The Applicant requested that the Respondent confirm or deny the correctness of a summary of data extracted from the 2009/2010 and 2011 Annual Reports relating to **'TOTAL ESTABLISHMENT AND**

Funding Budget Proposal (page 67 item 7) annexed hereto and marked **LA2**.

Para 5 of the PTA: Transfer of Northern Cape Senior Litigator Post to Mthatha

2.4. The Respondent annexes hereto an extract of a resolution of the meeting of the Legal Services Technical Committee dated 24 March 2010, (as annexure **LA3)**, read with the minutes thereof dated 24 March 2010 (page 4 item 4.1.7.) which resolved to transfer the Senior Litigator Post: Northern Cape to Mthatha.

Para 6 of the PTA: the budget for Senior Litigator posts both filled and vacant

2.5. The Respondent annexes a document indicating the Respondent's Budget allocation for the Senior Litigator posts both filled and vacant marked **LA4**.

2.6. The Respondent avers that there was no re-allocation of any budget between cost centres.

Para 7 of the PTA: the Salary of a Senior Junior Professional Assistant

2.7. The Respondent does not have the position of a Senior Junior Professional Assistant in its establishment.

31. **Ad Paragraph 31.**

31.1. Agreed.

31.2. It was Mr Nair who gave out the said instruction. This was, in any event, congruent with the cost cutting measures that the Respondent had begun including but not limited to the review of all recruitment processes.

32. **Ad Paragraphs 32 and 33.**

32.1. Agreed.

33. **Ad Paragraph 34.**

33.1. Disagreed.

33.2. The Respondent explained its silence regarding the entire process around that time and the decision to abort the recruitment was not taken a few weeks after the interviews in November 2009 but in July 2010 after the Board meeting.

Ad Paragraphs 35 and 36.

34.1. Agreed save that the recruitment process was not aborted a couple of weeks after the interviews.

34.2. The two persons referred to herein were eliminated early in the selection process and were not recommended for the second round of interviews. Accordingly, they were not entitled to any information that pertains to the second round of interviews.

46.1. Disagreed.

Ad Paragraph 53.

47.1. Agreed.

Ad Paragraph 54.

48.1. Disagreed.

48.2. The CEO only sought clarity as to the delay in handling the Applicant's application.

Ad Paragraph 55.

49.1. Disagreed.

49.2. The Applicant will have to prove this allegation.

Paragraph 56.

50.1. Agreed.

Paragraph 57.

51.1. Agreed save to clarify that District and Regional practitioner posts are not necessarily "Junior posts."

Paragraphs 58 and 59.

52.1. Agreed save to say that it was inherent in Brian Nair's responsibilities to inform candidates that the process has been aborted.

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Employment Opportunity

Position: Senior Litigator

Salary: R502 725 per annum (Level 13)

Location: Various in SA

Description:
The Legal Aid Board is an autonomous statutory body with the primary objective of rendering or making legal aid available to poor persons. The National Footprint of the Legal Aid Board covers more than 58 Justice Centres, spread throughout the country.

The above position exists in the National Operations Department at the following Justice Centres:
* Johannesburg (SNR L01)
* Pretoria (SNR L02)
* Pietermaritzburg (SNR L03)
* Durban (SNR L04)
* Port Elizabeth (SNR L05)
* Bloemfontein (SNR L06)
* Cape Town (SNR L07)
* Kimberley (SNR L08)
* Mafikeng (SNR L09)

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

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

Requirements:
* Admitted Attorney/ Advocate
* B Proc or LLB degree, with right of appearance in the High Court
* An LLM will be an advantage
* Minimum of ten (10) years' post-admission litigation experience, inclusive of at least five (5) years' high court experience as well as litigation experience as an Attorney and/or Advocate.

To Apply:
* NB: In your application, please indicate the Justice Centre where you need your application to be considered.
* Preference will be given to affirmative action candidates who meet the minimum competency requirements.
* Should you not have heard from us within one month of the closing date, please consider your application unsuccessful.
* A detailed Curriculum Vitae reflecting practical application of the position outputs and the required competencies as advertised, quoting the

reference number, to:

Human Resources
Private Bag X76
Braamfontein
2170

Attention: Mr Richard Baloyi
Fax: 011 – 877 2222
Email: recruit@legal-aid.co.za

Reference No: 2007/NO/JC01

Closing Date: 9 November 2007

SENIOR LITIGATOR EMPLOYMENT STATISTICS

March 2012

Pers.No.	First name	Last name	Personnel Area	Personnel SUbarea	Position	PS group	Ly	Annual salary	July to March 2012	May to June 2011	Apr-11	Total
10502	Pieter Willem	Nel	LAB FS & NW Region	Bloemfontein JC	Senior Litigator	LP-10	17	966 396.00	R 724 797.00	R 158 585.50	R 74 291.00	R 957 773.50
10807	Herman Ludik	Alberts	LAB Gauteng Region	Pretoria	Senior Litigator	LP-10	11	883 800.00	R 662 850.00	R 145 124.50	R 67 942.25	R 875 916.75
10830	Momay	Calitz	LAB WC & NC Region	Cape Town	Senior Litigator	LP-10	7	832 704.00	R 624 528.00	R 138 733.00	R 64 013.50	R 825 274.50
12086	William Anthony	Karam	LAB Gauteng Region	Johannesburg	Senior Litigator	LP-10	14	924 180.00	R 693 135.00	R 151 753.00	R 71 045.50	R 915 933.50
12287	Nzamo Lamec	Sibi	LAB FS & NW Region	Mafikeng JC	Senior Litigator	LP-10	2	772 968.00	R 579 726.00	R 126 923.50	R 59 421.00	R 766 070.50
12304	Elizabeth	Crouse	LAB Eastern Cape Region	Port Elizabeth	Senior Litigator	LP-10	7	832 704.00	R 624 528.00	R 138 733.00	R 64 013.50	R 825 274.50
	Frozen			Durban								
	Frozen			Pietermaritzburg								
	Frozen			Kimberley								
												R 5 166 243.25

LEGAL AID BOARD

Justice for all

SUMMARY OF THE SCORING FOR SENIOR LITIGATOTR POSITIONS (LVL LP-10)

LEVEL OF COMPETENCY			
1	2	3	4
Poor	**Average**	**Above Average**	**Excellent**
0 %- 49 %	**50 % -64 %**	**65 % - 79 %**	**80 % - 100 %**
Falling short of required standard	Meeting the required standard	Meeting the required standard to an above average level	Exceeding the required standard

CANDIDATE	TOTAL WEIGHTED SCORE	COMPETENCE	COMMENTS
1.Wilson Rambau	54%	Meeting the required standard	Not recommended for the position
2.Heman Alberts	80%	Meeting the required standard	Recommended for the position(**Pretoria**)
3.Patrick Loots	60%	Meeting the required standard	Not recommended for the position
4.Ashok Kaloo	52%	Meeting the required standard to an above average level	Not recommended for the position
5.Lilla Crouse	75%	Meeting the required standard to an above average level	Recommended for the position(**Port Elizabeth**)
6.Mornay Calitz	74%	Meeting the required standard to an above average level	Recommended for the position(**Cape Town**)
7.William Karam	76%	Meeting the required standard to an above average level	Recommended for the position(**Johannesburg**)

Names of panel members who interviewed the candidates

NAME	DESIGNATION
Judge Dunstan Mlambo	Chairperson Legal Aid Board
Brian Nair	National Operations Executive
Patrick Hundermark	Legal Development Executive
Amanda Clark	Acting Human Resources Executive
Jerry Makokoane	Chief Operations Officer

Consensus of the panel to appoint the following candidates in the position as Senior Litigator at the Legal Aid Board

NAME	High Court UNIT Centre
Herman Alberts	Pretoria
Lila Crouse	Port Elizabeth
Mornay Calitz	Cape Town
William Karam	Johannesburg

Judge Dunstan Mlambo
Chairperson: Legal Aid Board

Amanda Clark
Act Human Resources Executive

Brian Nair
National Operations Executive

Patrick Hundermark
Legal Development Executive

Jerry Makokoane
Chief Operations Officer

Candidate	D Mlambo	J Makokoane	B Nair	P Hundermark	A Clark	Average
Wilson Rambau	55	54	55	52	55	**54**
Herman Alberts	85	76	85	74	80	**80**
Patrick Loots	60	64	60	53	65	**60**
Ashok Kaloo	55	50	55	43	55	**52**
Lilla Crouse	75	71	75	78	75	**75**
Mornay Calitz	75	72	75	72	75	**74**
William Karam	80	74	80	76	70	**76**

NAME	RECOMMENDATION ACCEPTED	NOT ACCEPTED	DATE
VIDHU VEDALANKAR CHIEF EXECUTIVE OFFICER	V. Vedalankar		5.12.2008

LEGAL AID SOUTH AFRICA
BUDGET 2010/11

Office of the CFO
February 2010

LEGAL AID SOUTH AFRICA
SALARIES BUDGET 2010/2011

Pers. No	Employee Group	New levels 10/11	Position	Total CTC
Filled	Permanent Employees	LP-10-5	Senior Litigator	704 008.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00

LEGAL AID SOUTH AFRICA

RECRUITMENT STATS - NATIONAL SUMMARY - 30 June 2010 (Excluding frozen positions)

Category	Position	EC				FSNW				GP				KZN				LPMP				WCNC				Grand Total			
		Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%
Service Delivery	CA	88	3	91	97%	83	4	87	95%	132	5	137	96%	116	3	119	97%	67	1	68	99%	113	5	118	96%	599	21	620	97%
	CA - Civil	3	2	5	60%	4	1	5	80%	5		5	100%	5		5	100%		4	4	0%	2	4	6	33%	19	11	30	63%
	HCU Manager	4		4	100%	1	1	2	50%		2	2	0%	2		2	100%	1		1	100%	2		2	100%	10	3	13	77%
	JCE	8	1	9	89%	12	1	13	92%	7	1	8	88%	7	1	8	88%	9		9	100%	9	1	10	90%	52	5	57	91%
	JCE 2	1		1	100%				#DIV/0!	2		2	100%	2		2	100%				#DIV/0!	2		2	100%	7	0	7	100%
	PA - Children Civil	4	1	5	80%	3		3	100%	5		5	100%	4		4	100%	1	1	2	50%	2		2	100%	19	2	21	90%
	PA - Children Criminal	3	1	4	75%	2		2	100%	2		2	100%	2		2	100%		1	1	0%	5		5	100%	14	2	16	88%
	PA - Civil	13		13	100%	13	2	15	87%	14		14	100%	11		11	100%	9	2	11	82%	15		15	100%	75	4	79	95%
	PA - Commercial Crime	1		1	100%	1		1	100%	5		5	100%	1		1	100%				#DIV/0!	1		1	100%	9	0	9	100%
	PA - DC		2	2	0%	1		1	100%	1	2	3	33%	1	1	2	50%	9	1	10	90%				#DIV/0!	12	6	18	67%
	PA - Estates Children				#DIV/0!	1		1	100%				#DIV/0!				#DIV/0!				#DIV/0!				#DIV/0!	1	0	1	100%
	PA - HCU	17	1	18	94%	11		11	100%	19	1	20	95%	9	2	11	82%	8		8	100%	15	1	16	94%	79	5	84	94%
	PA - HCU Civil	2	1	3	67%	1		1	100%	1		1	100%	2		2	100%				#DIV/0!	1		1	100%	7	1	8	88%
	PA - JC	91	3	94	97%	83	9	92	90%	105	8	113	93%	95	3	98	97%	79	3	82	96%	120	6	126	95%	573	32	605	95%
	PA - Labour	1		1	100%				#DIV/0!	1		1	100%	1		1	100%				#DIV/0!	1		1	100%	4	0	4	100%
	Paralegal	24		24	100%	23		23	100%	25	2	27	93%	22	1	23	96%	26		26	100%	28	1	29	97%	148	4	152	97%
	Paralegal - ATP	3		3	100%	1		1	100%	3		3	100%	2		2	100%	1		1	100%	2		2	100%	12	0	12	100%
	Paralegal - HCU	2	1	3	67%	2		2	100%				#DIV/0!	1		1	100%	1		1	100%	1		1	100%	7	1	8	88%
	Principal Attorney	4		4	100%	2		2	100%	6		6	100%	3		3	100%	1		1	100%	6	1	7	86%	22	1	23	96%
	Principal Attorney - Civil	1		1	100%	1	1	2	50%	1	1	2	50%	2		2	100%		2	2	0%		2	2	0%	5	6	11	45%
	Senior Litigator	1	1	2	50%	2		2	100%	2		2	100%		2	2	0%				#DIV/0!	1		1	100%	6	3	9	67%
	SPA	14	1	15	93%	19	1	20	95%	20	1	21	95%	18		18	100%	15		15	100%	19		19	100%	105	3	108	97%
	SPA - HCU				#DIV/0!	1		1	100%	2		2	100%				#DIV/0!				#DIV/0!	1		1	100%	4	0	4	100%
	SPA - SO	8	1	9	89%	6		6	100%	4		4	100%	11		11	100%	14	3	17	82%	14	1	15	93%	57	5	62	92%
	Service Delivery Total	293	19	312	94%	273	20	293	93%	362	23	385	94%	317	13	330	96%	241	18	259	93%	360	22	382	94%	1846	115	1961	94%
Support	Admin Manager	10		10	100%	13		13	100%	10		10	100%	10		10	100%	9		9	100%	11	1	12	92%	63	1	64	98%
	Admin Officer	28	1	29	97%	25		25	100%	28	1	29	97%	27	1	28	96%	15		15	100%	32		32	100%	155	3	158	98%
	Admin Officer - Civil	2	1	3	67%	14		14	100%	4		4	100%				#DIV/0!	5		5	100%	7	1	8	88%	32	2	34	94%
	Executive PA	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	6	0	6	100%
	HRM	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	6	0	6	100%
	Office Assistant	2	1	3	67%	8		8	100%	8	1	9	89%	12		12	100%	11		11	100%	11		11	100%	52	2	54	96%
	Reception/Typist	11		11	100%	7		7	100%	8		8	100%	10		10	100%	9	1	10	90%	9		9	100%	54	1	55	98%
	Regional Accountant/Admin	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	6	0	6	100%
	Regional Communications Manager	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	6	0	6	100%
	Regional Legal Manager	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	6	0	6	100%
	Regional SPA	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	6	0	6	100%
	SPE	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	6	0	6	100%
	Secretary	7		7	100%	1		1	100%	11		11	100%	3	1	4	75%				#DIV/0!	4		4	100%	26	1	27	96%
	Support Total	67	3	70	96%	75	0	75	100%	76	2	78	97%	69	2	71	97%	56	1	57	98%	81	2	83	98%	424	10	434	98%
	Grand Total	360	22	382	94%	348	20	368	95%	438	25	463	95%	386	15	401	96%	297	19	316	94%	441	24	465	95%	2270	125	2395	95%

Legal Aid South Africa

Minutes of the Legal Services Technical Committee Held on 24th March 2010, 6th Floor, Legal Aid House

MEMBERS PRESENT:

Chairperson:
Brian Nair (NOE)

Members:
Jerry Makokoane (COO), Cordelia Robertson (CR), Vincent Mayisela (VNM), Thembile Mtati (TM), Martha Mbhele (Martha), Wilna Lambley (WL), Patrick Hundermark (LDE)

Board Members:
No Board member required

Invited Attendees:
Bee-Mari Schoeman [Legal Service Delivery] (BS), Rupert Roos [Legal Service Delivery – Data Unit] (RR)

SECRETARIAT:

Nadeen Long

1.	Welcome and Apologies
1.1.	**Welcome:** The meeting was declared open and all present were welcomed. It was noted that there will be no LSTC meeting in June.
1.2.	**Apologies:** Apologies were received from Vela Mdaka (VM), Michael Miller (MM), Upkaar Mungar (UM) and Dick Khubana (DK) who are attending conferences on behalf of Legal Aid South Africa. Jerry Makokoane (COO) was excused to attend to urgent matters.

2.	Minutes	Responsible Person	Due Date
2.1.	**Minutes of the previous meeting dated 25 February 2010:** The minutes were confirmed and accepted.		
2.2.	**Matters Arising:** Please refer to the LSTC Decision Sheet. All members are requested to update progress, before the meeting.		

SECTION A – Co-Operation Agreements

3.	Co-Operation Agreements:		
3.1.1	**Administration of Estates: Children - Pilot Project Statistics:** The stats were noted. RR was requested to add a YTD column.	RR	Soonest
3.1.2	**Update on Administration of Estates: Children – Pilot Project:** It was noted that the staffing of the Estate unit was discussed at NOE/ROE Session. It was noted that with the introduction of civil units, it would be possible that additional CAs and civil PAs also participate in estate unit matters. Hence, we must monitor demand at these units in a more holistic level.		

	The question of funding in respect of the FIFA World Cup Courts was raised. It was noted that they wanted us to spend the money and claim it back. They do not want to pay up front. WL was requested to facilitate a meeting and invite Rebecca (copy Jerry and Brian) to discuss the issue of funding. The plan for the World Cup was discussed, including the location of all designated courts. ROEs were requested to ensure that they monitored this issue carefully for their regions. It was noted that if a matter remains pending beyond the period the period established for these world cup courts, we may then request these practitioners to take on these matters on a Judicare basis. We must only identify accredited attorneys and they must be experienced practitioners. BS to send out this email survey weekly. World Cup email group to be created.	WL ROEs BS	Soonest Immediate Soonest
4.1.5.	**Judicare – Verify Instruction:** The NOE explained the difficulties that were encountered when JCs did not complete the verify step as part of the Judicare instruction process. ROEs were therefore requested to ensure that they discuss this item at their JCE forums to ensure that this step is timeously done. It was agree that Judicare instructions must be verified within 5 days. (Signed LA2 form must be sent back within 5 days.) These LA2's can be faxed or scanned immediately and the original can be sent by post. DK was requested to include in the next Judicare newsletter a reminder to Judicare practitioners to return the signed LA2 forms within 5 working days of receiving same and that non-compliance with this requirement may result in the instruction to them being terminated and reallocated. The LDE was also requested to include this in the Legal Aid Guide. ROEs were reminded that regions are not to do any transfers for Judicare (in or out) as this budget will be managed from National Operations Department until the end of this financial year. Further, noting the constraints on the Judicare budget, JCs requiring the use of Judicare must seek authorisation from the NOE's office ROEs were requested to do an analysis of Judicare in their regions. The current usage of Judicare is very skewed, it being noted that one JC alone accounts for 15% of the Judicare budget. This issue will need to be more carefully managed going forward.	ROEs DK LDE ROEs	Next JCE forum Soonest Soonest Soonest
4.1.6.	**Allocation of Senior Litigator – LP/MP:** The request for a Senior Litigator in the LP/MP region was withdrawn by the ROE for L/Mp, it being noted that the high court is still to be established in the province.		
4.1.7.	**Allocation of Senior Litigator – EC:** The request for a Senior Litigator in the EC region was approved. BS was requested to update recruitment reports as well as to facilitate the transfer of the budget. The ROE was requested to immediately commence recruitment for this position to be based at the Mthatha JC.	BS TM	Immediate Immediate

10.1.2.	**Legal Training** Programme **2009/2010:** The report was noted.		
10.1.3.	**Administration** of Estates – **training** material by **Justice College:** The report was noted.		
10.1.4.	**Child Justice Training Manual:** The report was noted. Because of urgency plan a Saturday training session.		
10.1.5.	**Child Justice Manual Programme** for Training **at JCs:** The report was noted. ROEs were requested to ensure that their JCEs meet with their legal staff and decide collectively how they will roll out this training without disrupting their courts. Regions were requested to provide details of each JCs training plan for this Child Justice training programme to the training co-ordinator. It was noted that LDD will provide the training materials in order for JCs to conduct these training sessions at their JC, including power point presentation/manuals/trained trainer. A certificate will also be given to all practitioners at JCs who have done this training. ROEs were requested to discuss the training programme for each JC with the respective JCEs. There were requested to ensure that the programme covers at least 12 hour training session. It was suggested that JCs should also consider utilising at least one Saturday for this training. All JCs were requested to ensure that by the end of April each practitioner would have been trained on the Child Justice Act. It was noted that the course to train JC trainers will be held on 6/7 April and 8/9 April i.e. two sessions.	JCEs ROEs	Soonest Soonest

SECTION D – FOR COMMENT AND NOTING

11.	**Legal services delivery – Increasing access**		
11.1.	**Criminal Courts** Coverage		
11.1.1.	**Tracking of Prisoner Letters** Summary: The report was noted.		
11.1.2.	**High Court Review** Stats: The report was noted.		
11.2.	**Children's Matters**		
11.2.1.	**Children's Matters** – Criminal: **Al stats on** legal aid **in criminal matters:** The report was noted.		
11.2.2.	**Children's Matters** – Civil: **Al stats on** legal aid **in civil matters granted:** The report was noted. RR was requested to look into why estates are not included in children's civil stats.	RR	Next meeting
11.3.	**Appropriate Staffing Levels Maintained**		
11.3.1.	**% Recruitment** Status 28 February 2010: Report not yet available.		
11.3.2.	**Recruitment Stats as at** end of February 2010: Report not yet available		
11.3.3.	**Conversion of PA to** SPA – SO FY09/10: Report not yet available		
11.4.	**Justice Centre Productivity**		
11.4.1	**JC Pending Matter** Stats – Internal February 2010: The report was noted. ROEs were requested to monitor actively, and ensure numbers come down.	ROEs	Soonest
11.5	**Delivery Infrastructure**		

Vacancies at Legal Aid South Africa

Apply for position: SENIOR LITIGATOR - MTHATHA JUSTICE CENTRE

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

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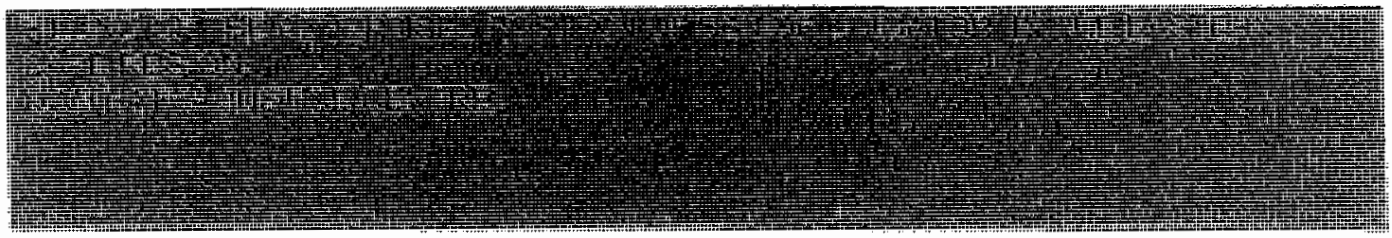
TO: **HUMAN RESOURCES EXECUTIVE**

FROM: **Thenjiwe Magazi**

DATE: **24 May 2010**



1. PURPOSE

The purpose of this recruitment process is to fill the vacancy of the Senior Litigator Position in Mthatha Justice Centre in the Eastern Cape region, taking into consideration the Employment Equity status of the region.

2. BACKGROUND

2.1 The above-mentioned position was advertised internally and externally and 11 applicants were received and 5 applicants were short listed and were considered for the interviews as they met the minimum requirements of the position. One (1) candidate did not show up for the session.

2.2 The incumbent must be able to show the following:

- Admitted as an Attorney/Advocate
- B Proc or LLB degree with right of Appearance in the High Court
- At Least 10 years post qualification, litigation experience (both criminal and civil) of which 5 years must be high court experience.

The following dimensions were considered when assessing the candidates, experience in trials, court procedure, ability to lead and delegate, ability to take decisions, knowledge and application of the law, culture fit and demonstrated by practical experience, communication ability and administrative ability.

Five (5) candidates were interviewed by the panel which consisted of the following members from Eastern Cape Region.

Thembile Mtati	-	Regional Operations Executive
Thenjiwe Magazi	-	HRM
Lynette Franklin	-	Justice Centre Executive

3. **THE INTERVIEWS PROCEEDED AS FOLLOWS:**

The selection panel conducted the interviews by using the standard interview questionnaires. The score was out of 55.

The results are shown in the table below

NAME OF CANDIDATE	TVM	LF	TLM	Percentage
Nzame Skibi	41	32.5	40	68

4. **THE RESPONSES ARE AS FOLLOWS:**

4.1 Nzame Skibi:

Nzame posses an LLB and B Juris Degree, he was admitted as an advocate in 1999. He has been in the legal field for 11 years and is currently employed as a Senior Litigator in Mafikeng JC. He is familiar with the requirements of the job and managed to articulately apply his mind when responding to questions posed to him as he occasionally substantiated his responses with relevant examples. He has appeared in the SCA on a number of occasions. He is recommended for this position.

[redacted]

[redacted]

4.4 [redacted]

5 **RECOMMENDATION**

Nzame Skibi came across as a strongest candidate as compared to others in terms of the knowledge, experience and the understanding of what the job entails. He has the advantage as he is currently occupying the same position. He has the most court experience as compared to other candidates and has appeared at the SCA on a numerous occasions. His appointment will also personally benefit him as he will be closer to his family in Bizana. He is recommended for this position.

Thembile Mtati – Regional Operations Executive

Thenjiwe Magazi- Regional HRM

Lynette Franklin – Justice Centre Executive

NAME	RECOMMENDATION ACCEPTED	NOT ACCEPTED	DATE
NOE : Brian Nair			
HRE: Amanda Clark			

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18 October 2010.

Adv Anthony Brink
25 Baker Road
Prestbury
Pietermaritzburg 3200

by Fax: 0866720776

Dear Advocate Brink,

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

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

1

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

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

2

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

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

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

(a) Any information held by the State; and

(b) Any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state".

3

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

a) Mandatory protection of the privacy of a third party who is a natural person.

b) Mandatory protection of certain confidential information of a third party.

c) Mandatory protection of records privileged from production in legal proceedings.

d) Mandatory protection of research information of a third party.

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

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

(a) the disclosure of the record would reveal evidence of—

a substantial contravention of, or failure to comply with, the law; or

an imminent and serious public safety or environmental risk; and

(b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question."

5

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

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

6

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

6.1 A defined number of Senior Litigator positions were created linking to particular High Courts.

6.2 Noting the seniority of these positions, it was decided to implement a two stage interview process in the appointment to these posts.

6.3 The first stage takes place at Regional Office level where an Interview Panel will make a recommendation for candidates to proceed to the second stage of interviews.

6.4 The second stage comprises an interview process by a national office panel, including the Chairperson of the Board, National Operations Executive (NOE), Legal Development Executive, Human Resource Executive and the Chief Operations Officer. This panel does not have to recommend for appointment any of the recommended candidates from the first phase interviews conducted by the region.

6.5 The recommendation of the second stage of interviews are finalised by the responsible executive in terms of section 8.2.2 (b) of the Legal Aid SA Approval Framework. As per this Approval Framework, the relevant Regional Operations Executive (ROE), in the case of the Durban and Pietermaritzburg positions the ROE for KwaZulu-Natal together with the NOE and CEO approve the final appointment. The Approval Framework is approved by the Board of Legal Aid SA from time to time, and was last approved on 27 February 2010. The relevant extract of the approval framework is hereby made available and attached for ease of reference.

6.6 The NOE, as the executive responsible for operations may also motivate a change in the organisational structure, including the freezing of positions, for discussion and finalisation with the CEO (refer S.8.1.2 (b) of the Legal Aid SA Approval Framework).

6.7 Due to the effects of the recession, anticipated funding for the 2010/11 financial year did not materialise. This had the effect of cutting our baseline funding by a significant amount. It was accepted that this required a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall. Since early this year, management has had to identify positions which could be frozen. In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.

7

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

7.1 You were interviewed together with other candidates in the first round of interviews.

7.2 You were recommended together with other candidates, for the second round of interviews. As explained above that however was not a guarantee that you would get the position. We have instances in the past when our nationally constituted panel has not recommended for appointment any of the recommended candidates from the first phase interviews conducted by the region.

7.3 The NOE and CEO took the decision that all senior litigator posts that were vacant would be frozen. Therefore, the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.

7.4 You were sent a final letter of regret from our Regional Operations Executive dated 23 August 2010 indicating that Legal Aid SA will not be proceeding with the filling of the Senior Litigator post. A copy of the aforementioned letter is also attached for your reference.

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

8

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

Yours faithfully,

V. N. Vedalankar

Ms Vidhu Vedalankar

CEO & Information Officer

Legal Aid South Africa

Your voice. For justice.

LEGAL AID SOUTH AFRICA : APPROVAL FRAMEWORK

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

Key to Levels

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

Key to Other

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

Key

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

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

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

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes
8	**HR MATTERS**	5								
8.1	**Personnel Structure**									
8.1.1	Approval and periodic revision of grading policy		A	C	C	C		E(HRE)	C/RC	
8.1.2	(a) Establishment of new positions, regrading existing positions and abolition of posts at executive senior managerial & within budget (levels 14-16)		A		B	C		E C (HRE)	C/RC	
	(b) Levels (11-13) & OSD - CM -1 ; OSD - LP - 9 & 10 and MR - 5				A	B		E C (HRE)		
8.1.3	Establishment of other new positions, regrading existing positions and abolition of posts within existing structure & within budget (levels 1-10) and OSD - SU - 1 & 2 and OSD - LP 1 - 8				B	A		E C (HRE)		
8.2	**Appointments**	17 & 21								
8.2.1	**(a) CEO (Level 16)**		A/E						C/RC	
	(b) COO or NOE (Level 15.3)		A		B/E				C/RC	
8.2.2	(a) Executive (other than the CEO, COO & NOE),		C B/Exco		A/E	B/E			D/RC	
	(b) Senior Management and Senior Professional staff (levels 11-13, OSD - CM -1 and OSD - LP - 9&10, OSD - MR - 5)				B	B		E A	D/RC HRE (17)	
	(c) OSD - SU - 1 & 2 and OSD - LP-8					B		A/E (ROE)	HRE (17)	
	(d) Other permanent staff (below level 11 and OSD - LP - 1 to 7)							A Incl JCE		

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By Email

28 January 2011

Adv A Brink

25 Baker Road

Prestbury

Pietermaritzburg, 3201

Email: arbrink@iafrica.com

Dear Adv. Anthony Brink,

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

1. I acknowledge your letter of 15 December 2010 in which you request access to information in Legal Aid SA's possession in terms of the Promotion of Access to Information Act, Act 2 of 2000 ("PAIA"). I have also considered your recent letters dated 30 November 2010 sent to the Chairperson of the Board of Legal Aid SA, Judge President Dunstan Mlambo ("Mlambo JP") and to the Board of Directors ("Board") dated 24 January 2011.

2. Legal Aid SA promotes and complies with the constitutional precepts of accountability; openness; transparency and respect for human and related rights including your right to access information in its possession. This recognition should set the tone for the answer that follows herein below.

3. In your letter to Mlambo JP, you made serious and malicious accusations which can in effect be separated into two groups. Firstly, you accuse Mr Brian Nair ("Nair"), the Legal Aid SA's National Operations Executive ("NOE"), and me of unlawfully misrepresenting information (mainly financial management issues) to Parliament's Portfolio Committee on Justice and Constitutional Development and of concocting unlawful excuses and reasons, all with malicious intent to freezing a post of Senior Litigator, Pietermaritzburg ("PMB") for which you were singly selected and recommended for appointment subject to your final interview with Mlambo JP.

4. Secondly, you accuse Mr Nair and I or even the Legal Aid SA of singling you out for differential treatment which is, according to you, unlawful and unconstitutional, because of your race and of your conscience and belief. As a result of the aforegoing conclusions, you grounded your application for access to information on section 46 of PAIA in seeking access to information from the Legal Aid SA. It is common cause that section 46 provides that:

> *"Despite other provisions of this Chapter, the information officer of a public body must grant a request for access to record of the body contemplated in section 34 (1)... if –*
>
> > *The disclosure of the record would reveal evidence of –*
> > *a substantial contravention of, failure to comply with, the law; or*
> > *...*
> > *the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question."*

5. At the outset, I wish to record my strongest rejection of your accusations which you levelled against me as the Chief Executive Officer of Legal Aid SA; members of the Executives (both individually and collectively) including but not limited to Mr Nair; Ms Amanda Clark ("Ms Clark") and the Board members including its chairperson, Mlambo JP; and its secretary Ms B Schoeman. Your views are unfounded; wrong and outright defamatory. My and my organisations' rights are strictly reserved to deal therewith at a later stage and/or an appropriate forum.

6. As I will show herein below, the premise you have chosen in seeking access to information you seek herein is baseless. This wrong assumption, which I will disprove herein below, led you to reject my answers to your request for access to our records. You continued with these malicious accusations to the Parliamentary Portfolio Committee on Justice and Constitutional Development; to the Ministry of Justice and Constitutional Development; to the Board; and to other institutions of your choice.

7. As I will demonstrate to you herein below, your assumptions in taking this route are far from the truth and are misinformed. I must however advise you, that the explanation furnished by me to you on 18 October 2010 remains valid and will be added to and clarified where possible as indicated herein below.

8. Despite the above accusations and assumptions, which I completely reject, I provide you with further information and reasons that led to the freezing of the Senior Litigator posts in Durban, Pietermaritzburg and Mthatha, in addition to the reasons furnished to you on 18 October 2010.

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

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

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

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

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

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

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

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

11. As to your requests 1 and 2: I wish to refer you to the Legal Aid SA's Policy Document read with the Approval Framework.

12. As regard your request number 3 and 4: Mr Nair relied on the Approval Framework especially at 8.2.2(c) where, you will note, he has to approve the appointment of senior staff. However, he was not the person in charge of or managing the process of recruiting a Senior Litigator. This process is managed by the relevant Regional Human Resources Manager if it is a regional post; and a HRE if it is a senior national appointment. Mr Nair is the line executive/manager responsible for the appointment of Senior Litigators.

13. Seeing that the posts of Senior Litigator's post was a senior post, second round interviews were to proceed to the national level with national executives and was to be coordinated and managed by the HRE. The relevant regional HR officer was responsible, at all times, together with the KZN ROE Mr Mdaka who managed and compiled the recommendation of the panel after the first round of interviews as attached in the above table.

14. I reject your allegations in your request number 5 and 6: I dispute your argumentative conclusion premised, of course on misguided facts and

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

15. As to request 7: I refer you to the Approval Framework annexed hereto.

16. As to requests 8 and 9 : I refuse to grant you access to this information on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA's Policy on Recruitment Checks.

17. As to request 10: No time limit was set to finalise the recruitment process.

18. As to requests 3 and 4 (both in Part A and B of the request document): there are no such communications that I am aware of. I am willing to provide you with an email from Ms Clark dated 30 April 2010 which you already have in your possession and which you have referred to in your letter to Mlambo JP on or about 30 November 2010. This was blind copied to the ROE of KZN Mr Mdaka and Brijal.

19. For your requests 11; 12; 13 (PART A); 13 (PART B); 14 (PART A); 14 (PART B); 15 (PART B): please refer to the correspondence on costs-cutting measures, read with the Legal Aid SA's Approval Framework.

20. As for your request 15: The disparity on the advertised salary between Mthatha and Durban/Pietermaritzburg Senior Litigator position, is as a result of cost of living expense which was effected on 23 October 2009. You would have noted that the difference between the two advertisements is a period of over nine months.

21. As for your request 16: I am not aware of any of the Executives discussing you and/or your candidacy for the above-mentioned post save the edited and blacked out recommendation for the next round of interviews. This is attached hereto as part of the bundle in the table above.

22. As to the regional panel members' individual assessment notes; scores; deliberations; submissions and assessment reports on you, I, having considered your request, refuse to grant you access thereto as these documents and information relating thereto were compiled from the Legal Aid SA's panel's deliberative process of decision-making in the assessment and interview of candidates, including you, for vacant posts in the Legal Aid SA. I am entitled to refuse to grant you this information in terms of section 44(1) and (2) of PAIA.

23. I have decided, notwithstanding the above position, and after I have exercised my discretion, to grant you access to an edited/blacked out version of the final recommendation of the panel to show you what its decision was.

AS TO PART B "OTHER RECORDS"

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

25. As to requests 3; and 4: Please refer to above.

26. As for requests 5; 6; 7; 8; 9; and 10: I am able to inform you that there is no recorded explanation for what you refer to as 'the delay'. I reject that there were any delays in dealing with any post. As far as I can tell, there were no time frames within which these recruitment drives were to be conducted and completed. I however wish to state that the Legal Aid SA was, at the same time as it conducted the recruitment drives referred to herein above and as you would have noted from the above documents, in a parallel process of securing funding. It had in conducting these recruitment processes parallel with fund raising drive, acted under the impression that the DoJ &CD would honour its promise to extend OSD funding to it. Accordingly and naturally, the drive to secure funding took priority as you would have noted from the correspondence above that all those Executives that were engaged in the recruitment of the Senior Litigator posts were also engaged in costs-cutting discussions/processes including identifying the areas that could be sacrificed to keep Legal Aid SA in budget. Ms Clark's mail to you was to be and must be understood in this light.

27. Because Ms Clark would not have been involved in the Senior Litigator's recruitment process as the second round of interviews was not proceeded with (see her email of 14; 22 and 30 April 2010 which you already have in your possession), Baboo Brijal would have been provided with the same updates as included herein above regarding the costs-cutting mechanisms. Obviously by November 2010, after the Memorandum from the COO, it was evident that there would be no funding coming from the DoJ. In fact a shortfall was expected up to 2012. Brijal was to update you should anything change regarding the continuation or otherwise of the recruitment drive not anything more.

28. As for requests 11; and 12: Ms Clark, as a HRE, was involved with the cost-cutting processes and was not at liberty to inform you of the reasons why the posts were not being finalised. All she did and said to you is informed by the costs-cutting measures that appear in the above documents. She was privy thereto and she too, just like all of us, had to wait and see if the Department of Justice and Constitutional Development would allocate us budget to proceed with finalising the recruitment processes. It is on this basis that you should understand Ms Clark's communications to you regarding this process.

29. As to requests 13, 14 and 15: The decision to create or abolish a post is derived from the Approval Framework which is annexed herewith. All communication relating thereto is also attached. If for any reason, the e-mail or any form of communication is not attached, it would have been verbal, the authority of which derives from the aforementioned Approval Framework.

30. As to your requests 16; 19; 20; 21; 22; 23; 24; 26; and 27: I have exercised my discretion against granting you access to this information in terms of sections 43(1) as it relates to confidential correspondence with third parties.

31. I further refuse to grant you access on the same information and documents on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA's Policy on Recruitment Checks). I also refuse to provide access to this record as it relates to research or information gathering by third parties on behalf of Legal Aid SA as contemplated in section 43(1) and (2). It seems apparent to me that you already have document(s) that you seek in this regard.

32. As for your requests 17 and 18: There is no such discussion other than the documents provided to you.

33. As for your request 25: As this information would relate to the internal deliberations; opinions and views intended for Legal Aid SA to take certain decisions as contemplated in section 44(1) and (2), I have exercised my discretion against granting you access thereto. I therefore refuse to grant you access to this information or document.

34. As for your requests 33; and 34: Your attention is referred to the costs-cutting measures correspondence in which Nair was instrumental in identifying posts that should be cut; frozen etc. This was part of the Executive's mandate around that time. See especially the email and memo from COO to all Executives; ROEs; JCEs and 'All Staff' herein above wherein Cabinet also propagated the same mechanisms as Legal Aid SA.

35. As for request 35: To the best of knowledge there are no other electronic records relating to you.

IN CONCLUSION

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

37. In light of the above information given to you, it must further be apparent that your allegations of discrimination against you as an individual are baseless and misguided. Save for the documents and information delivered to you, I refuse to grant you access to the documents I have referred to.

38. Mlambo JP had an occasion to peruse and consider your long letter of 30 November 2010 wherein you seem relentless in your complaint and accusations against me; Nair and the Legal Aid SA and has essentially, after reviewing our processes regarding the cost-cutting measures including but not limited to the Senior Litigator posts, found no evidence to substantiate your claims. Of course you do not believe him and you ridicule his findings in your subsequent correspondence and your threatened court actions. I have, on my part, also tried, notwithstanding this answer from Mlambo JP, to answer your requests and avail certain documents to you, the contents of which, I wish to repeat, are private and confidential.

39. As indicated hereinabove, I have also had an occasion of reading your recent letter dated 24 January 2011 to Mlambo JP. I, and the Legal Aid SA under my watch, have never sought to make any decisions regarding the Senior Litigator posts on any ground other than the budget constraints which you have rejected.

40. You accuse us and persist with your baseless accusations of financial improprieties and misrepresentations to the Portfolio Committees etc. I challenge you to present your investigative results of Legal Aid SA's financial mismanagement; wasteful and fruitless expenditure to the Auditor General.

41. In conclusion, I note your threats of court actions cross examining me; officials of Legal Aid SA; now the Board members; and their secretary. Your threats of *mandamus* against the Legal Aid SA; of using independent judges; of probing our executives' affidavits; of your draft notice of motion and an accompanying founding affidavit, are unnecessary. Please refrain from your disparaging attacks on people's dignity on baseless assumptions.

42. Be advised that the Legal Aid SA will defend itself against any of the threats that you have made against its officials and Board members.

43. The Legal Aid SA's Board of Directors; its Executives and all of its staff country-wide are committed to complying with the laws and statutes of the country most importantly the Constitution of the country and its values of accountability and transparency. It is in that spirit, and despite your insulting and condescending tone of language to us, that I have responded fully to your requests for access to information regarding your non-appointment to the position of Senior Litigator, PMB.

44. We have exhausted our explanations to you and trust that this final letter to you shall put this matter to rest. Please be advised that no further correspondence on this matter will be responded to. Your cheque will be returned to you with the original of this letter.

Yours faithfully,

V. V. Vedalankar

Vidhu Vedalankar

CEO: Legal Aid South Africa

V 1

Legal Aid South Africa

Your voice. For justice.

LEGAL AID SOUTH AFRICA : APPROVAL FRAMEWORK

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

Key to Levels

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

Key to Other

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

Key

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

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

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes 17-Feb-10
1	STRATEGY AND PLANNING									
1.1	Strategic Plan		A	C	E				C/ All Committees	
1.2	Business Plan		C	A	B	E			C/All Committees	

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	
7.	AUDITORS									
7.1	Appointment and dismissal at LAB of agent of AG	4	D	D	D				D/AC	
7.2	Reports (non-routine audits)		D		E				D/AC	
7.3	Non-auditing consultancy fees	18	D		B		A	E	A/BAC	
7.4	Auditing fees		A	C	B	C	C		D/AC	
7.5	Interim and Final Audit Plans		A	C	B	C	C		C/AC	
8	HR MATTERS	5								
8.1	Personnel Structure									
8.1.1	Approval and periodic revision of grading policy		A	C	C	C		E(HRE)	C/RC	
8.1.2	(a) Establishment of new positions, regrading existing positions and abolition of posts at executive senior managerial & within budget (levels 14-16)		A		B	C		E C (HRE)	C/RC	
	(b) Levels (11-13) & OSD - CM - 1 ; OSD - LP - 9 & 10 and MR - 5				A	B		E C (HRE)		
8.1.3	Establishment of other new positions, regrading existing positions and abolition of posts within existing structure & within budget (levels 1-10) and OSD - SU - 1 & 2 and OSD - LP 1 - 8				B	A		E C (HRE)		
8.2	Appointments	17 & 21								
8.2.1	(a) CEO (Level 16)		A/E						C/RC	
	(b) COO or NOE (Level 15.5)		A		B/E				C/RC	
8.2.2	(a) Executive (other than the CEO, COO & NOE),		C B/Exco		A/E	B/E			D/RC	X
	(b) Senior Management and Senior Professional staff (levels 11-13, OSD - CM -1 and OSD - LP - 9&10, OSD - MR - 5)				B	B		E A	D/RC HRE (17)	
	(c) OSD - SU - 1 & 2 and OSD - LP-8					B		A/E (ROE)	HRE (17)	
	(d) Other permanent staff (below level 11 and OSD - LP - 1 to 7)							A incl JCE		

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	[illegible]

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

V2.

1. RECRUITMENT

1.1 Purpose and Objectives

1.1.1 Recruitment is a process of attracting and appointing the best possible candidates for employment into suitable positions within the Legal Aid Board with the purpose of enhancing high performance in the business. As a principle, the services rendered by the Legal Aid Board, especially taking into account the provision of access to justice for the poor and indigent should be taken into consideration.

1.1.2 This policy and procedure aims at ensuring that appropriate recruitment procedures are followed, in line with all relevant statutory legislation and business practices, so that the Legal Aid Board's operational needs and requirements are met adequately. The recruitment process must be fair, objective, transparent, and non-discriminatory.

1.1.3 This policy and procedure provides the Legal Aid Board with clear guidelines to be followed when a vacancy exists.

1.2 Recruitment Procedure

1.2.1 General

1.2.1.1 A request for the filling of a position (vacant or new) should be initiated on the Staff Requisition form. The Regional Operations Executive will approve the filling of vacancies for the relevant Justice Centres and the Departmental Executive responsible will approve the filling of vacancies at National Office.

1.2.1.2 New positions and position profiles will be only be created after it has been motivated and approved as per the LAB approval framework and signed off by Chief Operations Officer.

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

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

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

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

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

1.2.1.7 Either prior to or concurrent with the external and internal advertisement, an invitation for the internal referral of suitably qualified and culturally compatable candidates must be extended to LAB employees and Board members. This invitation must meet the requirements contained in (a)-(j) above.

1.2.1.8 In the case of an external advertisement in the local print media, once the draft in line with the provisions of (a)-(j) above has been completed, the Recruitment Officer/Administration Manager/ Regional Human Resources Manager will advise the advertising agency to draw up the final advertisement, and submit quotations for the publication thereof in the media as specified. In the case of advertisement in national print media, Recruitment Officer / Administration Manager / Regional Human Resources Manager shall refer the draft advert to the Human Resources Administration Supervisor for centralised placement and publication of the advert.

1.2.1.9 After the prescribed requisition procedures have been followed, the advertising agency must be instructed to place the advertisement.

1.2. 2. Selection Committee / Panel

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

1.2.2.2 It is the responsibility of the Human Resources Department and the relevant line manager to jointly ensure that a diverse and knowledgeable selection committee/ panel is appointed. As far as is reasonably practicable, the selection committee or panel should be suitably representative and diverse, provided, however, that the selection committee or panel should include at least one official who has been fully trained in recruitment and selection process and procedures of the organisation and whose function is to ensure that the interviewing process and the deliberations of the committee take place in a fair manner. A trained official must be included in the selection committee or panel irrespective of the level of the position.

1.2.2.4 Where only one (1) candidate meets the minimum requirements, the Human Resources Department should endeavour to source further CVs from employment agencies listed on the preferred suppliers database of Legal Aid Board or advertise externally via the media to ensure that the greatest number of potential candidates are informed and interviewed in the best interests of organisation.

1.2.2.5 Irrespective of the level of the position, the manager who would manage the incumbent filling the vacant position must also be on the selection committee or panel, since this manager would know the exact requirements of the job, the expectations attached to the position to be filled and the key performance areas that would attach to the incumbent filling the vacant post.

1.2.2.6 The selection committee shall consist of at least three (3) members who are employees of a grading equal to or higher than the grading of the post to be filled. For non-SMS posts, a union representative is to be invited as an observer. The union representative is additional to the minimum of three members.
NB. A document on the role of the trade union representative during an interview may be obtained from Human Resources Department.

1.2.2.7 For positions at level eleven (11) and above, the relevant department within the Legal Aid Board should be represented by the Executive or his/her nominee. For Professional Assistants, irrespective of level, the JCE should always form part of the panel.

1.2.2.8 Managers/employees of a lower grading than the grading of the post to be filled may record or provide advisory services during the selection process but shall not form part of the selection committee. Any issues relating to processes or interview itself, to be raised by a non-selection committee member should be addressed to the ROE concerned or the Human Resources Executive.

1.2.2.9 In the process of interviewing, the selection committee or panel must avoid irrelevant questions or questions that could be potentially discriminatory, including, but not limited to an employee's family status, religion, political or other beliefs, social status, family responsibilities, race, gender or sexual orientation. The interviewing process and subsequent deliberations of the committee or panel should focus on assessing whether the person being interviewed is suitable for the position or not.

1.2.2.10 Employees nominated to serve on a selection committee or panel should be informed, and, where necessary, trained in respect of the consequences of discrimination in the recruitment and selection process and ways to avoid hidden or latent discrimination in the recruitment processes.

1.2.2.11 Short listed candidates should be informed timeously before interviews take place.

1.2.2.12 Before interviewing applicants, all members of the selection committee or panel should be informed of the Legal Aid Board's employment equity and affirmative action policies and how these policies impact on the vacancy for which they are interviewing; interview panel members are obliged to keep the interview information confidential.

1.2. 3 Selection Criteria

1.2.3.1 The Human Resources Department will prepare criteria against which all applications for a specific post are to be evaluated consistent with and based on the inherent requirements of the post as listed in the advertisement.

1.2.3.2 Care must be taken to avoid the making of recruitment decisions on discriminatory grounds.

1.2.3.3 An internal candidate who qualifies for the post in terms of the advertised requirements will not automatically be appointed to the position but will be selected through the same process as an external candidate.

1.2.3.4 After the selection committee has identified the most suitable candidate for appointment in a post, procedures will be followed to appoint the individual into a position or a temporary one.

1.2.3.5 The selection committee may require certain short listed candidates undergo for psychometric assessment to supplement the interview results.

1.2.3.6 Before the final appointment is made, and only where the advertisement indicated that references were required, the referees as submitted by the applicant should be contacted and objectively verifiable information should be obtained from the referees. Objectively verifiable information includes the candidate's length of service, the capacity in which the referee knows the candidate and the position the candidate occupied (if appropriate).

1.2.3.7 Before any offer is made to any candidate, the candidate's personal particulars including but not limited to, qualifications, security checks, and credit checks must be verified in compliance with the LAB Recruitment Check Procedure.

NB: Motivation has to be signed off by all the members of the panel and the line executive before being forwarded to the HRE/ COO/CEO/ delegated for approval, appointment recommendations will be approve in line with the approval framework

1.3 Recruitment Check Procedure

1.3.1 Purpose

The purpose of the LAB-RC for the Legal- Aid Board is to :

1.3.1.1 ensure that the LAB will only consider the best suited candidates for positions in the organisation;

1.3.1.2 safe guard and limit the LAB's exposure to possible fraud; and

1.3.1.3 provide guidelines in terms of rehabilitation.

For the purpose of this procedure, reference to the existing Avalanche and MIE tests will be replaced by LAB-RC (Legal Aid Board recruitment check).

1.3.2 Authorisation

1.3.2.1 Regional Appointments

The responsibility of authorising this test will vest in the ROE, who in turn can delegate it to the Regional Human Resources Manager. When authorising this test the ROE or his/her nominated representative should consider the parameters of this procedure.

1.3.2.2 Central Office Appointments

The responsibility of authorising this test will vest in the relevant executive. When authorising this test the Executive should consider the parameters of this procedure.

1.3.3 Consent to Recruitment Check

The candidate must consent in writing to the recruitment check and should the candidate refuse to grant such consent, they may not be employed.

V3

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Legal Aid
South Africa

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18 March 2010

The Director-General
Department of Justice and Constitutional Development
Private Bag X81
PRETORIA
0001

Dear Ms Msomi

LEGAL AID SA 2010/11 BUDGET & EFFECT OF OSD FUNDING

1. Government introduced an Occupational Specific Dispensation (OSD) for legal professionals effective from July 2007. The Minister of Justice and Constitutional Development has since extended the OSD to Legal Aid South Africa.

2. The OSD implementation was intended to be implemented in two phases with funding provided by the Department of Justice and Constitutional Development (DoJ &CD). Legal Aid SA has implemented OSD phase 1 in full after the DG of DoJ&CD made a written commitment to provide for the OSD funding and thus effect MTEF budget baseline adjustments for Legal Aid SA. Contrary to a commitment made, OSD phase 1 is being funded from DoJ &CD budget savings and Legal Aid SA's MTEF allocations continue to show a budget shortfall.

3. In January 2010 a joint meeting of DoJ, NPA and Legal Aid SA delegations met to resolve the outstanding funding shortfall on OSD phase 1 and implementation of OSD phase 2. Subsequent to the meeting the 25 January DoJ ManExco considered the agreed position by the joint meeting. The DDG Corporate Services of DoJ, Mr Vuso Shabalala, later confirmed that the DoJ Exco had endorsed the adjustments as agreed in the joint meeting of January.

4. The funding shortfall is as follows:

OSD area	2009/10	2010/11 and MTEF
OSD phase 1		R23,8 million
OSD phase 2	R42 Million (including back payments from July 2007)	R30 million
TOTAL		**R53.8 million**

5. Legal Aid SA has since received a letter from National Treasury confirming approval to transfer an amount of R42 Million from DoJ& CD budget 2009/10 to Legal Aid SA. This amount is not yet received by Legal Aid SA. The DoJ&CD or National Treasury did not advise any further on the 2010/11 budget & MTEF baseline adjustments.

6. On Wednesday, 10 March 2010, in response to Legal Aid SA's request a copy of the OSD letter of DoJ to National Treasury (sent to NT in February 2010) was received. Contrary to confirmed reports by DoJ&CD, the Department did not recommend a budget baseline adjustment for MTEF 2010/13 for Legal Aid SA.

7. This situation will result in a budget deficit for Legal Aid SA in its 2010/11 MTEF cycle.

8. It should be noted that if Legal Aid SA pays the OSD Phase 2 funds in the 2009/10 financial year, it will be committing to payment of OSD Phase 2 salary adjustments for subsequent years. However if the DoJ&CD does not commit to an adjusted baseline Legal Aid SA will in effect be budgeting for a deficit. In terms of the Section 53(3) of the PFMA –"*A public entity which must submit a budget in terms of subsection (1), may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the National Treasury has been obtained.*"

9. Legal Aid SA is therefore unable to begin paying the OSD Phase 2 salary adjustments for 2009/10 and previous financial years until the future funding for it has been secured.

10. Of the total R53,8million shortfall for 2010/11, R23,8million shortfall is for OSD Phase I.

11. It is noted that despite the DoJ&CD committing to funding for OSD Phase I, in 2009/10 and now in 2010/11 Legal Aid SA faces a shortfall because an adjustment to the MTEF baseline has not been effected. Legal Aid SA cannot further

exacerbate this by paying the first installment of OSD Phase 2 to staff and adding to the budget deficit.

12. Your office is requested to confirm allocations of OSD shortfall funding to the amount of R53,8million in the 2010/11 budget allocation, and that such amounts will be added to the MTEF budget baseline going forward.

13. You are advised that in case DoJ & CD is unable to respond and confirm the budget and MTEF allocations in writing,
    13.1. Legal Aid SA will not be able to pay OSD phase 2 by end March 2010 as intended;
    13.2. When we receive the R42 million, we shall retain it (OSD Phase 2 for 2009/10 and back pay) pending National Treasury approval as a rollover to 2010/11;
    13.3. We will only effect the OSD phase 2 adjustment and payments once the DoJ&CD and National Treasury have, in writing, approved the adjustment to budget & MTEF 2010/11 going forward.

Your urgent response to this matter will be appreciated.

Regards

V. N. Vedalankar

Ms Vidhu Vedalankar
Chief Executive Officer

Legal Aid South Africa

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V4

13 April 2010

The Director General
Department of Justice and Constitutional Development
Private Bag X81
PRETORIA
0001

Fax: 086 644 6406

Dear Ms Msomi

RE: LEGAL AID SOUTH AFRICA BUDGET 2010 & EFFECT OF OSD FUNDING

My letter dated 18 March 2010 has reference. I have to date not received an acknowledgement or response to my letter.

As raised in my letter of 18 March 2010, in terms of Section 3(3) of the PFMA, Legal Aid South Africa as a public entity may not budget for a deficit unless the prior written approval of the National Treasury has been obtained. In my letter I indicated the deficit for OSD Phase I for 2010/11 to be R23,8million. For ease of reference I attach a copy of a letter from the DG:DoJ&CD dated 05.02.2009 in which, in the last paragraph, he committed 'to adjust the baseline of the LAB in the Adjustment Budget with R69,6million subject to periodic reporting of the LAB on projected personnel expenditure...". Despite this commitment to adjusting the baseline we have only seen an adjustment to our baseline by R50million. The R69,6million for 2009/10 amounts to R73million for 2010/11. The adjustment of the baseline by R50million leaves us with a shortfall of R23million for 2010/11. This is unfortunate because we have already budgeted for 2010/11 on the basis of the DG's commitment. Please note that funding these amounts from your savings, as and when they become available, is contrary to the intent of the Medium Term Expenditure Framework and leaves us in a very precarious position. Please will you indicate how you intend to abide by this commitment?

If you are unable to abide by this commitment we will be forced to effect the necessary adjustments to our 2010/11 Budget so as to accommodate the R23 million budget shortfall of OSD phase 1. The primary impact of that will unfortunately have to be on service delivery at courts including increased

delays and backlogs as a result of us reducing the number of practitioners that we can make available at courts.

As per my letter dated, 18 March 2010 the funding for OSD Phase II also remains outstanding. As indicated we are unable to implement OSD Phase II unless we have a commitment to a change in our budget baseline by the amounts indicated in the letter. Discontent amongst staff on the non finalisation of OSD Phase II remains a challenge.

May I request your urgent response to the issues raised above as well as to my letter of 18 March 2010?

With Kind Regards

V.N. Vedalankar

Ms Vidhu Vedalankar
Chief Executive Officer
LEGAL AID SOUTH AFRICA

V5

From: Brian Nair
Sent: 15 July 2010 04:54 PM
To: Jerry Makokoane
Cc: Amanda Clark; Rebecca Hlabatau; Vidhu Vedalankar
Subject: Budget cuts - Reduction in Criminal Court Coverage - July 2010.xlsx

Hi Jerry

Please find my first cut of 56 practitioner posts at JCs. I have not looked for paralegal and admin positions at JCs as yet. This amounts to a potential savings of R16m which is much lower than what is required.

In terms of this cut, I have ensured that DC will not be lower than 80% coverage whilst RCs will not be lower than 90% coverage. If we need to find more savings from practitioner positions, then we will need to agree to lower coverage levels for District and Regional courts.

Kindly note that I have not consulted ROEs on these cuts. I will need to engage them once we are sure that these cuts will be necessary.

Thanks

Brian

V6

From: Jerry Makokoane
Sent: Thursday, September 30, 2010 3:07 PM
To: Andile M. Mbatyoti; Rebecca Hlabatau; Amanda Clark; Thembile Mtati; Mpho Phasha
Cc: Solly Sekgota; Oscar Maripane
Subject: Consideration of cost cutting measures in Legal Aid SA
Importance: High

Day All

The attached memo from my office refers.

Please ensure that all staff in your department are given an opportunity to consider this issue. Further, a staff meeting should be held where suggestions from your staff can be discussed and finalised.

In order to facilitate the consolidation of information from Departments, a web page has been developed to record your input on the line items in our budget which could be considered for cutting. Please access this web page from our National Operations reporting site under Ad Hoc reports. This web page is called *Budget Savings*.

Kindly note that ROEs and JCEs have been send a separate communication. You only have to fill information for your function. If you want to also use the Functional committee it is also ok.

Kindly note the deadline for the provision of your reports on this matter ie 15th October 2010.

Thanks

Regards

Jerry Makokoane
Chief Operations Officer

Legal Aid South Africa

Legal Aid South Africa

Your voice. For justice.

To:

National Executives
ROEs
JCEs
All Staff

Consideration for effecting cost–cutting measures in Legal Aid SA

1. With the current economic recession showing a slow recovery while pressure of service delivery by state institutions remain a point of focus, Cabinet has on the 18th August 2010 indicated that it is to finalise proposals for cost-cutting measures across the state departments. These cost-cutting measures are intended to reduce financial wastage and redundancies, and thus assist in availing funds to priority areas such as salary costs.

2. Legal Aid SA is as a result not expecting new or additional funding from the National Treasury during the next MTEF period. We currently face a deficit of more than R23.8mil in our Budget 2010/11 due to a cut in funds from the DoJ. The wage settlement for COLI will add further to the deficit since it is at a higher level than the grant provided by National Treasury. This will carry through into our 2011/12 budget. We have a further cut of about R34mil in the 2012/13 government grant allocation. This means that we are compelled to introduce some cost-cutting measures and efficiency measures as required by government. The cost-cutting and efficiency measure proposed by the Cabinet are the following:

    1. freezing of all vacant posts;
    2. a moratorium on purchasing of furniture;
    3. rationalization of overseas trips;
    4. cancelling performance bonuses for the 2010/11 financial year;
    5. using government facilities for meetings (instead of Hotels);
    6. no team building exercises and Christmas parties;
    7. reduction of cell phone expenditures;
    8. limiting business class travel to Members of the Executive Council (MEC's) and Head Of Departments (HOD's)

3. As you already know, more than 68% of our budget is committed to salaries and related benefits, a further 7% goes to contractual services such as Office Lease, municipal service, Insurance fees, cleaning and security services, etc. The anticipated cost-cutting measures are bound to affect service delivery and internal business operations of Legal Aid SA.

4. In preparation of this eventuality, each cost center is herewith advised to provide inputs on the nature and extent of budget cuts the Legal Aid SA is to consider, effective from quarter 3 of 2010/11 financial year through the next MTEF period.

5. All inputs to be canvassed through staff meetings. The inputs must therefore be a product of the staff meeting recommendations.

6. The required inputs are to be stated in each budget line area hereunder:

(*Your statements of Suggested Actions are to be: Short, Realistic, and Actionable)*

Name of Cost Center:	**(Department / Regional Office / Justice Centre)**
Budget line	**Suggested action**
Salaries and related benefits	e.g. freezing of all vacant posts
Other Direct Expenditure Judicare	
Operating Budget -Congress and Seminars -Education & Training -Refreshments -Staff bursaries -Telephone & Fax -Tools & Equipments -Travel & Subsistence -Workshops	e.g. reduction of telephone expenditures
Capital Budget -Computer Hardware (PCs & laptops) -Furniture & Equipments -Motor Vehicles	e.g. a moratorium on purchasing of furniture

7. In considering inputs, Management Exco will be sensitive to all relevant aspects which could regress progress made in our business operations.

Kindly let me have your inputs by 15 October 2010.

Chief Operations Officer

Legal Aid South Africa

TO	NDE
FROM	ROE (KZN)
DATE	06th NOVEMBER 2009

SENIOR LITIGATOR INTERVIEWS
RECOMMENDATION FOR NEXT ROUND INTERVIEWS

1. **PURPOSE**

To recommend the following candidates for the next round of interviews:-

- Mr Anthony Brink
- Mr Bongani Mngadi

2. **BACKGROUND**

The above-mentioned position was advertised internally and externally a few times to give employees within the organisation and external candidates an opportunity to apply. Candidates must possess the following:

- Admitted Attorney / Advocate.
- B Proc or LLB degree, with right of Appearance in the High Court.
- A LLM will be an advantage.
- At least 12 years post qualification legal experience of which 10 years must be high court experience. Must be performing at least 80% active court litigation.
- Valid code 08 drivers licence.
- Excellent leadership & people development skills with a track record in training.
- Experience in budget preparation & management thereof.
- Advanced computer skills (MS Word, Excel, Outlook, PowerPoint & Ad infinitum).
- Strong communication, problem solving & interpersonal skills.
- Innovative, creative & analytical thinking skills. Strong research skills.
- Ability to interpret & apply policies.

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

From the applications received 4 candidates were short listed for interviews for this position. Candidates were invited to an interview held on the 05-11-2009.

The selection panel consisted of the following members:

Mr Vela Mdaka	-	ROE (KZN)
Mr Baboo Brijlal	-	Reg. HR Manager (KZN Region)
Mr Kishore Mehta	-	JCE (Durban JC)
Mr Bertus Appel	-	JCE (PmBurg JC)
Mr Julian Butler	-	HCU Manager (PmBurg JC)
Mr Vis Nair	-	JCE (Pinetown JC)

3. THE INTERVIEWS PROCEEDED AS FOLLOWS:

The selection panel conducted the interviews by using the standard interview assessment form and guidelines. The results of the interview are shown in the table below:-

NAME OF CANDIDATE	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	AVERAGE & PERCENTAGE
Mr Mzochithwayo Ngcamu	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mr Anthony Brink	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mr Johannes van Wyk	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mr Bongani Mngadi	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Notes:-
All scoring out of a maximum score of 50 (5 questions X 10 points each).

4. SUMMARY OF CANDIDATES

[redacted]

2

Legal Aid South Africa

[redacted]

Mr Anthony Brink

Mr Brink has a BA & LLB degrees. He is an admitted Advocate (April 1983). Candidate is currently employed at a public interest NGO (last 5 years) with limited litigation primarily involved in advocacy work. Previously candidate worked as Prosecutor (5 years), Civil Magistrate (4 years) & Private Practice (8 years). Candidate has ±8 years experience in the High Court (2 years short of the minimum requirements as per advert). Candidate has also trained pupil advocates. Candidate had 2 matters in the SCA (1 argued & 1 settled) and 1 matter (*pro amico*) for the Constitutional Court (drafted papers). Candidate demonstrated his capability to undertake high level research. He also sufficiently demonstrated his ability to conduct training. Candidate has a good grasp of law. Candidate is a prolific writer/author with many commendations cited on his CV. After having considered the candidate's overall presentation to the panel, candidate is recommended for next round of interviews.

[redacted]

[redacted]

[redacted]

5. **EMPLOYMENT EQUITY STATUS**

The Durban JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	23	10	33
2. Whites	2	3	5
3. Indians	10	17	27
4. Coloureds	1	2	3
TOTAL	36	32	68

Equity Stats as at 06.11.2009.

The PmBurg JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	19	11	30
2. Whites	6	3	9
3. Indians	12	12	24
4. Coloureds	2	1	3
TOTAL	39	27	66

Equity Stats as at 06.11.2009.

6. **RECOMMENDATION**

The panel recommends the following candidates for the next round of interviews:-

- Mr Anthony Brink - External Candidate
- Mr Bongani Mngadi - Internal Candidate

Legal Aid South Africa

We certify that the Employment Equity targets for the JCs have been taken into account and that this recommendation meets the Employment Equity targets.

Baboo Brijlal
Reg. HR Manager (KZN Region)

Vis Nair
JCE (Pinetown) 23/11/2009

Kishore Mehta
JCE (Durban JC) 17/11/09

Sortus Appiah
JCE (PmBurg JC) 23/11/09.

Julian Bosior
HEU Manager (PmBurg JC)
23/11/2009

Vela Mdaka
ROE (KZN Region)

NEXT ROUND INTERVIEW APPROVAL

NAME	RECOMMENDATION: ACCEPTED	RECOMMENDATION: NOT ACCEPTED	DATE
BRIAN NAIR HOE			

Transcript of audio recording of CEO Vidhu Vedalankar's address to the Portfolio Committee for Justice and Constitutional Development on 12 October 2010 during LASA's briefing on its Annual and First Quarter Reports (audio recording: http://www.pmg.org.za/node/23447 ; transcript made by Adv Brink)

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

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

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

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

Legal Aid South Africa

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CONFIDENTIAL

23 August 2010

Mr Anthony Brink
25 Baker Road
Pietermaritzburg
3200

Dear Mr Brink

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

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

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

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

Yours sincerely

LEGAL AID SOUTH AFRICA

VELA MDAKA
REGIONAL OPERATIONS EXECUTIVE
KZN REGION

Your voice. For justice.

	ACTIONS/DECISIONS	Responsible Person	Due date
1.	**WELCOME AND APOLOGIES**		
1.1	The Chairperson declared the meeting open and welcomed all present.		
1.2	The following apologies were noted • Ms S Monaledi • Mr V Jarana		
2.	**REGISTER OF INTERESTS** The Register of Interests was circulated and duly noted by all members present.		
3.	**MINUTES**		
3.1	**Minutes of the previous meeting** The minutes of the previous meeting held on 29 May 2010 were adopted.		
3.2	**Matters Arising Schedule** The Matters Arising Schedule was noted.		
4.	**MATTERS FOR APPROVAL** **<u>ALL COMMITTEES</u>**		
4.1	**Draft Annual Report 2009/10 including Annual Financial Statements** The Board approved the Draft Annual Report 2009/10 subject to the following amendments: • p16 that the designation of the person be placed next to their names in the same format as the name; • That the qualification (**CA(SA)**) be added to Ms Luthuli's credentials; • p78 under Mr Ramdas' name; 'City of Johannesburg; • P 76 that Judge Mlambo and Mr Makume's details be updated to reflect their new positions; The Board commended management on a comprehensive Annual Report that made good reading.	BS	31.08.10
4.2	**MTEF 2011/14 CONSOLIDATED** The Board approved the recommendations as contained in clause 8 of the document: *8.1 The Board approve the MTEF for the period ending 2011/12-2013/14.* *8.2 The Board approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of Annexure I.*	CFO CEO	30.09.10 01.11.10

Legal Aid South Africa

ANNEXURE I

REPORT TO BOARD

16 July 2010

Impact of OSD funding shortfall on budget 2010/11

1. Background

1.1. The 2010/11 budget includes the outstanding OSD funding of R53.8million. This amount constitutes:

OSD Phase	Amount	Status
OSD Phase 1	R23.8 million	Implemented
OSD Phase 2	R30million	Not yet implemented
OSD Phase 2 back payment	R42million	Not yet implemented

1.2. On the 14 July 2010 Legal Aid SA COO met with both DoJ DDG, Mr Vuso Shabalala , as well as Adv Pieter du Rand, Legal Aid SA board member in order to clarify the position of DoJ regarding the outstanding OSD funding of R53.8 million for the 2010/11 budget period, as well as its effect to the MTEF baseline.

1.3. DoJ has indicated that they do not have funds to cover for the R53.8 million OSD shortfall. The Executive Authority has however in a meeting with the Legal Aid SA Board Chairperson expressed his wish to have Legal Aid SA service delivery maintained and that DoJ should make funds available to cover the OSD shortfall through the mid-year budget adjustments in September/October 2010.

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2. 2010/11 Budget period

2.1. In the event DoJ is unable to secure funds to cover the OSD Phase 1 shortfall, Legal Aid SA will have a deficit of R23.8 million in the 2010/11 Budget. Salaries for 2010/11 are budgeted at 97% with recruitment currently being at about 94%.

2.2. In order to mitigate the probable deficit, the following measures are proposed:

a) Court coverage is currently approximately 90% at Distric Courts and 100% at Regional Courts. For the remaining of the 2010/11 budget period, District Courts will be progressively reduced to no lower than 80% coverage whilst Regional Courts will be progressively reduced to no lower than 90% coverage. About R16 million will be saved from this measure, though its effect will be a reduction in the number of days that we are able to cover District Courts and Regional Courts. This has a direct negative impact on service delivery. Any further reduction on filled legal practitioner positions will result in a further percentage reduction in court coverage
b) The recruitment process will be reviewed, centralizing the decision on filling of posts at Executive level, with due regard to the need to prioritise critical positions;
c) Any savings derived during the financial year be reserved to cover part of the anticipated OSD shortfall.

2.3. In the event DoJ is unable to secure the OSD Phase 2 funding, the result will be that,

a) a potential labour unrest within Legal Aid SA will increase;
b) Legal Aid SA legal practitioners will be paid less than their counterparts in DoJ (who have already implemented OSD Phase 2), and those in NPA (in the event NPA finalise payments of OSD Phase 2).

3. MTEF 2011/12 onwards

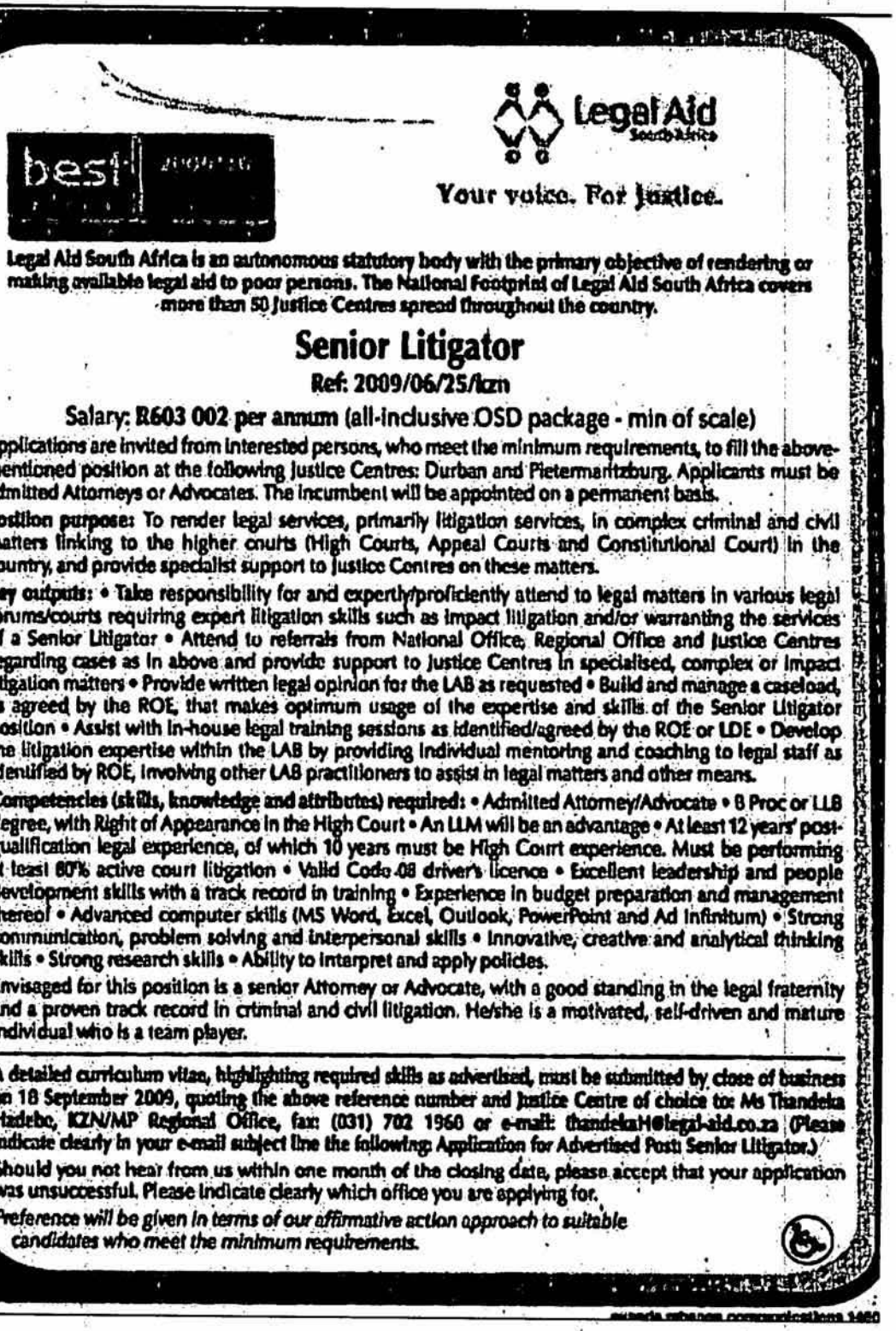
Should DoJ not secure OSD funding in full, Legal Aid SA will have to revise its MTEF 2011/12 onwards. With the current macro increase on budget allocation received from National Treasury, Legal Aid SA salaries will continue to impact negatively on the Operational and Capital budget unless posts are either frozen or abolished. This will have a significant negative impact on service delivery and good progress Legal Aid SA has already achieved in providing legal representation to many indigent persons in the country.

4. Recommendation

To provide for the anticipated OSD shortfall funding of R23.8 million, it is recommended that:

I. Savings from the 2010/11 financial year be used to fund the OSD shortfall;
II. District Court coverage be approximately no lower than 80% coverage, while Regional Court coverage is reduced to no lower than 90% coverage, for the remaining part of the 2010/11 budget period. This will derive a saving of about R16million to cover the shortfall.

EVII



Legal Aid South Africa

Your voice. For Justice.

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

Senior Litigator

Ref: 2009/06/25/kzn

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

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

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

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

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

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

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

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

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

For more vacancies visit www.legal-aid.co.za

From: Amanda Clark
Sent: Wednesday, September 08, 2010 11:00 AM
To: Thembile Mtati
Subject: FW: SENIOR LITIGATOR INTERVIEWS

From: Amanda Clark
Sent: 30 April 2010 04:24 PM
To: Anthony Brink
Subject: RE: SENIOR LITIGATOR INTERVIEWS

Hi Anthony

The process is where it is. It is your decision as to whether you wish to wait to allow us to complete the process or whether you wish to withdraw. Our process has nothing to do with your personal choices with regard to visits to Italy or the World Cup or your partner whom you refer to a "sweetie".

At this stage it is not even clear which applicants will be considered in the second round or if indeed we will proceed with a second round.

Applying for a job is done at the applicants own risk. Being called to an interview is not a guarantee of being appointed to the position.

I think you should allow us to complete our process at the pace we have decided. It is also not proper to obtain inside information from your brother and then to stand on whatever you have been told by him.

If we require further information or follow-up from yourself, our organisation will contact you.

Amanda Clark
Human Resources Executive

Legal Aid South Africa

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Legal Aid SA Culture - Live the Values !!!

From: Anthony Brink [mailto:arbrink@iafrica.com]
Sent: 22 April 2010 02:58 PM

The Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Constitutional Development on the performance of the Department of Justice and Constitutional Development for the 2009/10 financial year, dated 26 October 2010.

The Portfolio Committee on Justice and Constitutional Development, having considered the performance of the Department of Justice and Constitutional Development, National Prosecuting Authority, Legal Aid South Africa, South African Human Rights Commission and Public Protector, reports as follows:

1. Introduction

1.1. The Committee oversees the activities of the Department of Justice and Constitutional Development and various other institutions, all of which receive their allocation under the Justice and Constitutional Development Vote. These include the National Prosecuting Authority (NPA); Legal Aid South Africa (LASA); South African Human Rights Commission (SAHRC) and Public Protector (PP).

1.2. Each year, as part of its oversight function, the Committee considers the annual reports of the Department of Justice and Constitutional Development and other institutions that it oversees. The recently promulgated Money Bills Procedures and Related Matters Amendment Act, (Act 9 of 2009), sets out the process allowing Parliament to make recommendations to the Minister of Finance to amend the budget of a national Department. As part of this process, Portfolio Committees must compile Budgetary Review and Recommendation Reports (BRRR) in October of each year, containing recommendations relating to funding allocations for the departments and other institutions that account to them. The BRRR are also a source document for the Standing Committee on Finance when it makes recommendations to the National Assembly on the Medium-Term Budget Policy Statement (MTBPS). The annual review and analysis of performance (entailing both financial and non-financial performance indicators) forms part of this process.

1.3. This is the first year that the Committee is undertaking the BRRR process. The Committee believes its engagement with the Justice Department, NPA, LASA, SAHRC and PP was robust and, given the time constraints and the quality of the information provided, its evaluation of the information presented fair. The Committee is of the view that continuous engagement with the Department and institutions on their performance is critical, and has already committed to meeting with the Department and other institutions it oversees quarterly. It intends to refine this quarterly reporting process by developing tools that will strengthen its oversight capacity.

1.4. The Committee was briefed on the annual performance for 2009/10 of the Department of Justice and Constitutional Development, NPA, LASA, SAHRC and PP. The briefings took place from 12 – 15 October 2010. Copies of the presentations are available from the committee secretary, Mr V Ramaano. The Committee has already considered and reported on the respective strategic plans and budget proposals of the Justice Department, NPA, LASA, SAHRC and PP for 2010/11 and, as mentioned above, has reviewed their performance for the first quarter of 2010/11.

1.5. This Report comprises four parts:

- An increase in conviction rates was also recorded.

4.4.2. Key challenges arising during 2009/10

- Qualified audit opinion (for tangible assets; irregular expenditure; prepayments and advances; fruitless and wasteful expenditure). (There has, however, been some improvement from 2007/08 when the NPA received a disclaimer).
- The vacancy rate within the prosecutorial component (16%)
- Case-flow-related problems and the absence of key role-players
- Lack of promotion of the use of other languages
- Prosecutorial and investigative capacities in the NPA and SAPS
- The NPA reported a growing number of cases resolved by informal mediation.
- The conviction rates for sexual offences are low (in the 60% range); significantly lower than for other types of cases. (The conviction rates in the dedicated courts and the Thuthuzela Care Centre's (TCCs) far outreach that of ordinary courts when dealing with sexual offence matters).

4.5. Programme 5 Auxiliary and Related Services

This programme includes the South African Human Rights Commission and Public Protector, as well as Legal Aid South Africa. Each institution is discussed in Part 3 and, therefore, only a high level summary of acheivements and challenegs is provided.

Table 6: Budget allocation and Audit opinion 2009/10

Institution	**Audit opinion**	**Budget allocation 2009/10 millions (R)**	**Budget allocation 2010/11 millions (R)**
South African Human Rights Commision	Unqualified	70.1	73.5
Public Protector	Unqualified	108.9	112.8
Legal Aid South Africa	Unqualified	848.4	991.9

4.5.1. Selected achievements, as reported, for each institution for 2009/10 included:

Legal Aid South Africa:

- Provided services at all criminal courts in the country through a national footprint of 64 Justice Centres and 63 Satellite Offices
- Delivered quality legal services in 419 149 new legal matters
- Provided legal assistance in 29 028 civil legal matters. 211 874 clients received general legal advice
- Assisted 59 266 children
- Reported that its practioners are exceeding their legal quality targets
- Implemented agency agreements to serve rural courts
- Exceeded its legal training targets
- Established civil units at 13 Justice Centres
- Ensured a recruitment level of 94%
- Sucessfully implemented its Leadership Development Programme
- Spent 99.5% of the allocated budget for 2009/10
- Successfully rolled out the new Legal Aid South Africa brand

Legal Aid South Africa

Recruitment Stats - National Summary - December 2010

		Eastern Cape				Free State & North West				Gauteng				Kwazulu Natal				Limpopo & Mpumalanga				Western Cape & Northern Cape				Grand Total			
		Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%
Service Delivery	CA	89	2	91	98 %	87	1	88	99 %	131	6	137	96 %	113	6	119	95 %	66	3	69	96 %	116	2	118	98 %	602	20	622	97 %
	CA - Civil	5		5	100 %	5		5	100 %	4	1	5	80 %	5		5	100 %	3	1	4	75 %	5	1	6	83 %	27	3	30	90 %
	HCU Manager	4		4	100 %	1	1	2	50 %	2		2	100 %	2		2	100 %	1		1	100 %	2		2	100 %	12	1	13	92 %
	JCE	8	1	9	89 %	13		13	100 %	8		8	100 %	8		8	100 %	9		9	100 %	10		10	100 %	56	1	57	98 %
	JCE 2	1		1	100 %			0	-	2		2	100 %	2		2	100 %			0	-	2		2	100 %	7	0	7	100 %
	PA - Children Civil	5		5	100 %	2	1	3	67 %	4	1	5	80 %	4		4	100 %	2		2	100 %	2		2	100 %	19	2	21	90 %
	PA - Children Criminal	3		3	100 %	2		2	100 %	2		2	100 %	2		2	100 %			0	-	4	1	5	80 %	13	1	14	93 %
	PA - Civil	13		13	100 %	14	1	15	93 %	14		14	100 %	10	1	11	91 %	8	3	11	73 %	14	2	16	88 %	73	7	80	91 %
	PA - Commercial Crime	1		1	100 %	1		1	100 %	5		5	100 %	1		1	100 %			0	-	1		1	100 %	9	0	9	100 %
	PA - DC	4		4	100 %	5		5	100 %	3		3	100 %	3		3	100 %	12	1	13	92 %			0	-	27	1	28	96 %
	PA - Estates Children			0	-	1		1	100 %			0	-			0	-			0	-			0	-	1	0	1	100 %
	PA - HCU	18		18	100 %	11		11	100 %	18	2	20	90 %	9	2	11	82 %	7	1	8	88 %	14	2	16	88 %	77	7	84	92 %
	PA - HCU Civil	3		3	100 %	1		1	100 %	1		1	100 %	2		2	100 %			0	-	1		1	100 %	8	0	8	100 %
	PA - Justice Centre	92	1	93	99 %	84	3	87	97 %	104	9	113	92 %	91	6	97	94 %	75	5	80	94 %	120	5	125	96 %	566	29	595	95 %
	PA - Labour	1		1	100 %			0	-	1		1	100 %	1		1	100 %			0	-	1		1	100 %	4	0	4	100 %
	Paralegal	23	1	24	96 %	23		23	100 %	23	3	26	88 %	21	1	22	95 %	26		26	100 %	29		29	100 %	145	5	150	97 %
	Paralegal - ATP	3		3	100 %	1		1	100 %	3		3	100 %	2		2	100 %	0	1	1	0 %	2		2	100 %	11	1	12	92 %
	Paralegal - HCU	3		3	100 %	2		2	100 %			0	-	1	1	2	50 %	1		1	100 %	1		1	100 %	8	1	9	89 %
	Principal Attorney	4		4	100 %	2		2	100 %	6		6	100 %	3		3	100 %	1		1	100 %	5	1	6	83 %	21	1	22	95 %
	Principal Attorney - Civil	2		2	100 %	2		2	100 %	2		2	100 %	2		2	100 %	2		2	100 %	3		3	100 %	13	0	13	100 %
	Senior Litigator	1		1	100 %	2		2	100 %	2		2	100 %	0	2	2	0 %			0	-	1	1	2	50 %	6	3	9	67 %
	SPA	14		14	100 %	18	2	20	90 %	20	1	21	95 %	13	5	18	72 %	15		15	100 %	19		19	100 %	99	8	107	93 %
	SPA HCU			0	-	1		1	100 %	1	1	2	50 %			0	-			0	-	1		1	100 %	3	1	4	75 %
	SPA SO	9		9	100 %	6		6	100 %	3	1	4	75 %	11		11	100 %	15	2	17	88 %	15		15	100 %	59	3	62	95 %
	Service Delivery Total	306	5	311	98 %	284	9	293	97 %	359	25	384	93 %	306	24	330	93 %	243	17	260	93 %	368	15	383	96 %	1866	95	1961	95 %

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HE LABOURT COURT OF SOUTH AFRICA, HELD AT DURBAN

Case No: D529/11

e matter between:

THONY BRINK — Applicant

d

GAL AID SOUTH AFRICA — Respondent

STATEMENT OF DEFENCE

RELIMINARY ISSUE

1. The Respondent will abide the decision of this Court on the question whether the referral of this matter was timeous. Should the Court decide that the referral was not timeous, the Respondent asks the Court to dismiss the matter with costs on the attorney and client scale. Costs should be on the punitive scale because the Applicant has gratuitously accused the Respondent, in

1129080

48.9. The aforegoing exercise ensures that (i) the critical position of High Court litigator is not abandoned and (ii) yet the costs involved in that process are dramatically saved.

48.10. The Respondent avers that even after the OSD funding was resolved it was still not feasible to fill the Senior Litigator posts. The Respondent had to relook at its critical vacant positions and fill them in the best possible and feasible manner. Furthermore, the Respondent is budgeting for the abovementioned 2012/2013's R34 million cut.

48.11. Accordingly, the Respondent denies that it and/or its officials lied to the Minister and the Portfolio Committee on any of these issues.

48.12. The Respondent denies the suggestions and speculative conclusions arrived at by the Applicant in the balance of these paragraphs.

49. **PARAGRAPHS 165. – 179.**

49.1. The Respondent denies these accusations.

49.2. The Respondent has demonstrated that by July 2010, the OSD shortfall was still being discussed and cost cutting measures being implemented. Not disputed.

49.3. The Respondent repeats the example made hereinabove on how it, *inter alia*, strategically aimed at realising the objectives mentioned in its Strategic Plan 2009 – 2012. In other words, the hiring of two or more

On 29 July 2010 Vedalankar then emailed Nair, summoning him to meet with her to discuss how to respond to the applicant's letter. (Bundle, page 389)

At their meeting Vedalankar instructed Nair to answer the applicant's letter and to tell him that the respondent had decided that it would not be filling its vacant Senior Litigator posts. (Bundle, page 19)

The meeting between Vedalankar and Nair was conducted off the record, and no minute exists of the discussion and decision.

57. At its meeting on 31 July 2010 the Board approved the national executive managers' 'Recommendation' in their 'Report to Board', as the minutes reflect: 'The Board approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of Annexure 1' – i.e. the twin proposal that 'to cover part of the anticipated OSD shortfall ... savings derived during the financial year be reserved' and that Junior Practitioner posts be reduced. (Bundle, page 251)

58. Notwithstanding the 'need to prioritise critical positions' for 'recruitment', noted by Vedalankar, Makokoane, Nair, and other national executive managers in their 'Report to Board' among their 'proposed ... measures ... to mitigate the probable deficit', Nair wrote to the applicant on 3 August 2010, as instructed by Vedalankar, alleging to him that 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [sic] put on hold due to various reasons. I can now confirm that we will not be proceeding with the filling of any of these posts.'

59. The candidate who had just been selected and recommended for appointment to the Mthatha Senior Litigator post in about July, was now told in August that the respondent would not be filling this critical position, which Vedalankar, Makokoane, Nair, and other national executive managers had just mentioned generically in their 'Report to Board', speaking of 'the need to prioritise critical positions' for 'recruitment' among their 'proposed ... measures ... to mitigate the probable deficit'.

60. No record exists of the decision taken by the respondent's national managers to abort the successful candidate's appointment to the critical Mthatha Senior Litigator post. This is because the decision was taken off the record.

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ITHONY, ROBIN BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

RESPONDENT'S REPLY TO APPLICANT'S PRE-TRIAL ISSUES RAISED AT A PRE-TRIAL CONFERENCE HELD ON 26 OCTOBER 2011

ISSUES THE RESPONDENT UNDERTOOK TO REVERT ON IN TERMS OF THE PRE-TRIAL MINUTE DATED 26 OCTOBER 2011

1. AD CONFIRMATION OF THE DATA AND PERCENTAGE CALCULATIONS OF LASA'S STAFF COMPLEMENT

1.1. The Applicant requested that the Respondent confirm or deny the correctness of a summary of data extracted from the 2009/2010 and 2011 Annual Reports relating to **'TOTAL ESTABLISHMENT AND**

Funding Budget Proposal (page 67 item 7) annexed hereto and marked **LA2**.

Para 5 of the PTA: Transfer of Northern Cape Senior Litigator Post to Mthatha

2.4. The Respondent annexes hereto an extract of a resolution of the meeting of the Legal Services Technical Committee dated 24 March 2010, (as annexure **LA3)**, read with the minutes thereof dated 24 March 2010 (page 4 item 4.1.7.) which resolved to transfer the Senior Litigator Post: Northern Cape to Mthatha.

Para 6 of the PTA: the budget for Senior Litigator posts both filled and vacant

2.5. The Respondent annexes a document indicating the Respondent's Budget allocation for the Senior Litigator posts both filled and vacant marked **LA4**.

2.6. The Respondent avers that there was no re-allocation of any budget between cost centres.

Para 7 of the PTA: the Salary of a Senior Junior Professional Assistant

2.7. The Respondent does not have the position of a Senior Junior Professional Assistant in its establishment.

31. **Ad Paragraph 31.**

31.1. Agreed.

31.2. It was Mr Nair who gave out the said instruction. This was, in any event, congruent with the cost cutting measures that the Respondent had begun including but not limited to the review of all recruitment processes.

32. **Ad Paragraphs 32 and 33.**

32.1. Agreed.

33. **Ad Paragraph 34.**

33.1. Disagreed.

33.2. The Respondent explained its silence regarding the entire process around that time and the decision to abort the recruitment was not taken a few weeks after the interviews in November 2009 but in July 2010 after the Board meeting.

34. **Ad Paragraphs 35 and 36.**

34.1. Agreed save that the recruitment process was not aborted a couple of weeks after the interviews.

34.2. The two persons referred to herein were eliminated early in the selection process and were not recommended for the second round of interviews. Accordingly, they were not entitled to any information that pertains to the second round of interviews.

46.1. Disagreed.

Ad Paragraph 53.

47.1. Agreed.

Ad Paragraph 54.

48.1. Disagreed.

48.2. The CEO only sought clarity as to the delay in handling the Applicant's application.

Ad Paragraph 55.

49.1. Disagreed.

49.2. The Applicant will have to prove this allegation.

Paragraph 56.

50.1. Agreed.

Paragraph 57.

51.1. Agreed save to clarify that District and Regional practitioner posts are not necessarily "Junior posts."

Paragraphs 58 and 59.

52.1. Agreed save to say that it was inherent in Brian Nair's responsibilities to inform candidates that the process has been aborted.

national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Medium Term Budget Policy Statement

2010

Speech

Pravin Gordhan

Minister of Finance

27 October 2010

Medium Term Budget Policy Speech – 2010

I am pleased to be able to table a comprehensive *Adjusted Estimates of National Expenditure* to accompany the *Adjustments Appropriation Bill* and – for the first time – a *Division of Revenue Amendment Bill,* for the consideration of the House. I cannot deal with all the adjustments in detail, but let me highlight the main points.

In total, the adjusted expenditure level is R2.5 billion lower than the February budget estimate, which included an unallocated contingency reserve of R6 billion. Contributing to this decrease is a lower provision for state debt costs due to the current strength of the rand and the decrease in interest rates, and savings declared by departments amounting to almost R2 billion.

The main additional allocations in the Adjustments Appropriation are as follows:

1. R1.8 billion in roll-overs arising from commitments related to unspent balances in 2009/10;
2. R6.2 billion to cover higher remuneration costs;
3. R396 million for various self-funding department-specific activities;
4. R2.2 billion in unforeseeable and unavoidable expenditure adjustments recommended by the Treasury Committee this year, including
    a) R769 million to cover property rates due to municipalities on behalf of provinces, funded through the *devolution of property rate funds grant,*
    b) R320 million for occupation-specific dispensation salary adjustments in the Department of Justice and Constitutional Development, the National Prosecuting Authority and Legal Aid South Africa,

Adjusted Estimates of National Expenditure

2010

National Treasury

Republic of South Africa

October 2010

Vote 23

Justice and Constitutional Development

Adjusted budget summary

	2010/11			
R thousand	Main appropriation	Adjusted appropriation	Decrease	Increase
Amount to be appropriated	10 250 483	10 787 345	–	536 862
of which:				
Current payments	8 137 191	8 479 407	–	342 216
Transfers and subsidies	1 485 637	1 623 828	–	138 191
Payments for capital assets	627 655	683 650	–	55 995
Payments for financial assets	–	460	–	460
Direct charge against the National Revenue Fund	1 929 870	1 929 870	–	–
Executive authority	Minister of Justice and Constitutional Development			
Accounting officer	Director-General of Justice and Constitutional Development			
Website address	www.doj.gov.za			

Aim

The aim of the Department of Justice and Constitutional Development is to uphold and protect the Constitution and the rule of law, and render accessible, fair, speedy and cost effective administration of justice in the interests of a safer and more secure South Africa.

Mid-year performance status

Indicator	Programme	Outcome	Annual performance		
As published in the 2010 ENE	Programme linked to the indicator	Outcome the indicator is linked to (if relevant)	Projected for 2010/11 as published in the 2010 ENE	Achieved in the first five months of 2010/11 (April to August)[1]	Changed estimate for 2010/11
Outstanding court roll at end of each financial year	Court Services	All people in South Africa are and feel safe	232 243	209 650	–
Number of cases finalised[2]:	National Prosecuting Authority	All people in South Africa are and feel safe			
– including alternative dispute resolution mechanisms			412 313	195 413	482 491
– excluding alternative dispute resolution mechanisms			324 030	141 921	357 928
Conviction rate:	National Prosecuting Authority	All people in South Africa are and feel safe			
– high courts			87%	88%	–
– regional courts			74%	73%	–
– district courts			87%	91%	–
– sexual offences courts			66%	68%	–
– specialised commercial crime unit			94%	91%	–
Asset forfeiture unit:	National Prosecuting Authority	All people in South Africa are and feel safe			
– number of new completed forfeiture cases			300	136	–
– number of new freezing orders			310	175	–
– value of new freezing orders			R400m	R374m	R450m
– success rate			86%	96%	90%

1. Six months data only available after publication of AENE, this data are for five months.

2. The indicator "Number of new cases finalised" has been corrected to "Number of cases finalised", because it is not only new cases that are being finalised within the reporting period, but all cases on the court roll.

The estimates for the number of cases finalised, the value of new freezing orders (asset forfeiture unit) and the success rate (asset forfeiture unit) have been revised to align with targets set in the National Prosecuting Authority's 2010–15 strategic plan.

Programme 5: Auxiliary and Associated Services

Subprogramme	2010/11						
		Adjustments appropriation					
R thousand	Main appropriation	Roll-overs	Unforeseeable/ unavoidable	Virements and shifts	Other adjustments	Total adjustments appropriation	Adjusted appropriation
Office for the Control of Interception and Monitoring of Communication	603	–	–	(5)	12	7	610
South African Human Rights Commission	73 474	–	–	–	894	894	74 368
Special Investigating Unit	165 802	–	–	2 129	3 158	5 287	171 089
Legal Aid South Africa	991 895	–	96 000	24 200	10 544	130 744	1 122 639
Office of the Public Protector	112 816	–	–	–	1 266	1 266	114 082
Justice Modernisation	379 197	–	–	–	–	–	379 197
President's Fund	1	–	–	–	–	–	1
Represented Political Parties Fund	98 095	–	–	–	–	–	98 095
Total	1 821 883	–	96 000	26 324	15 874	138 198	1 960 081
Economic classification							
Current payments	359 932	–	–	(5)	12	7	359 939
Compensation of employees	508	–	–	–	12	12	520
Goods and services	359 424	–	–	(5)	–	(5)	359 419
Transfers and subsidies	1 442 083	–	96 000	26 329	15 862	138 191	1 580 274
Departmental agencies and accounts	1 442 083	–	96 000	26 329	15 862	138 191	1 580 274
Payments for capital assets	19 868	–	–	–	–	–	19 868
Machinery and equipment	19 868	–	–	–	–	–	19 868
Total	1 821 883	–	96 000	26 324	15 874	138 198	1 960 081

Details of adjustments to Estimates of National Expenditure 2010

Unforeseeable and unavoidable expenditure – R341.9 million

Programme 2: Court Services

An additional R26 million is allocated for phase 2 of the occupation specific dispensation for legally qualified professionals.

Programme 3: State Legal Services

An additional R21.9 million is allocated for the presidential project: United in Diversity.

Programme 4: National Prosecuting Authority

An additional R198 million is allocated for phase 2 of the occupation specific dispensation for legally qualified professionals.

Programme 5: Auxiliary and Associated Services

An additional R96 million is allocated for phase 2 of the occupation specific dispensation for legally qualified professionals at Legal Aid South Africa.

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DATE: 14/12/2010
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PAYMENT MADE BY : NAT: DEPT JUSTICE & CONST DEV
(BASD28) DISBURSEMENT NO : 000325484
OFFICE : NAT: DEPT JUSTICE & CONST DEV
PAYMENT DATE : 15/12/2010
CONTACT PERSON : HELP DESK
PAYMENT METHOD : CREDIT TRANSFER
CONTACT TEL NO : 0860 800 904 OR 012 309 9001

PAYEE NAME : LEGAL AID BOARD
BANK NAME : FIRSTRAND BANK LIMITED
PAYMENT ADDRESS : PRIVATE BAG X76
BANK BRANCH : BRAAMFONTEIN 054
BRAAMFONTEIN
BRANCH NUMBER : 251905

ACCOUNT TYPE : CURRENT ACCOUNT

ACCOUNT NO : 62224831471
2017
DISBURSEMENT STATUS : PAID

MICR NUMBER : 0

SUPPLIER CONTACT DETAILS : LEGAL AID BOARD TELEPHONE NUMBER:

SOURCE DOC TYPE	SOURCE DOCUMENT NUMBER	PURCHASE ORDER NUMBER	PAYMENT NUMBER	PAYMENT DESCRIPTION	AMOUNT
SUNDRY	LAB/DECEMBER 2010	NOT APPLIC	00541218	LEGAL AID BOARD	R 89453000.00

TOTAL : R 89453000.00

**** END OF REPORT

DBBS07BS ****

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7.5 STATEMENT OF FINANCIAL PERFORMANCE

for the year ended 31 March 2011

	Notes	2011 R	2010 R
Revenue	**14**	**1,116,355,000**	**917,408,000**
Baseline allocation		1,001,439,000	895,808,000
Case backlog funding		25,000,000	20,000,000
Child Justice Act		10,000,000	1,600,000
Children's Act		3,000,000	-
FIFA World Cup Courts		4,916,000	-
Occupational Specific Dispensation		72,000,000	-
Expenses		**(1,105,553,939)**	**(940,598,906)**
Personnel		(767,981,310)	(658,925,782)
Administrative	**15**	(149,122,225)	(111,920,652)
Other expenses	**15.1**	(154,537,513)	(143,152,390)
Depreciation and amortisation	**16**	(33,436,556)	(25,460,167)
Finance Costs	**10.1**	(476,335)	(1,139,915)
Surplus/(Deficit) from operations		10,801,061	(23,190,906)
Other income	**17**	4,431,043	4,295,948
Interest income	**17.1**	16,510,225	17,025,347
Surplus/(Deficit) for the year		**31,742,328**	**(1,869,611)**

7.6 STATEMENT OF CHANGES IN NET ASSETS

for the year ended 31 March 2011

	Notes	R
Balance at 31 March 2009		**164,899,464**
Net deficit for the year ended 31 March 2010		(1,869,611)
Balance at 31 March 2010		163,029,853
Net surplus for the year ended 31 March 2011		31,742,328
Balance at 31 March 2011		**194,772,181**

9. NOTES TO CASH FLOW STATEMENT

9.1 CASH GENERATED BY OPERATING ACTIVITIES

	2010 R	2009 R
Net deficit/surplus	(1 869 611)	21 231 359
Non-cash movement		
Depreciation	25 371 627	16 232 845
Amortisation	88 539	205 180
Decrease in provision	(8 985 474)	1 486 230
Increase in payables	11 349 436	(11 752 272)
(Gains)/losses on sale of property,plant and equipment	(778 105)	(3 414 223)
Increase in provision for doubtful debts	563 289	42 211
Increase in capital assets/tools adjustment	(3 066 585)	375 075
Decrease in receivables	218 694	(757 818)
Net cash flows from operating activities	22 891 810	23 648 587

9.2

a) Cash and cash equivalents

Cash and cash equivalents consist of cash on hand and balances with banks and investments in money market instruments. Cash and cash equivalents included in the cash flow statement comprise the following statement of amounts indicating financial position:

	2010 R	2009 R
Cash on hand and balances with banks	229 221 373	230 656 030
	229 221 373	230 656 030

b) Property,plant and equipment

During the period, the economic entity acquired property, plant and equipment with an aggregate of R31 599 120, of which R31 599 120 was acquired by means of capital grants by the national government. Cash payments of R31 599 120 were made to purchase property,plant and equipment.

TOTAL ESTABLISHMENT AND RECRUITMENT, AND LEGAL STAFF INCREASES FROM MARCH 2009 TO MARCH 2011

	2009 Mar	2009 Sept	2009 Dec	2010 Mar	2010 June	2010 Sept	2010 Dec	2011 Mar	Increase in 2009/10	Increase in 2010/11
Professional Assistants	753			781				807	3.7%	3.3%
Legal Managers	240			252				275	5.0%	9.1%
Total legal staff excluding CAs and temporary staff	993			1033				1082	4.0%	4.7%
Quarterly legal employment excluding CAs, including temporary[2]	1085	1136	1129	1147	1173	1193	1223	1206	5.7%	5.1%
Quarterly increase			0.0%	1.6%	2.3%	1.7%	2.5%	0.0%		
Total budgeted staff establishment[1]	2419[3]			2513	2595			2595	3.9%	3.3%
Total number of legal and support staff recruited	2281			2352	2434			2489	3.1%	5.8%
Total recruitment quarterly increase					3.5%					

NOTES

1.This table shows the changes in the total budgeted establishment and recruitment, and legal staff increases, as well as the changes in the total quarterly legal staff including temporary from March 2009 to March 2011.

2. Columns 10 and 11 show total permanent legal recruitment increasing by 4.7% in 2010/11 compared to 4% in 2009/10.

3. Row 6 shows a nil increase in total legal staff in the quarter September to December 2009, followed by 1.6% in January to March 2010, 2.3% in April to June 2010, 1.7% in July to September 2010, and 2.5% in October to December 2010.

4. These figures show that far from legal recruitment being 'put on hold', it progressively increased after December 2009, with increases continuing to the end of the year.

5. The total recruitment increase of 3.5% in the April to June 2010 first quarter is greater than the increase of 3.1% for the whole of 2009/10.

6. Columns 10 and 11 show total establishment budgeted posts increasing by 3.3% in the first quarter April to June 2010, almost equal to the 3.7% increase for the whole of 2009/10 – and this is after LASA was 'suddenly confronted' with 'budgetary issues' on 10 March 2010 when it learned that its OSD funding allocation hadn't yet come through as expected at the time.

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1. Annual report 2010/11, table 7, page 48. (Bundle addendum, page 693)
2. Annual report 2009/10, table 10, page 152; and annual report 2010/11, table 15, page 113. (Bundle addendum, pages 694 and 695)
3. First Quarter Report 2010/11, page 23. (Bundle addendum, page 696)

Portfolio Committee of Justice and Constitutional Development
14 April 2010
Briefing by the South African Human Rights Commission and South African Legal Aid on their Strategic Plans

Acting Chairperson: Mr M Gungubele (ANC)

Documents Handed Out:
South African Human Rights Commission (SAHRC) Chairperson's Report
South African Human Rights Commission Strategic Plan
South African Human Rights Commission Strategic Business Plan
Legal Aid South Africa Strategic Plan
Legal Aid South Africa Budget

Audio Recording

Summary
The South African Human Rights Commission was concerned about delivering on its strategic objectives with its very constrained budget. After accommodation and personnel costs were met, there would be R13 million this year with which to deliver on its mandate. The new Commissioners had been in place for only 90 days. The Chief Executive Officer and the Chief Financial Officer had both left just as the new Commissioners were appointed. Given the "current volatile situation in the country" as one MP termed it, the Commission in delivering on its constitutional mandate faced immense challenges.

There had recently been a big influx of complaints regarding hate speech and race elated matters. The main priority for the Commission was its monitoring function. This entailed the extent to which citizen's rights were protected and enjoyed. The budget was not enough to support all the operations of the Commission.

Despite this, the Committee complained about the lack of visibility of the Commission during the current events in the country. The Committee was also concerned that the work of the Commission itself was not visible. The strategic plan was not comprehensive enough in mapping out how the outputs would be achieved. The outputs themselves were deemed to be too many and unrealistic. A stakeholder meeting was proposed.

The main strategy of the Legal Aid South Africa was to increase access as well as focus on quality legal services. The legal quality assurance unit governed all aspects of quality control within the organisation. One of the goals of the organisation was to try and provide one practitioner per court. Legal Aid South Africa was concerned about the increasing insistence of legal aid by affluent individuals. What was more disturbing was that the courts were instructing Legal Aid to comply in these instances. The Committee was pleased with the quality of the report

Minutes
South African Human Rights Commission (SAHRC) Chairperson's Report
Advocate Lawrence Mushwana, Chairperson of the Human Rights Commission (SAHRC) informed the Committee that his document was based on the first impressions of the newly appointed SAHRC. The previous Chief Executive Officer (CEO) and Chief Financial Officer (CFO) both left when the new Commission was appointed. The financial auditors had already begun with auditing the SAHRC's books and there was confidence that the financial state of affairs was in good order. The staff had formally complained to the Speaker of Parliament prior the time the new Commission was appointed. This was not an easy matter to deal with. Staff morale was "down" but this was improving. The Speaker would receive a detailed report once the SAHRC was satisfied that the matter was dealt. There had been a steady decline in the number of public complaints and the SAHR was unsure as to why this was the case. There was a big influx of complaints regarding hate speech and race related matters.

The Chairperson interrupted Adv Mushwana and said that when the Commission was dealing with

Annual Report contained some of the concerns that the Commission had regarding PAIA. The SAHRC had reports on the work done on farm workers, health and a whole range of very valuable investigations. The reports had been brought to Parliament. The key question was how was Parliament processing these reports and how was it ensuring that the recommendations were being implemented or effected. An information commissioner was needed in order to facilitate the practical accessing of information.

The Chairperson thanked the Commission and gave them two weeks to provide the Committee with written responses.

Legal Aid South Africa (LASA) Strategic Plan
Judge Dunstan Mlambo, Chairperson of LASA, referred to Slide 5 which indicated the approach that LASA had adopted in formulating the strategic plan. The four key components of the strategic plan were Financial, Customer, Learning and Growth as well as Internal Business Processes. The mandate of LASA came from the Constitution and the Legal Aid Act. LASA had to consider the context of the environment in which it operated when it crafted the strategic plan. LASA had considered health, living conditions, poverty and the economic situation. The legal and justice sector was also analysed. LASA considered children awaiting crime, case backlogs, prisoners awaiting trial, the number of violent crimes and the inequality that existed in South African life.

Slide 23 identified four outcomes: for there to be an efficient and effective justice sector; justice for all focusing on the poor and vulnerable; a sustainable and efficient organisation; for citizens and communities to live by the rights enshrined in the Constitution. LASA was sought out throughout the continent and internationally. LASA had 17 strategies, the main strategy was to increase access as well as focus on quality legal services.

Ms Vidhu Vedelankar, CEO, continued that LASA's methodology in its plan was to ensure that there was focus on all aspects of the business. The bottom line was to ensure there was delivery of quality legal services. The client, community aspects as well as the finance and affordability aspects were considered as externally focused aspects. The internal business process and employee and organisational aspects were internal, focused aspects. The client and community components were at the core of the business. The strategies were incorporated into programmes where LASA wanted to ensure that it was client focused and that it increased access. It was also important to focus on expanding the brand of the organisation in order to reach many more South Africans. The finance and governance issues were monitored as well as quality. The legal quality assurance unit undertook this. Organisational capacity referred to the national footprint of LASA via its nationwide offices.

Judge Mlambo in closing said that LASA was aiming for one practitioner per court but the budgetary constraints were preventing this. The regional courts were the busiest and LASA wanted to meet the demand. Courts had now started to order LASA to provide legal aid to affluent individuals. In the *Gary Porritt* case the judge had ordered LASA to provide legal aid at senior counsel rates. This was despite the fact that the defendants flew to court cases. LASA was challenging the ruling but this was a trend. The trials were expensive and if this trend continued, it would have a serious effect on the budget. In the *Boeremag* case LASA fought the matter right up until the Appeal Court and lost there. The Constitution had to add its voice to this matter.

Discussion
Mr G Ndabandaba (ANC) thanked LASA for an excellent report. He asked how did LASA select lawyers from Judicare and what did they do to those who provided shoddy work.

Mr Jeffery congratulated LASA on an excellent report. Why had LASA requested more money for the implementation of the Child Justice Act, as the Act did not require the presence of lawyers at the preliminary stage of an inquiry? What was the budget for legal aid during the World Cup as there would be special courts running? What was the progress of the civil litigation claims for farm workers?

Ms Smuts asked on what grounds did the Supreme Court of Appeal turn down LASA in the *Boeremag* case?

Judge Mlambo replied that the initial number of accused in the *Boeremag* case were 23. Some of the accused did not pass the means test. The court had said that the case was extraordinary and would take a long time. The funds of the accused would probably run out before the trial ended. The Legal Aid Board then decided that they would represent the accused once their funds ran out. Usually lawyers were not appointed by the accused, instead Legal Aid appointed a lawyer. If someone fired the appointed lawyer for no good reason then LASA would no longer assist that person. However in the *Boeremag* case, LASA was instructed to provide lawyers for the accused, this enabled them to choose their own lawyers and they duly did so. LASA lost the case not to represent the accused because it was deemed unconstitutional for an accused to be unrepresented in a criminal law case, it was not in the interests of justice. In the *Garry Porritt* case the accused refused to disclose his wealth in order for a means test to be applied. The judge instructed LASA to provide advocates to represent the accused and the judge also instructed LASA to provide a certain number of advocates. The pre-trial costs would thus be in the region of R60 million for this case. The problem was that the Constitution was often relied upon by the accused who did not want to spend his own money in court. The civil claims for farm workers was outsourced by the Department of Land Affairs and the cost was probably twice as much as what Legal Aid would charge. LASA had an accreditation list for lawyers and this was based on the BEE status of lawyers. Individuals or firms had to put themselves on this list. Those practitioners who provided shoddy services were removed from the accreditation list and banned.

Mr Brian Nair, National Operations Executive for LASA, said that the necessary cost for the Child Justice Act was providing a lawyer in each case as Magistrates were requiring the presence of a lawyer during the pre-trial inquiry. LASA was actively involved in World Cup preparations and had already included a budget for its plans. It had drawn up contracts for extra staff that would work during that period and once the final budget was approved they would sign their contracts. LASA had been engaging with the Department of Land Affairs but it was unlikely that LASA would be used by the department. Land Affairs had said that it would renew the contract of the outsourced firm.

Mr Swart asked how much it cost the Department of Land Affairs to outsource to a private firm.

Mr Jeffery said that it would be unfair to burden LASA with providing this information. The Committee should rather ask the Portfolio Committee dealing with Land Affairs to obtain the information and then provide it to the Committee.

Mr Landers said that the Committee should just ask the Minister of Land Affairs directly.

Mr Ndabandaba asked of the 48.5 million people that were serviced by Legal Aid, what percentage was from the rural areas.

Mr Nair replied that 92% of cases were criminal cases. Civil legal aid was provided in mostly rural areas, the demand was bigger there.

The Chairperson commended LASA for their excellent report as it had measurable outputs, objectives as well as a commitment to targets.

Meeting adjourned.

ADV. BRINK

HE IS AN ADVOCATE, HE APPLIED TO LASA (LEGAL AID) FOR SNE ADVISORY POSITION 2 WERE AVAILABLE. HE WAS SHORTLISTE W/ 4 OTHER CANDIDATES. ONE CANDIDATE GOT 1 DURBAN POST, AND SOMEHOW HE WAS OF 1 IMPRESSION HE HAD GOTTEN 1 PIETERMERITZBURG POST. 1 2 OTHER CANDIDATES RECIEVED REGRET LETTERS. ADV BRINK RECIEVED A LETTER NOT EXPLAINING WHY HE WAS REJECTED.

- HE REQ REJCT LETTERS SENT 2 OTHER CANDIDATES
- RECRUITMENT POLICY DOCUMENT.
- HE HAS A CASE AT LABOUR CRT AGAINST LASA FOR UNFAIR DISCRIMINATION.
- 10 - VEDANANDAR - DIC - NAIR
- ADV. BRINK TOOK PROVINCIAL OFFICE TO INTERNAL APPEAL FOR LOOSING HIS FILE ON 1 VIEW THAT IT FELL OUTSIDE 1 SCOPE OF 1 COMMISSION.

Legal Aid South Africa

Your voice. For justice.

LEGAL AID SOUTH AFRICA : APPROVAL FRAMEWORK

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

Key to Levels

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

Key to Other

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

Key

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

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

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes 27-Feb-18
1	**STRATEGY AND PLANNING**									
1.1	Strategic Plan		A	C	E				C/ All Committees	
1.2	Business Plan		C	A	B	E			C/All Committees	
2	**BUDGET**									
2.1	**Within Treasury allocation and approved surplus**	1	A	C	C	C	E	C	C/ All Committees	
2.2	**Deficit Budget**	2	B	C	C	C	E		A/ National Treasury	
2.3	**Reallocation of budget - Operational Expenditure & Capital Expenditure (only within operational or capital) (Except Contingency)**									
2.3.1	Reallocation of budget between line items within a cost centre subject to an aggregate of 8% of cost centre					C (excl JCE)	D	E A	E (JCE)	
2.3.2	Reallocation of budget <R200,000 across cost centres subject to an aggregate of 1% of the total budget					B	A	E C		
2.3.3	Reallocation of budget <R350,000 across cost centres subject to an aggregate of 4% of the total budget					A	C	E C		
2.3.4	Reallocation of budget between cost centres subject to a maximum of 8% of total budget				A	B	C	E C		
2.3.5	Reallocation of budget in excess of 8% between cost centres		A		B	C	C	C		

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes 27-Feb-10
2.4	Transfers between operational expenditure and capital expenditure or vice versa									
2.4.1	**Transfers ≤R500,000**					A	C	E		
2.4.2	Transfers ≤R1,000,000				A	C	C	E		
2.4.3	**Transfers > R1,000,000**		A		**C**		D	E		
3	**EXPENDITURE**									
3.1	**Expenditure (Operating & Capital) including salaries, wages, allowances**	24								
3.1.1	Expenditure within budget <R50,000	3						A/E		
3.1.2	Expenditure within budget R50,000 – R250,000							A/E		
3.1.3	Expenditure within budget R250,000 - R500,000	13 & 16				A		E	C/AC	
3.1.4	Expenditure within budget >R500,000	13 & 16			A			E	B/BAC C/AC	
3.1.5	Tenders > R10million	13 & 16	A		**D**	**D**		E	**B/**BAC C/AC	
3.2	**Write off and disposal of assets – depreciated value**									
3.2.1	≤R1million								authority as per 3.1	
3.2.2	>R1million		A		B	C		E		
3.3	**Write off of bad debts in any one year**									
3.3.1	< R50,000		D				B	A/E		
3.3.2	R50,000 – R200,000		D		C	A	C	E		
3.3.3	≤R1million				A	C	C	E		
3.3.4	>R1million		A	C		C	E	C	C/AC	
4	**ACCOUNTING AND REPORTING**									
4.1	Establishment of policy		A	C	C	C	C		B/AC	
4.2	Deviation in application of policy		A	C	C	C	C		B/AC	
4.3	Statutory Accounts		A	C	C	C	C		B/AC	
4.4	Annual Report		A	C	C	C	C		B/AC	
4.5	Valuation of properties and portfolio		A	C	C	C	C		B/AC	
5	**INTERNAL CONTROLS**									
5.1	**Establishment of controls and changes thereto**									
5.1.1	Approval framework		A	C	B			E(CSE)		
5.1.2	Procedure manual			C		A		C/E		
5.1.3	Corporate Governance, including Code of Ethics		A	C		C		E (BS)		
5.2	**Internal auditors**	14								
5.2.1	terms of reference (3 year Rolling Plan)		A		C			E (IA)	B/AC	
5.2.2	appointment/dismissal of external consultants			C	A		C	E (IA)	C/AC	
6	**BANKING**									
6.1	Setting of overall policy on banking relationships and spread of banking services		A	C	C	C	E			
6.2	Change of main bankers		A	C	C	C	E	D	C/AC/B/BAC	
6.3	Approval of signing procedures and signatures “A” and “B” signatories		D	C	A	C	E			
6.4	Periodic negotiation and acceptance of banking facilities		D	C	A	C	E			

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes 27-Feb-10
7	**AUDITORS**									
7.1	Appointment and dismissal at LAB of agent of AG	4	D	D	D				D/AC	
7.2	Reports (non-routine audits)		D		E				D/AC	
7.3	Non-auditing consultancy fees	18	D		B		A	E	A/BAC	
7.4	Auditing fees		A	C	B	C	C		D/AC	
7.5	Interim and Final Audit Plans		A	C	B	C	C		C/AC	
8	**HR MATTERS**	5								
8.1	**Personnel Structure**									
8.1.1	Approval and periodic revision of grading policy		A	C	C	C		E(HRE)	C/RC	
8.1.2	(a) Establishment of new positions, regrading existing positions and abolition of posts at executive senior managerial & within budget (levels 14-16)		A		B	C		E C (HRE)	C/RC	
	(b) Levels (11-13) & OSD - CM -1 ; OSD - LP - 9 & 10 and MR - 5				A	B		E C (HRE)		
8.1.3	Establishment of other new positions, regrading existing positions and abolition of posts within existing structure & within budget (levels 1-10) and OSD - SU - 1 & 2 and OSD - LP 1 - 8				B	A		E C (HRE)		
8.2	**Appointments**	17 & 21								
8.2.1	**(a)** CEO (Level 16)		A/E						C/RC	
	(b) COO or NOE (Level 15.5)		**A**		**B/E**				**C/RC**	
8.2.2	(a) Executive (other than the CEO, COO & NOE),		C B/Exco		A/E	B/E			D/RC	X
	(b) Senior Management and Senior Professional staff (levels 11-13, OSD - CM -1 and OSD - LP - 9&10, OSD - MR - 5)				**B**	**B**		E A	D/RC HRE (17)	
	(c) OSD - SU - 1 & 2 and OSD - LP-8					**B**		A/E **(ROE)**	HRE (17)	
	(d) Other permanent staff (below level 11 and OSD - LP - 1 to 7)							A **incl JCE**		
8.2.3	Temporary staff - including OSD-CP-1									
	(a) Up to 3 months (maternity leave 4 months)							A	C (HRE - to facilitate SAP)	
	(b) More than 3 months					A		E	C (HRE - to facilitate SAP)	
8.3	**Remuneration: Fixed Packages**									
8.3.1	Annual review and adjustments		A	C				E (HRE)	C/RC	
8.3.2	Interim adjustments (Professional, management and administrations)		A	C				E (HRE)		
8.3.3	Annual Performance Bonus All staff including modifiers		A					E	C/RC	
8.4	**Changes to conditions of employment**									
8.4.1	Changes to general terms and conditions of employment		A	**C**	B	B		**E**(HRE)	D/RC	
8.4.2	Changes to the conditions of employment restricted to an office or a department of the national office					A **(COO)**		B(HRE)		
8.4.3	Changes to the conditions of employment restricted to a single employee							A(HRE)		

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes 27-Feb-10
11.2	**Destruction of Documents**									
11.2.1	Destruction of documents converted to electronic images							A(JCE)		
11.2.2	Destruction of Documents not converted to electronic images (not to take place until 7 years after last payment/3 years after last action if no payment)							A/EXEC	A/CFO (for all financial records)	
11.2.3	Transfer of records to National Archives (board agendas, board minutes and annual reports)					A		E/Board Secretary		
12	**OTHER**									
12.1	Any member of Management Exco may delegate their authority, be it in terms of this approval framework or their authority to sign contracts, to any other employee if the Executive will be absent from work or out of the country				A A			E		
12.2	The CEO may further delegate any authority delegated to her				A					

General Note

Failure to comply with the provisions of this approval framework may lead to:

- Disciplinary proceedings. In the event of very serious transgressions dismissal may result.
- Consequences in terms of the Public Finance Management Act and the regulations thereunder, including both criminal and civil liability.
- Personal liability in the event of the non compliance resulting in the LAB suffering damages.

NOTES:

1	See section 53(1) of the Public Finance Management Act No. 29 of 1999.	
2	See section 53(3) of the PFMA	
3	May be delegated to manager by the CEO and the EXEC jointly. May be delegated below R20 000 by the EXEC. Justice Centre Executives, the Special Projects Manager, the Board Secretary, and all Finance Managers reporting directly to the CFO are delegated to approve expenditure up to R50 000 except in respect of capital expenditure. Further delegations must be in writing. Any delegation may be terminated either by written withdrawal or by cessation of employment. For purposes of this document a "Manager" is a person reporting directly to a member of Man/Exco and responsible for the management of staff or resources.	
4	Auditor General approval required in addition. Should take place every five years. Initiated by A - G.	
5	Subject to Section 8 of the Legal Aid Act No. 22 of 1969.	
6	See also Section 4 of the Legal Aid Act No. 22 of 1969.	
7	In conjunction with the Minister of the Public Service and Administration.	
8	Except that additions to the schedule of an existing policy or renewal of an existing policy, provided within budget, may be notified after the event.	
9	See also Section 3 of the Legal Aid Act No. 22 of 1969.	
10	The CEO may delegate the approval of press releases and presentations including media interviews not related to changes of policy to any Executive.	
11	All amounts set out in the approval framework are inclusive of VAT. Approval limits relate to the expenditure which may be authorised in any one financial year.	
12	EXEC includes Regional Operations Executive, and the Board Secretary but excludes Justice Centre Executives.	
13	All expenditure >R500 000 is to be made in terms of the Supply Chain Management Policy by tender. If a Tender approved by the Bid Adjudication Committee is not the lowest in terms of price, the decision of the Bid Adjudication Committee must be ratified by the Management Executive Committee. If the party selected by the Bid Adjudication Committee is the party offering the lowest price the CEO or COO (in accordance with the Approval Framework) may conclude the contract after approval by the Bid Adjudication Committee without prior approval by the MAN/EXCO. Payments for all expenditure approved by the Board to be authorised by the CEO.	
14	The CEO is entitled to require the Internal Audit Department to initiate audits and/or investigations but is not entitled to terminate or curtail audits and/or investigations once approved by the Board, the Board Executive Committee or the Audit Committee.	
15	Notwithstanding anything contained in this paragraph 10.3 the CEO, LDE or CSE are authorised to do whatsoever may be necessary to protect the Board and/or a client's rights, prevent default judgment, avoid prescription or comply with any statute or Rule of Court pending any necessary decision by Board Exco. All litigation on behalf of the LAB is to be conducted under the control of the Corporate Services Department.	
16	Applicable only to audit matters where the Audit Committee is to be consulted in advance by report to the Audit Committee.	

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes 27-Feb-10
17	It is the responsibility of the **line function Executive** to ensure that such is provided for in the budget and MTEF **and that a vacancy exists in respect of the post concerned. The HRE to confirm budget and vacancy and EE statistics with regard to JC/region/dept.**									
18	This relates to the performance of non-auditing consultancy work by any firm which is either the agent of the Auditor-General in respect of the external audit or an internal audit service provider.									
19	No employee may approve his/her own travel, subsistence and/or accommodation. No subordinate may approve an employee's travel, subsistence and/or accommodation. The CEO may expend funds on her/his travel, subsistence and/or accommodation within the budget allocated to the CEO in the annual budget approved by the Board.									
20	When Board Exco are not available international travel, accommodation and subsistence may be approved by the chairperson and the CEO jointly subject to such being tabled at the next Board Exco meeting.									
21	All appointments are to be in accordance with the standard letter(s) of appointment to be found on the U Drive.									
22	Where the disposal of assets or the write off of bad debts is originated by the CFO he/she must act in conjunction with the CEO.									
23	In respect of Impact Services, amounts not greater than R500 000 for any one matter in any one financial year are committed by decision of the Legal Services Technical Committee and require the agreement of the CEO. The CEO, NOE and LDE may jointly commit to expenditure up to R50 000 in any one matter.									
24	Certain agents (e.g. insurance brokers) receive an income from commission. It is necessary to ensure such commissions are disclosed. In considering whether you have authority to approve a contract you must consider: ▪ The amount to be paid by the LAB in any one financial year ▪ The amount to be received by the agent as commission in any one financial year									
25	To approve a contract you must be permitted to approve the greater of the payments to be made by the LAB or the commission to be earned.									
26	Contracts <R50 000.00 per annum can be signed by Justice Centre Executive without vetting by the Corporate Legal Section. All other contracts >R50 000.00 per annum to be vetted by the Corporate Legal Unit before sign off									
27	The contracts of the Impact Litigation Unit are to be prepared/be vetted by the Impact Litigation Uit and signed as per the Approval Framework.									
28	Where the payments in terms of the proposed contract are over not more than 36 months and fall within the budget in respect of current financial year and/or the MTEF. An exception is made in respect of leases of immovable property where a maximum duration of 60 months is permitted and only the first 36 months fall within the budget in respect of current financial year and/or the MTEF. Where a contract continues over more than one financial year and where the payments vary during the duration of the contract, the aggregate expenditure in the financial year in which payments are highest will determine the authority level required for approval.									
29	All authority as per this column is reserved for the Board, unless otherwise specified as delegated to Board Exco, It is further noted that as per Clause 3.1 of the approved Board Exco Charter - "The Exco is conferred with all the powers conferred upon the Board by the Legal Aid Act No. 22 of 1969 that may be delegated and the Exco shall be responsible for: • ... • ... • decisions on any matter requiring decision by the Board between Board meetings:"									
30	On 24 November 2007 the Board adopted the following Resolution: "Having noted the provisions of section 56 of the Public Finance Management Act, 1999, in its capacity as accounting authority in terms of section 49 of the Act, the Board hereby delegates to the Chief Executive Officer of the Legal Aid Board all of the powers entrusted or delegated to the accounting authority in terms of the Act including the Treasury Regulations under the Act, without limitations or conditions and with the power of substitution. In doing so the Board notes that it is not divested of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty. The Board furthermore notes that it may confirm, vary or revoke any decision taken by the Chief Executive Officer as a result of this delegation, subject to any rights that may have become vested as a consequence of the decision."									
31	Delegation to the COO and NOE shall be in accordance with the functions each is responsible for ie all delegated authority to the COO will be for those functions and executives reporting to him/her and all delegated authority to the NOE shall be for those functions and executives reporting to him/her; It is noted that this delegation is not interchangeable ie The COO shall not have authority to approve matters relating to functions that are the responsibility of the NOE and vice versa.									
32	Matters of discipline in this regard exclude, verbal and written warnings.									X
33	In matters, which in the view of the CEO, need urgent and immediate action and wherein any delay in actioning the disciplinary proceedings will compromise the interests of Legal Aid South Africa, the CEO may act after consulting with the chairperson of the Board. The matter to be reported to the Board Exco by email as well at its next meeting. An example will be, and without limitation, suspension of an executive due to an allegation of fraud.									X

ANNEXURE A

On 24 November 2006 the Board adopted a resolution delegating the authority to litigate on behalf of the Legal Aid Board to the Chief Executive Officer and the Corporate Services Executive. Although that resolution is no longer duplicated in this Approval Framework it remains in force.

Legal Aid South Africa

29 De Beer Street
Braamfontein
Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

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

Tuesday, August 03, 2010

Anthony Brink
25 Baker Road
Prestbury
PIETERMARITZBURG
3200

E-mail: arbrink@iafrica.com

Dear Mr Brink

Senior Litigator Position: Pietermaritzburg

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

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

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

Yours faithfully

Brian Nair
National Operations Executive

State grilled over 'secret' Zimbabwe report

M&G REPORTER | JOHANNESBURG, SOUTH AFRICA - Nov 26 2010 00:00

Lawyers for President Jacob Zuma faced a barrage of questions from the judges of the Supreme Court of Appeal (SCA) on Monday, November 22, as they tried to justify the presidency's decision to keep secret a report on the constitutional and legal conditions surrounding Zimbabwe's controversial 2002 elections.

Presiding judge Robert Nugent repeatedly pressed Zuma's counsel, Marumo Moerane, over the failure of the presidency, following a Promotion of Access to Information (PAIA) request from the *Mail & Guardian*, to provide reasons for its failure to release the report, which was commissioned by then president Thabo Mbeki from judges Sisi Khampepe and Dikgang Moseneke.

The request was refused twice, first by Trevor Fowler in his capacity as presidency information officer, and later by then Minister in the Presidency Manto Tshabalala-Msimang. The *M&G* then took the case to the North Gauteng High Court, which ruled that Zuma must hand over the report. The presidency appealed that judgment in the SCA.

Moerane explained that on the basis of a reading of the report, Fowler had concluded that releasing it would be improper as it would breach the confidence afforded the judges as representatives of Mbeki by Zimbabwean officials, and would damage relations with that country.
"If Mr Fowler says, 'That's my opinion', then that is the end of the matter and the court must just accept it?" Nugent asked.

Judges Azhar Cachalia, Mandisa Maya and Belinda van Heerden all took a similar line, asking Moerane why no detailed information about the nature of the judges' mission had been provided, and pointing out contradictions in the version of events offered on affidavit as "personal knowledge" by Fowler and by Frank Chikane, the director general in the presidency.

Much of the discussion turned on the nature of the mission undertaken by the judges. Were they sent by Mbeki to undertake an independent inquiry into the "constitutional and legal" environment surrounding the elections, which were widely seen as rigged? Or were they, as Chikane and Fowler claimed, acting as "envoys" of the South African state? Was it something uncomfortably in between?

If Khampepe and Moseneke were operating independently, the case for keeping the information secret is greatly weakened as no state-to-state confidentiality would apply. If they went as quasi-diplomats, then serious constitutional concerns would arise, because undertaking such a role would breach the separation of powers between judiciary and executive, and be in violation of the Constitutional Court's "Heath" judgment, which banned judges from taking on what amounts to government work.

> "Surely", Cachalia told Moerane, "there's a letter of appointment, there's a note, there's a minute. Government does not operate like a glorified spaza shop … In the absence of any paper trail must we just accept that [Chikane and Fowler] are people of standing and they will never mislead, just like [then United States secretary of state] Colin Powell never misled the security council [over Saddam Hussein's possession of weapons of mass destruction]."

"It is unlikely they would just be called into the president's office and told 'off you go'," added Van Heerden.

"We have no affidavit from the former president and no affidavit from the former judges," Nugent added. "All we have is bald allegation."

Both Nugent and Cachalia expressed concern over the constitutional implications of the mission.
"I have great, great difficulty accepting that judges would turn themselves into diplomats," Nugent said.

Cachalia put it more strongly: "I'm troubled … that this was an executive function being performed. If it is not distinguishable from [the Heath judgment] then it is unconstitutional and illegal … I'd want to hear why it did not offend the separation of powers and, if it does, why would any legal protection attach itself to the report?"

Pressed to say whether the trip had been an executive or an independent one given his insistence that the two travelled as diplomats, Moerane said, "I don't want to give it a name. Give a dog a name, and you hang it."

"You gave the dog the name," Cachalia replied.

The judges also hammered Moerane about factual divergences between Chikane's and Fowler's versions of events.

Jeremy Gauntlett, counsel for the *M&G,* also pressed this point, "the two deponents drew their guns and shot one another", he told the court.

"In what shambolic state is the presidency that it puts up as its main affidavit [an account] by someone who says he started working there two years after the events in question?"

As the hearing closed Nugent reminded Moerane that in a democratic South Africa the government officials have to justify their decisions on the basis of facts.

"In the old days you used to get these affidavits that said 'I've locked up Mr Cachalia because it's in the public interest'. Boom. 'Court, I don't care what you think'… The point is we've now moved beyond that."

Judgment on the matter was reserved.

Source: Mail & Guardian Online
Web Address: http://www.mg.co.za/article/2010-11-26-state-grilled-over-secret-zimbabwe-report

If employees become aware of any evidence that LEGAL AID BOARD funds or property may have been used in a fraudulent or improper manner they should immediately and confidentially advise LEGAL AID BOARD as set out in the contravention of the code section of this document.

12. LEGAL AID BOARD's Records

Accurate and reliable records of many kinds are necessary to meet the LEGAL AID BOARD's legal and financial obligations and to manage the affairs of the LEGAL AID BOARD.

The LEGAL AID BOARD's books and records should reflect all business transactions in an accurate and timely manner. Undisclosed or unrecorded revenues, expenses, assets or liabilities are not permissible, and the employees responsible for accounting and record-keeping functions are expected to be diligent in enforcing proper practices.

13. Dealing with outside persons and organisations

13.1 Prompt Communications

LEGAL AID BOARD strives to achieve complete, accurate and timely communications with all parties with whom it conducts business, as well as government authorities and the public. In addition, prompt and effective internal communication is encouraged.

A prompt, courteous and accurate response should be made to all reasonable requests for information and other client communications. Any complaints should be dealt with in accordance with internal procedures established by various operating areas of the LEGAL AID BOARD and applicable laws.

13.2 Media Relations

In addition to everyday communications with outside persons and organisations, the LEGAL AID BOARD will, on occasion, be asked to express its views to the media on certain issues.

When communicating publicly on matters that involve the LEGAL AID BOARD business, employees must not presume to speak for the LEGAL AID BOARD on any matter, unless they are certain that the views they express are those of the LEGAL AID BOARD and it is the LEGAL AID BOARD's desire that such views be publicly disseminated. Employees approached by the media should immediately contact the department or

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

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

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number:

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

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

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

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

The Information Officer/Deputy Information Officer:

…… (CEO Ms Vidhu Vedalankar entered in manuscript)

Legal Aid South Africa
Private Bag X76
Braamfontein 2017
Johannesburg

B. Particulars of person requesting access to the record

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

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

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

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

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

N/A

C. Particulars of person on whose behalf request is made

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

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

D. Particulars of record

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

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

1. Description of record or relevant part of the record:

2. Reference number, if available:

3. Any further particulars of record:

See annexure

G. Notice of decision regarding request for access

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

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

Signed at Pietermaritzburg on this 23rd day of August 2010

……..
SIGNATURE OF REQUESTER

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

11. All and any email or notes to Clark, founding her statements in her second email to Brink on 30 April 2010, two weeks after her first, that 'the process is where it is' and remained to be completed (i.e. had not yet been 'put on hold' as Nair alleged in his letter to Brink on 3 August 2010): 'It is your decision as to whether you wish to wait to allow us to complete the process or whether you wish to withdraw' and 'I think you should allow us to complete our process at the pace we have decided', five and a half months since the professional selection board had interviewed its shortlisted applicants and selected a suitably qualified and experienced senior legal professional for appointment as Senior Litigator at the Pietermaritzburg Justice Centre (– quoted in paragraph 25 of Brink's letter to Vedalankar).

12. All and any email or notes to Clark, founding her emailed statement to Brink on 30 April 2010 that 'At this stage it is not even clear which applicants will be considered in the second round or if indeed we will proceed with a second round' (– quoted in paragraph 28 of Brink's letter to Vedalankar).

13. All records, including but not limited to email, reports and notes, pertaining to the decision to 'put on hold … the recruitment process to finalize the appointments for all vacant Senior Litigator posts' (– per Nair's letter to Brink).

14. All records, including but not limited to email, reports and notes, pertaining to the decision to finally abort the 'recruitment process' and 'not be proceeding with the filling of any of these posts' (– per Nair's letter to Brink).

Signed: Adv AR Brink

Supplementary PAIA Request

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

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

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number:

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

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

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

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

The Information Officer
CEO Ms Vidhu Vedalankar
Legal Aid South Africa
Private Bag X76
Braamfontein 2017
Johannesburg

B. Particulars of person requesting access to the record

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

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

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

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

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

N/A

C. Particulars of person on whose behalf request is made

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

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

D. Particulars of record

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

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

1. Description of record or relevant part of the record:

2. Reference number, if available:

3. Any further particulars of record:

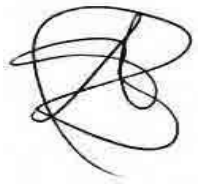
See annexure headed 'SUPPLEMENTARY PAIA RECORDS REQUEST: ANNEXURE TO FORM A'

G. Notice of decision regarding request for access

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

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

Signed at Pietermaritzburg on this 15th day of December 2010



……..
SIGNATURE OF REQUESTER

6. Minutes of 'management' meetings held 'Since early this year' recording its discussion that 'a reduction to our staff establishment' was 'required … in order to meet this shortfall' in 'funding' that was lower than 'anticipated' by a 'significant' amount.

7. Minutes of 'management' meetings held 'Since early this year' recording the work 'management … had' to perform 'to identify positions which could be frozen … in order to meet this shortfall' in 'funding' that was lower than 'anticipated' by a 'significant' amount.

8. Minutes and/or notes kept/made 'Since early this year' in which the 'positions which could be frozen' were 'identif[ied]' by 'management'.

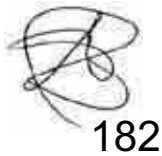
9. Minutes reflecting COO Makokoane's agreement, in terms of section 8.1.2 (b) of the Approval Framework, with NOE Nair and CEO Vedalankar's 'decision that all vacant senior litigator posts that were vacant would be immediately frozen'.

10. The resolution passed by 'management' in terms of section 8.1.2 (b) of the Approval Framework, following consultation with HRE Clark and with COO Makokoane's agreement, in relation to the claim: 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen.'

11. Written notification of the Board Executive Committee of the 'decision … the NOE and CEO took … In July 2010 … that all senior litigator posts that were vacant would immediately be frozen'.

12. Email to Durban Justice Centre attorney Bongani Mngadi (he says 'in April/May') notifying him that the Durban Senior Litigator post for which he'd applied wasn't going to be filled.

Signed: Adv AR Brink



PART ONE

COMPLAINT TO THE AUDITOR-GENERAL REGARDING MAJOR ONGOING BREACHES OF THE PUBLIC FINANCE MANAGEMENT ACT INVOLVING MANY MILLIONS OF RANDS AND OTHER MATERIAL IRREGULARITIES INCLUDING CRIMES COMMITTED IN A CORRUPTION COVER-UP BY PAST AND CURRENT HIGH OFFICERS OF LEGAL AID SOUTH AFRICA

I, Anthony Robin Brink, affirm:

1. I am an adult male, 60, an advocate of the High Court of South Africa, admitted to practice on 12 April 1983, and a former magistrate of the District- and Regional Courts, specialising in civil law. I reside at 36 Pearson Street, Eshowe, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 083 779 4174.

EXECUTIVE SUMMARY

2. This complaint identifies major ongoing contraventions of the Public Finance Management Act 1 of 1999 ('PFMA'), some criminal, committed in a cover-up of top-level recruitment corruption at Legal Aid South Africa ('LASA') entailing unauthorised expenditure of around thirty million rands since 2010, hitherto undetected and unreported by LASA's external auditor PWC.

3. The complaint further identifies multiple instances of 'material irregularity' as defined by section 1 of the Public Audit Act 25 of 2004 ('PAA'), some criminal, committed by LASA's top officers prior to and in the course of the cover-up, in which the express wishes of both Parliament and the Justice Minister were defied, to the massive detriment of critical service delivery to the country's indigent.

4. Part Two and other parts of this complaint to follow will detail further material irregularities in the form of procedural and ethical corruption of staff

recruitment at LASA, and further ethical and criminal misconduct in covering it up.

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CRIMINAL AND OTHER CAPITAL CONTRAVENTIONS OF SECTIONS 53(3), 53(4), 55(1)(a) & 55(2)(a) OF THE PFMA, READ WITH SECTION 86 'OFFENCES AND PENALTIES'; AND CRIMINAL CONTRAVENTIONS OF SECTION 17(2) OF THE POWERS, PRIVILEGES AND IMMUNITIES OF PARLIAMENT AND PROVINCIAL LEGISLATURES ACT 4 OF 2004 IN FALSELY REPORTING TO MISLEAD THE JUSTICE PORTFOLIO COMMITTEE	75–106
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The supporting documents referenced herein are accessible online in PDF at illegal-aid.co.za/AG. For easy copying, reprinting, transmission by email, and reading on a portable device, copies of this complaint are available in PDF, MS Word, and HTML at the same site.

INTRODUCTION

5. The 'biggest law firm on the African continent', as its internet website bills it, LASA enjoys a sterling reputation as a model of good practice and probity in corporate governance, management and financial administration in South Africa, and it is officially lauded as the standard for emulation by other public entities. Then Deputy Minister of Justice and Constitutional Development Andries Nel enthused in 2011: 'The world would be a better place if it were run by Legal Aid'.[1] and Minister of Justice and Correctional Services Ronald Lamola

[1] *Business Day*, 12 January 2011.

recently crooned in tune: 'This is one of the best-run entities of government. We have had clean audits for the past 18 years. There is a well-established culture [of proper corporate governance at LASA]. … So it is an institution of best practice, not only in SA but in the whole world'.[2]

6. The Auditor-General's 'clean audits for the past 18 years' have generated the universal impression that LASA is 'squeaky clean'[3] and have served to 'beatify' it and give it a 'saintly status'.[4] In fact, as this complaint will demonstrate, LASA is profoundly corrupt. Under the stewardship of former Board chairperson Dunstan Mlambo JP and former CEO Vidhu Vedalankar (both of whom retired in 2019)[5] and with the active complicity of Chief Legal Executive Patrick Hundermark (now also a Board member), National Operations Executive Brian Nair (now also a Board member), and Human Resources Executive Amanda Clark, proper corporate governance and the rule of law at LASA seriously broke down, with criminal lawlessness becoming the norm.

7. Chief Operations Executive Jerry Makokoane (now also a Board member) and Chief Financial Officer Rebecca Hlabatau turned a blind eye to the corruption called to their attention, as did Board member Pieter du Rand,[6] then and still representing the Department of Justice and Correctional Services ('the Department') on the Board, thus betraying his fiduciary duty to LASA and his watching brief from the Department. Board Secretary Langa Lethiba failed to

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[2] News24, 1 August 2019.
[3] The phrase Chief Justice Mogoeng Mogoeng used ironically in paragraph 104 of *Public Protector v South African Reserve Bank* [2019] ZACC 29 (22 July 2019) in relation to the Reserve Bank as it operated during apartheid.
[4] Against which general danger Mogoeng CJ warned in a talk quoted by *The Mercury* on 18 July 2019: 'We have got to make it our business not to beatify others at the expense of others, not to make others untouchable, and not to allow anybody, including me, to be awarded an undeserved saintly status.'
[5] Although Mlambo JP and Vedalankar have been succeeded by new chairperson Makume J and new CEO Kola, *brevitas causa* they'll continue to be cited in this complaint as chairperson and CEO respectively.
[6] Thus all breaching section 15.1.5 of LASA's Code of Conduct and Ethics (Bundle 2, page 780): 'All employees must ... report any harmful activity they observe in the workplace'. The correspondence they disregarded will be put up with and treated in another part of this complaint to follow.

inform the Board of the illegalities brought to his attention, thereby preventing it from acting to remedy them.[7]

8. The wholesale corruption at LASA addressed in this complaint[8] had its beginning in non-executive[9] Board chairperson Mlambo JP's illegal intrusion into and interference with senior professional staff recruitment[10] – in so doing, lawlessly disregarding and flouting LASA's internal regulations precisely governing job candidate selection[11] and approval,[12] which give him zero role or say in such operations and decision-making[13] – and then in participating in an elaborate criminal cover-up of a particular case of ethical recruitment corruption[14] in which he was centrally involved, escalated to the Minister of Justice and Constitutional Development (now the Minister of Justice and Correctional Services, 'the Minister'), to the National Assembly, and to the courts,[15] in a classic instance of the multiplying dynamic of a disintegrating

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[7] See note 7 above.
[8] Given the egregious corruption and ethical turpitude at LASA reported in this complaint, uncovered by a limited investigation only of recruitment corruption and its cover-up, a comprehensive general forensic audit of LASA is likely to uncover much more.
[9] LASA's annual report 2010/11 explains: 'Legal Aid South Africa is governed by a Board of non-executive members commonly referred to as the Board of Directors. ... COMPOSITION OF THE BOARD AS AT 31ST MARCH 2010: JUDGE DUNSTAN MLAMBO ... Chairperson of the Board of Directors for Legal Aid South Africa since October 2002.' Bundle 2, page 756. LASA's annual report 2011/12 sets out the 'Role and Function of the Board of Directors': 'The Board ... is responsible for providing strategic direction and leadership, ensuring good corporate governance and ethics, determining policy, agreeing on performance criteria and delegating the detailed planning and implementation of policy to the Management Executive Committee.' Bundle 2, page 1053, section 2.2.3. As chairperson Mlambo JP explained in LASA's annual report 2010/11, the Board of non-executive directors plays an 'oversight role'. Bundle 2, page 1056.
[10] President Cyril Ramaphosa deplored this common evil at public entities in his State of the Nation Address on 16 February 2018: 'We have found ... that board members get involved in operational measures. ... We will remove board members from any role in [them].'
[11] Per LASA's Policies and Procedures on Recruitment, Induction, Probation and Relocation. Bundle 1, pages 228–34.
[12] Per LASA's Approval Framework. Bundle 1, pages 225–7.
[13] Besides approving the appointment of LASA's CEO, COO and NOE, in committee with the rest of the Board. Bundle, page 226, section 8.2.1.
[14] In favour of a professional colleague of his – to be canvassed in another part of this complaint to follow.
[15] The Judicial Conduct Committee ('JCC') of the Judicial Service Commission (JSC') is currently seized with eight gross misconduct complaints made under section 14 of the Judicial Service Commission Act 9 of 1994 against Board chairperson Mlambo JP concerning *inter alia* (a) his active collusion in and connivance at CEO and information officer Vedalankar's (nominal, actually Hundermark's) persistent illegal and unconstitutional suppression of records duly requested under section 18 of the Promotion of Access to Information Act 2 of 2000 ('PAIA') since 2010, and (b) his dishonest and deceptive false 'confidential' written report to the Minister and then to the Justice Portfolio Committee to successfully pervert their separately and

cover-up, starting with lies and eventually spiralling out into the commission of crimes. All this will be closely detailed with reference to supporting documents in this and other parts of this complaint to follow.[16]

9. Over the past decade, LASA's top officers have determinedly obstructed the investigation and exposure of their procedural, ethical and criminal corruption by scorning LASA's information transparency obligations imposed by section 32 of the Constitution, and by repeatedly falsely reporting[17] to evade being held to account for it;[18] and then, as this passive obstruction strategy was failing, by endeavouring to end the investigation with a multi-pronged attack to neutralise this investigator by moving to destroy him professionally, strangle him financially, and have him deprived of his essential basic civil rights guaranteed

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independently instituted enquiries (i) into the top-level recruitment corruption at LASA in question, in which report he advanced demonstrably objectively false reasons for the abortion of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments (one false reason later retracted after being refuted and exposed, the other substituted with novel contradictory reasons); and (ii) into the said illegal and unconstitutional suppression of records exposing this corruption – later forced out of LASA through multiple pre-trial document discovery processes and multiple applications to court under section 78 of PAIA, the first five of them conceded by LASA at court. The complaints, Mlambo JP's response to them, and the complainant's invited comments on it can be accessed online at illegal-aid.co.za/JSC. Further complaints to the JCC against Mlambo JP will be lodged upon LASA's release, under court order, of other duly requested documents that Hundermark has illegally and unconstitutionally refused, initially in the name of his former immediate subordinate, Legal Executive Thembile Mtati, and others, but more recently, since Mtati's resignation, by Hundermark directly and personally.

[16] The submission of this complaint, commenced years ago, has long been delayed by Hundermark's determined concealment of incriminating records needed to complete it, followed by meritless, dilatory opposition to numerous necessary applications to court brought to compel their production, and by corruptly-motivated litigation he unsuccessfully brought to derail an application to compel full and proper compliance with his surrender treaty recording his total capitulation to the said first five applications – to be detailed in a another part of this complaint to follow, regarding irregular, fruitless and wasteful expenditure. Several further High Court applications to compel Hundermark's surrender of subsequently requested records are pending in the High Court. To avoid further delay, this complaint will be presented in separate parts, as and when the illegally and unconstitutionally withheld documents are disgorged by court order.

[17] Annually to the South African Human Rights Commission ('SAHRC') under section 32 of PAIA, for the misinformation of the SAHRC's annual section 84 reports to the National Assembly on public body compliance with PAIA, and in a special confidential report submitted to the Justice Portfolio Committee in June 2011. In this fraudulent manner, LASA has misinformed the National Assembly about its compliance or otherwise with PAIA requests, and has defeated its constitutional oversight function, thereby evading being held to account for hiding information illegally and unconstitutionally. All this is comprehensively dealt with in a 'Special Report' on LASA's chronic PAIA delinquency filed with the SAHRC in late 2016, and is further described in court papers in litigation subsequently launched under PAIA to compel LASA's delivery of duly requested records. The 'Special Report' and the said court papers are accessible online at illegal-aid.co.za/PAIA.

[18] As then Board member Ela Gandhi put it appositely in *The Mercury* on 23 November 2011, 'It's only when people have something they are not proud of that they try to hide things.'

and entrenched by sections 32 and 34 of the Constitution, i.e. to access information held by the state and to approach the courts to compel its production when in a corruption cover-up it's illegally and unconstitutionally suppressed.[19]

10. Detailed and vouched in this complaint, the continuing pervasive, systemic corruption in LASA's top echelons has metastasized through virtually the entire governing- and national management structures, with audacious, confident, high-toned, practised lawyerly mendacity having become normal in engagement with their executive and oversight authorities, evincing a complete collapse of ethical standards among them. Indeed, detailed separately in a complaint currently pending before the Judicial Service Commission, LASA's most senior officers' brazen corruption and contempt for the law has reached such gross proportions that it has even polluted the judiciary.[20]

PROVISIONS OF THE PFMA, THE PAA, AND THE CONSTITUTION GENERALLY RELEVANT TO THE COMPLAINT

11. Section 3(1)(b) of the PFMA provides that the Act 'applies to ... public entities listed in Schedule ... 3',[21] including '49. Legal Aid Board' (now LASA); and section 2(1) of the Legal Aid South Africa Act 39 of 2014 accordingly describes LASA as 'a national public entity as provided for in the Public Finance Management Act'.

12. Section 2 of the PFMA states that 'The object of this Act is to secure transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to which this Act applies.'

13. Under section 1 of the PFMA, '**"executive authority"** ... (c) in relation to a national public entity, means the Cabinet member who is accountable to Parliament for that public entity or in whose portfolio it falls' – *in casu*, the Minister.

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[19] All this will be detailed in another part of this complaint to follow.
[20] Supported by the hard written evidence of this discovered in a court file, the complaint to the JSC about it, the judge's response, and the complainant's invited comments on it, identifying the likely perpetrator on the probabilities, can all be accessed online at illegal-aid.co.za/JSC.
[21] Here, as elsewhere in this complaint, ellipsis in quotation is the complainant's.

14. Section 4 of the PAA, 'Constitutional functions', provides in subsection (3):

> The Auditor-General may audit and report on the accounts, financial statements and financial management of–
>
> (a) any public entity listed in the Public Finance Management Act[.]

15. Under section 1 of the PAA, 'Definitions',

> **"material irregularity"** means any non-compliance with, or contravention of, legislation, fraud, ... or a breach of fiduciary duty identified during an audit performed under this Act that resulted in or is likely to result in ... the misuse ... of a public resource or substantial harm to a public sector institution or the general public[.]

16. Section 5(1A) of the PAA provides:

> The Auditor-General may, as prescribed, refer any suspected material irregularity identified during an audit performed under this Act to a relevant public body for investigation, and the relevant public body must keep the Auditor-General informed of the progress and final outcome of the investigation.

17. Section 5(1B) provides:

> The Auditor-General has the power to–
>
> (a) take any appropriate remedial action[.]

18. Section 5(3) of the PAA provides:

> The Auditor-General may, in the public interest, report on any matter within the functions of the Auditor-General and submit such a report to the relevant legislature and to any other organs of state with a direct interest in the matter.

19. Section 5A of the PAA requires:

The Auditor-General must, within a reasonable time after the issuing of an audit report in terms of section 20, follow up on whether the accounting officer or accounting authority has implemented the recommendations contained in the audit report relating to any material irregularity, within the time-frame stipulated in the audit report.

20. Section 11 of the PAA prescribes that 'Part 3: Accountability' 'applies to all audits of auditees which the Auditor-General – ... (b) opts to perform in terms of section 4(3).

21. Section 15 of the PAA provides:

When performing an audit under section 11, the Auditor-General or an authorised auditor has at all reasonable times full and unrestricted access to–

(a) any document, book or written or electronic record or information of the auditee which or which reflects or may elucidate the business, financial results, financial position or performance of the auditee;

(b) ... or

(c) any staff member or representative of the auditee.

22. Section 20 of the PAA provides:

(1) The Auditor-General must in respect of each audit referred to in section 11 prepare a report on the audit.

(2) An audit report must reflect ... an opinion, conclusion or findings on–

(a) ...

(b) compliance with any applicable legislation relating to financial matters, financial management and other related matters; and

(c) reported performance of the auditee against its predetermined objectives.

(3) In addition, the Auditor-General may report on whether the auditee's resources were procured economically and utilised efficiently and effectively.

23. Section 216 of the Constitution, 'Treasury control', provides in subsection (2):

> The national treasury must enforce compliance with the measures established in terms of subsection (1), and may stop the transfer of funds to an organ of state if that organ of state commits a serious or persistent material breach of those measures.

The 'measures established in terms of subsection (1)' mentioned in subsection (2) are *inter alia* 'uniform treasury norms and standards.'

24. LASA's 'serious [and] persistent material breach' over the past decade of 'uniform treasury norms and standards', some criminal, will be particularised with reference to specific contraventions of the PFMA cited and quoted below. A multitude of unlawful material irregularities within the purview of section 1 of the PAA, some criminal, will likewise be detailed in this first part of the complaint and in other parts to follow.

LASA'S CREATION OF ITS SENIOR LITIGATOR POSTS, AND ITS REASON FOR DOING SO

25. In November 2006, LASA CEO Vedalankar, NOE Nair and their Management Executive Committee colleagues submitted a 'Report to Board' in which they proposed 'Increasing Senior Litigation capacity' 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.[22]

[22] Bundle 2, pages 990–1, paragraph 2.7.

26. Nine such Senior Litigator posts were proposed,[23] for which the motivation recorded there was 'Funding available'.[24]

27. On 24 November 2006, the Board approved the proposal,[25] and the posts were duly created and subsequently advertised.[26]

28. In view of their high population densities and corresponding greater need for them, KwaZulu-Natal and Gauteng were allocated two Senior Litigator posts each.[27] Particularly relevant to the KwaZulu-Natal posts, NOE Nair has pointed out that it's in the 'rural areas' that the 'demand [for] civil legal aid … was bigger';[28] and chairperson Mlambo JP has 'agreed that there was still much to be done in reaching the rural poor'.[29]

29. At grade LP10[30] (formerly 'level 13'),[31] Senior Litigators are the most 'Senior Professional staff'[32] in LASA's legal professional staff establishment;[33] and LASA classifies a Senior Litigator post as a 'critical position'[34] accordingly.

30. Section 53 of the PFMA provides:

> (1) The accounting authority for a public entity listed in Schedule 3 which is not a government business enterprise must submit to the executive authority responsible for that public entity, at least six months before

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[23] Bundle 2, page 992, item 7.
[24] *Ibid*: page 992, item 7. 'Funding available' noted in the right margin; page 989, second paragraph; and pages 704–6.
[25] Bundle 2, page 702. In paragraph 4.1 of its answer to a pre-trial conference agenda listing facts for formal admission in case LC D529/11, LASA confirmed in October 2011 that 'the Senior Litigator positions were created by Management and approved by the Board'. (More accurately, they were 'proposed' by management. Bundle 2, page 990, paragraph 2.7.)
[26] Bundle 1, page 537.
[27] Bundle 2, page 690.
[28] Bundle 1, page 433, penultimate paragraph.
[29] Bundle 1, page 441, thirteenth paragraph.
[30] Bundle 2, page 1021, paragraph 16.
[31] Bundle 2, page 690.
[32] Bundle 2, page 1036, section 8.2.2 (b).
[33] Bundle 2, page 733: 'through positions such as senior litigator' for 'employees to advance into'.
[34] Bundle 1, page 253. Paragraph 2.2.b of this 'Report to Board' distinguished between 'critical positions' and LASA's many public defender posts serving the lower criminal 'District Courts and Regional Courts.' Paragraph 48.9 of LASA's original response (plea) to the original statement of claim in case LC D529/11 referred in to 'the critical position of High Court [senior] litigator'. In paragraph 43.1 of its answer to the facts listed for admission in the pre-trial conference agenda, LASA 'Agreed' the proposition that 'The Pietermaritzburg Senior Litigator post is "a critical position"'.

the start of the financial year of the department designated in terms of subsection (2) ..., a budget of estimated revenue and expenditure for that financial year, for approval by the executive authority.

(2) The budget must be submitted to the executive authority through the accounting officer for a department designated by the executive authority, who may make recommendations to the executive authority with regard to the approval or amendment of the budget.

31. In due compliance with section 53(1) of the PFMA, LASA specifically budgets for salaries for all nine of its Senior Litigator posts,[35] and provision in LASA's budgets for the employment of nine Senior Litigators has from inception to date been (i) annually approved by the Minister on the advice of the Department's accounting officer, (ii) voted by the National Assembly, and (iii) received by LASA from the Treasury via the Department's Third Party Funds Directorate.[36]

32. In short, LASA's nine Senior Litigator posts have always been and remain funded; which is to say in plain terms that LASA has always had and still has the money to employ nine Senior Litigators at seats of the High Court around the country.

THE JUSTICE PORTFOLIO COMMITTEE'S REPEATEDLY EXPRESSED CONCERN ABOUT INADEQUATE LEGAL EXPERTISE AVAILABLE TO THE PUBLIC AT LASA; LASA'S REPEATED CONCESSION OF THE

[35] Bundle 3, pages 1073–92: These documents are LASA's consolidated budget applications and its specific budget applications for Senior Litigator salaries over the period February 2010 to October 2013. Duly requested under PAIA, other such budget applications for other years have been illegally and unconstitutionally suppressed by Hundermark to obstruct this corruption investigation, and litigation is pending in the Pietermaritzburg High Court to compel their production (case 5239/18P). Meanwhile the Auditor-General has 'full and unrestricted access to' these further financial records under section 15 of the PAA.

[36] Bundle 3, page 1093. These employment statistics show LASA's employment of six Senior Litigators as at March 2012. (The falsity of the 'frozen' entry for the Durban, Pietermaritzburg and Kimberley Senior Litigator posts is discussed below.) Hundermark is also hiding payment vouchers reflecting the Department's transfer to LASA of its baseline budgets, and High Court litigation is pending to compel their production (case 5239/18P). As said, under section 15 of the PAA the Auditor-General can readily access these records to confirm that all nine of LASA's Senior Litigator posts have always been and still are funded by the Treasury via the Department's Third Party Funds directorate .

PROBLEM; AND THE JUSTICE PORTFOLIO'S SPECIFIC CONCERN THAT LASA EMPLOY SENIOR LITIGATORS TO REMEDY IT

33. Six months after the Board resolved to create its new Senior Litigator posts, but before they were advertised, LASA's parliamentary oversight authority at the time, the National Assembly's Select Committee on Safety and Security,[37] pertinently enquired at its meeting with Board chairperson Mlambo JP and CEO Vedalankar on 30 May 2007 'if the LAB [the Legal Aid Board, now LASA] 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'. Mlambo JP responded by admitting, 'The LAB was aware of constant criticism that they employed inexperienced lawyers to do the work.'[38]

34. Again the Justice Portfolio Committee raised its concern about the quality of legal expertise available at LASA when on 5 August 2009 it 'asked if the Board [i.e. LASA] was working on improving public perceptions about itself.'[39] Mlambo JP responded by again conceding that LASA bore 'a legacy' of 'bad public perceptions'.[40] (Mentioned in paragraph 27 above, LASA resolved to create nine new Senior Litigator posts three months later.)

35. Again at its meeting with LASA on 11 October 2010,[41] 'The Committee wanted to know about the experience levels of Legal Aid South Africa practitioners as well as their ability to compete with lawyers from … private practice'.[42]

36. Again on 3 November 2010, the 'Chairperson [of the Portfolio Committee] remarked that public perceptions of Legal Aid SA were important.' Then Legal Development Executive, now CLE Hundermark repeated Mlambo JP's

[37] This Select Committee was the precursor of the Portfolio Committee on Justice and Constitutional Development, now named the Portfolio Committee on Justice and Correctional Services.
[38] Bundle 2, page 816.
[39] Bundle 2, page 1048, penultimate paragraph.
[40] Bundle 2, page 1049, first paragraph.
[41] Reported on 12 October 2010.
[42] Bundle 2, pages 960 and 962.

concession that there were still 'remnants' of 'the perception' of poor legal service delivery by LASA.[43]

37. Again in its pleadings in the Durban Labour Court in 2013, LASA conceded that its 'public image … has, for the most part, been negative due to a perception of incompetence and lack of vital court skills.'[44]

38. Again in its Strategic Plan 2012–17, LASA identified among its 'strategic risks' the 'Quality of legal services offered by Legal Aid SA' and the 'Attraction and retention of expertise and specialist skills'.[45]

39. Again in its current Strategic Plan 2015–20, LASA confessed this real problem – as well as other serious problems germane to this complaint – now in the most direct and frank terms to date:

> The organisation has assessed the strategic risks that have to be mitigated during the strategic plan period and these are as follows: ... Lack of capacity to deliver on the demand for legal services. ... Poor quality of the legal services provided by the Justice Centres ... Unethical, corrupt or fraudulent practices or acts. ... Lack of engagement with the organisational values and culture by employees.[46]

40. 'Lack of capacity to deliver on the demand for legal services' and 'Poor quality of the legal services provided by the Justice Centres' as a result of 'Unethical, corrupt or fraudulent practices or acts' by LASA's top officers named in paragraph 6 above, and their 'Lack of engagement with the organisational values' of LASA – ethical, legal, and constitutional – prescribed by LASA's Code of Conduct and Ethics[47] – a lack displayed also by the officers named in paragraph 7 – is precisely the subject of this complaint.

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[43] Bundle 2, page 1003.
[44] Paragraph 9 of LASA's original response to the original statement of claim in LC D529/11.
[45] Bundle 3, page 1108.
[46] Bundle 3, page 1110.
[47] Bundle 2, pages 770–80.

THE JUSTICE PORTFOLIO COMMITTEE'S REPEATEDLY EXPRESSED CONCERN THAT VACANT POSTS IN THE JUSTICE CLUSTER BE FILLED, ESPECIALLY CRITICAL POSTS

41. On 4 May 2010, the Justice Portfolio Committee raised the fact that it:

> has several times previously expressed its concern about the negative consequences that vacancies can have for the delivery of justice services. Also, the committee believes that although the use of savings from vacant posts to fund other projects (such as the implementation of the OSD) may be understandable, the practice is potentially risky as it may discourage the filling of posts. … 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.[48]

THE JUSTICE MINISTER'S SPECIFIC CONCERN STATED TO LASA'S CHAIRPERSON THAT LASA SHOULD FILL ITS VACANT POSTS AND NOT FREEZE ANY, AND THAT IT SHOULD MAINTAIN ITS DELIVERY OF LEGAL SERVICES AS PLANNED

42. On 16 July 2010, COO Makokoane[49] submitted a 'Report to Board'[50] recording that:

> the Executive Authority [i.e. the Minister] has … in a meeting with the Legal Aid SA Board Chairperson expressed his wish to have Legal Aid SA service delivery maintained and that DoJ should make funds available to cover the OSD shortfall through the mid-year budget adjustments in September/October 2010.[51]

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[48] Bundle 2, page 820.
[49] LASA volunteered that it was 'a report by the COO to the Board' in paragraph 17 of its original response to the original statement of claim in case LC D529/11.
[50] Bundle 1, pages 253, paragraph 2.2.(a); and page 254, paragraph 4.II.
[51] Bundle 1, page 252, paragraph 1.2.

43. COO Makokoane was referring to the fact that funding for salary increases for legal staff under Phase 1 of the Occupational Special Dispensation (OSD) scheme hadn't been included in LASA's baseline budget for 2010/11, as LASA learned in March 2010;[52] but as undertaken by the Minister to chairperson Mlambo JP, provision for this additional funding was indeed made[53] in the national mid-term budget in October 2010[54] and it was paid to LASA on 15 December 2010.[55]

44. Addressing the Justice Portfolio Committee on 11 October 2010 and informing it that the OSD funding issue had just been resolved with the Minister's assistance by including provision for it in the national mid-term budget, CEO Vedalankar reported the Minister's wishes, originally stated to Mlambo JP, that he 'didn't want' LASA to 'freeze ... posts' and that he'd 'said that we needed to continue with the business'[56] of providing legal services to the country's indigent in accordance with LASA's Strategic Plan2009–12 by filling LASA's budgeted and funded vacant legal posts.

THE EMPLOYMENT OF SENIOR LITIGATORS AS A KEY COMPONENT OF LASA'S STRATEGIC PLAN 2009–12

45. As LASA explains in various documents, the Board 'is responsible for providing strategic direction … and delegating the detailed planning and implementation of policy to the Management Executive Committee.'[57] This 'strategic direction' and 'policy' is set out in the Board's Strategic Plan for LASA's future operations; and LASA's annual Business Plan ('also referred to as …the Annual Performance Plan'),[58] based on the Strategic Plan,[59] sets out the

[52] Bundle 1, page 236, paragraph 6.
[53] Bundle 2, page 849, last paragraph.
[54] Bundle 2, page 847.
[55] Bundle 2, page 713.
[56] Bundle 1, page 184.
[57] Bundle 2, page 1053.
[58] Bundle 1, page 435, last paragraph.
[59] Bundle 2, page 452, second point.

'detailed planning and implementation of policy [by] the Management Executive Committee.'[60]

46. The National Treasury states in its 'Framework for Strategic Plans and Annual Performance Plans':

> Strategic Plans identify strategically important outcomes-orientated goals and objectives against which public institutions' medium-term results can be measured and evaluated by Parliament ... and the public.[61]

47. LASA states consistently: The 'Strategic Plan sets a clear Vision and Mission as well as Outcomes and Strategies that the organisation aims to achieve.' It's 'key to Legal Aid South Africa's operations' and 'complies with National Treasury Regulations', requiring it to 'outline how it will use its resources optimally to achieve its vision and outcomes.'[62]

48. Section 3.2.1.a of the Charter of LASA's Board Executive Committee stipulates that 'approval of the strategy, business plans and annual budgets and any subsequent changes in strategic direction or material deviations in business plans' at LASA are 'reserved for Board decision'.[63]

49. Chaired by NOE Nair,[64] LASA's Legal Services Technical Committee has (per the Legal Aid Guide) the 'collective responsibility' for 'managing the legal services delivery programme' and 'the execution of all Board strategy, policies, programmes and plans relating to the legal services delivery programme of the Legal Aid South Africa'.[65]

50. In CEO Vedalankar's parliamentary presentation titled 'Briefing of Justice Portfolio Committee 5 August 2009',[66] a couple of months before she and her fellow management executives proposed that LASA's Board approve the creation of the new Senior Litigator posts, she mentioned among LASA's 'Legal Delivery

[60] Bundle 2, page 1053.
[61] Bundle 3, page 1113.
[62] Bundle 3, page 1107.
[63] Bundle 3, page 1101.
[64] Bundle 2, page 767, section 2.3.
[65] Bundle 2, page 767–8.
[66] Bundle 1, page 427.

Challenges' its 'Limited capacity to render civil legal aid services'[67] – hence the organisation's resolution in its 'Way Forward' to 'Increase Legal Aid SA's capacity to render civil legal aid services.'[68]

51. LASA elaborated more specifically its lack of capacity to undertake complex, high-level litigation in its draft 'Strategic Plan 2009–2012', issued about a year earlier on 5 September 2008,[69] namely its 'Lack of specialised legal skills' and 'Lack of capacity to provide impact litigation'[70] – which is why the Strategic Plan 2009–12 stated that 'the Legal Aid Board should capacitate for specialised skills'.[71]

52. Accordingly, the objects of LASA's Strategic Plan 2009–2012 in this regard were:

- 'To develop a full appreciation of the civil justice needs of the poor and provide more civil representation';[72]
- 'To undertake targeted impact litigation';[73]
- 'To improve access to justice through impact litigation';[74]
- To 'recruit specialist skills';[75]
- To effect 'increased capacity of LAB ie more legal specialists';[76] and,
- To 'capacitate civil units ie more staff and more supervision'.[77]

53. In September 2009,[78] LASA's Strategic Plan 2009–2012 was presented to the Minister, being LASA's 'executive authority' under section 1 of the PFMA; and on 13 April 2010[79] to the Justice Portfolio Committee, LASA's oversight authority under section 55(2)(b)(ii) of the Constitution.

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[67] Bundle 1, page 426, penultimate paragraph.
[68] Bundle 1, page 429.
[69] Bundle 1, page 444.
[70] Bundle 1, page 445, sections III and IV.
[71] Bundle 1, page 445, section XIV.
[72] Bundle 1, page 446, 'Client & Community'.
[73] *Ibid*.
[74] Bundle 1, page 447, Programme P5.
[75] Bundle 1, page 450, Programme P23.
[76] Bundle 1, page 450, Programme P24.
[77] *Ibid*.
[78] Bundle 1, page 452.
[79] Bundle 1, page 431; and bundle 2, page 821.

54. The Strategic Plan 2009–12 doesn't mention Senior Litigator posts by name, but LASA has expressly acknowledged that the engagement of Senior Litigators was integral to the plan to develop and increase LASA's capacity to deliver expert litigation services to indigent litigants by creating a pool of specialist professionals to attend to complex matters in specialist and High Courts, including the Supreme Court of Appeal and the Constitutional Court.[80]

55. LASA's current Strategic Plan 2015–20 puts a point on it:

> To give content to the Constitution through impact litigation – which is able to address Constitutional rights and socio-economic rights and develop jurisprudence on social justice matters.[81]

56. LASA's several advertisements for Senior Litigators in the period 2007–2010 precisely envisaged their conduct of such 'specialised, complex or impact'[82] litigation, and stated LASA's aim to 'Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff', that is, to 'provide support for practitioners in more complex matters',[83] as LASA's annual report for 2009/10 puts it, and, as announced in a press release in March 2012, for 'protecting the rights of women and children' in accordance with LASA's, 'vision as an organisation … for the implementation of a child-centred justice strategy that ensures the best interests of the child in all legal matters. … In very complex matters, our Senior Litigators provide support and advice to practitioners that need it.'[84]

57. In their Foreword to LASA's current Strategic Plan 2015–20, Mlambo JP and Vedalankar likewise emphasised 'Priority to civil legal aid assistance in Constitutional rights related matters'[85] – exactly the province of 'professional staff that are senior enough to take on … cases of a highly complex nature',

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[80] Bundle 2, page 898, section 3; and paragraphs 2.2–3 of LASA's response to paragraph 3.2 of first amended statement of claim in case LC D529/11.
[81] Bundle 3, page 1111, section S4, P4.
[82] Bundle 1, pages 43, 45, 46, and 537; and Bundle 2, page 732.
[83] Bundle 1, page 142, paragraph 153.
[84] Bundle 2, pages 825–6.
[85] Bundle 3, page 1109.

namely 'senior litigators … able to undertake more complex work'[86] as Vedalankar and her executive management colleagues envisaged in their motivation for the creation of the nine Senior Litigation posts, approved by Mlambo JP and the rest of the Board.

58. Quoted below, LASA would repeatedly vaunt the employment of Senior Litigators as a key achievement in its 'Report on Completion of Strategic Plan 2009–2012', both in the Board's 'Annual Performance Report 2011–12' and in Vedalankar's CEO report for that year.

THE CONCEALED ILLEGAL ABORTION OF LASA'S STRATEGIC PLAN 2009–12 IN REGARD TO THE EMPLOYMENT OF SENIOR LITIGATORS BEFORE IT WAS COMPLETED, UNLAWFULLY LEAVING A THIRD OF THESE CRITICAL BUDGETED AND FUNDED POSTS VACANT, IN CONTRAVENTION OF THE PFMA, AS THE CONSTITUTIONAL COURT HAS NOTED

59. In October 2007, four months after Parliament enquired whether LASA 'employed senior litigators',[87] LASA advertised to recruit applicants for appointment to its nine newly created Senior Litigator posts,[88] after which the candidates selected for the Johannesburg, Pretoria, Cape Town and Port Elizabeth posts were approved on 8 December 2008[89] and appointed.[90] The Bloemfontein and Mahikeng posts were filled later on.[91] No appointments were

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[86] Bundle 2, pages 990–1, paragraph 2.7.
[87] Bundle 2, page 816.
[88] Bundle 1, page 537.
[89] Bundle 3, pages 1094 and 1097. Material irregularities in the approval process will be canvassed in another part of this complaint to follow.
[90] Bundle 3, page 1093.
[91] Bundle 3, pages 1073 and especially 1076 compared with pages 1077 and especially 1080. These two budget applications show five Senior Litigator posts were vacant in February 2010, and that the vacancies dropped to three in February 2012, which means two of them were filled after February 2010 (at Bloemfontein and Mahikeng). To obstruct the complainant's investigation and determination of the date(s) on which these latter two appointments were made (sometime after February 2010, well after the irregular abortion of the Pietermaritzburg and Durban recruitments in November 2009; see paragraphs 67 and 68), Hundermark is hiding the records of 'All six Senior Litigator appointments'. These were duly requested on 1 August 2016 under section 18 of PAIA, and after they were illegally and unconstitutionally refused in September, were sued for, along with other documents, two weeks later in October 2016 under section 78 of PAIA (case 11187/16P). The case was eventually argued in the Pietermaritzburg High Court on 30 August 2019, nearly three years later, after being repeatedly held up by

made to the Pietermaritzburg, Durban and Kimberley posts pursuant to the initial advertisement and recruitment process, and LASA readvertised the three posts in 2009.[92]

60. The re-advertisement of the Kimberley post in May 2009[93] failed to attract a suitable applicant,[94] and on 24 March 2010, LASA's Legal Services Technical Committee accepted that the vacant post was 'redundant'[95] since there'd 'never been a demand for' it[96] and resolved to abolish it and transfer its budget to a second Senior Litigator post to be created for the Eastern Cape at Mthatha,[97] on the basis cogently argued by the Regional Operations Executive for the region[98] that 'We currently have one Senior Litigator who is stationed at Port Elizabeth. It is a huge challenge for this one person to provide support to the whole Region' with its 'four High Court seats [at] Port Elizabeth, Grahamstown, Bhisho and Mthatha',[99] the latter three many kilometres distant from Port Elizabeth.

61. The two vacant Pietermaritzburg and Durban posts in KwaZulu-Natal were simultaneously readvertised in June 2009[100] and again two months later in August.[101]

62. Just as they'd done before the original advertisement of the nine Senior Litigator posts in 2007, LASA's responsible management executives duly 'determined [that] a "real" need exists for the position[s] to be filled before [the] process of recruitment [was] initiated'[102] before readvertising the Pietermaritzburg and Durban posts in 2009, in due compliance with their obligation to do so under section 3.1 of Chapter 2 on 'Recruitment' in the Senior

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various dilatory tactics, and reserved judgment is pending. Once they've been disgorged by order of court, the withheld documents will be used in support of further parts of this complaint to follow, concerning several instances of 'material irregularity' as defined by section 1 of the PFMA, including 'fraud'.

[92] Bundle 1, pages 43, 45, and 537; and Bundle 2, page 732.
[93] Bundle 2, page 732.
[94] Bundle 2, page 736, 'Background', second paragraph.
[95] Bundle 2, page 738, paragraph 1.
[96] Bundle 2, page 736, 'Background', first paragraph.
[97] Bundle 2, page 709, paragraph 4.1.7.
[98] Bundle 2, page 738, header; and page 740, final entry.
[99] Bundle 1, page 739, paragraph 2.2.
[100] Bundle 1, pages 43–44.
[101] Bundle 1, page 45.
[102] Bundle 2, page 789.

Management Services Public Service Handbook[103] ('SMS Handbook') issued by the Department of Public Service and Administration. LASA's own 'Policies and Procedures on Recruitment, Induction, Probation and Relocation'[104] ('Recruitment code') states its conformity with the SMS Handbook: 'This policy and procedure aims at ensuring that appropriate recruitment procedures are followed, in line with statutory legislation and business practices[105] … [It] provides the Legal Aid Board with clear guidelines to be followed when a vacancy exists.'[106]

63. Section 3.3 of the SMS Handbook requires that such responsible management executives ensure that 'the position is budgeted for'[107] and Note 17 of LASA's Approval Framework applicable at the time mandated consistently: 'It is the responsibility of the line function Executive to ensure that such [appointment] is provided for in the budget and MTEF and that a vacancy exists in respect of the post concerned.'[108]

64. The 'line function Executive'[109] in regard to Senior Litigator posts is NOE Nair, and before the recruitment processes for the Pietermaritzburg and Durban Senior Litigator were recommenced in 2009, he would have duly confirmed that the two posts had been budgeted for – as indeed LASA's recruitment/vacancy/budget statistics for November 2009[110] show they were.

65. Four of the candidates attracted by the re-advertisement of the Pietermaritzburg and Durban Senior Litigator posts in 2009 were shortlisted;[111] and on 12 November 2009[112] they were duly interviewed by a duly constituted selection panel of LASA's most senior lawyers in the region,[113] following which

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[103] Bundle 2, pages 787–801.
[104] Bundle 2, page 717.
[105] Bundle 1, page 228, section 1.1.2.
[106] Bundle 1, page 228, section 1.1.3.
[107] Ibid.
[108] Bundle 2, page 1040.
[109] Bundle 1, page 19.
[110] Bundle 2, pages 1028 and 1029: 'Vacant' and 'Budget' columns.
[111] Bundle 1, page 245.
[112] Bundle 1, page 244. The date of the interviews is incorrectly recorded on the recommendation report as 6 November 2009; in fact they were held on the 12th.
[113] Bundle 1, page 248.

two suitably qualified and experienced candidates were duly and unanimously selected and recommended by the panel, one for each of the Pietermaritzburg and Durban posts[114] for which they'd respectively applied.[115]

66. In sum, the selection and recommendation process was conducted impeccably properly in compliance with LASA's Recruitment code and with similar official codes of recruitment practice in the public sector observed by LASA.[116]

67. The two candidates duly recommended for the Pietermaritzburg and Durban posts were not appointed, however, and the approval process to finalize their recruitments governed by the Approval Framework[117] was silently aborted by national-level officers of LASA,[118] no reason initially given.[119]

68. In a confirmatory affidavit put up in legal proceedings for the true information of the trial judge, NOE Nair corroborated[120] then Corporate Services

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[114] Bundle 1, page 247, paragraph 6.
[115] Bundle 2, page 827.
[116] The irregular manner in which the selection panel framed its recommendations of the two candidates after duly selecting them will be discussed in another part of this complaint to follow, as will the many unlawful irregularities committed by LASA's national executives in the matter, *inter alia* by unlawfully gerrymandering the qualifying criteria for the posts in a failed attempt to bias the process in favour of one of the applicants, Ngcamu AJ (as he used to be), a long-time judicial colleague of LASA chairperson Mlambo JP, who was then head of the Labour- and Labour Appeal Courts, and who'd repeatedly got him appointed as an acting judge of the Labour Court over a period of about six years prior to the interviews. To be discussed in another part of this complaint to follow, this long suppressed, determinedly concealed, critically relevant information was finally forced out of LASA through PAIA litigation in April 2016, years after the trial of and judgment in the misconceived, correctly dismissed labour action mentioned above (LC D529/11), which had been wrongly founded on unfair discrimination.
[117] Bundle 2, page 1036. Under section 8.2.2.b of the Approval Framework, the NOE (Nair) has 'Final approval' authority, provided that the CEO (then Vedalankar) 'Must agree' with the appointment.
[118] To be identified in light of relevant documents in another part of this complaint to follow.
[119] Bundle 1, page 19. This is a letter by NOE Nair on 3 August 2011, under pressure of the complainant's enquiry more than seven months after the silent abortion of the Pietermaritzburg and Durban Senior Litigator recruitments, alleging that 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [*sic*] put on hold due to various reasons. I can now confirm we will not be proceeding with the filling of any of these posts.' The mendacity of Nair's first allegation will be exposed in another part of this complaint to follow. The mendacity of his second allegation is exposed in paragraph 88 below; in sum, Nair, Vedalankar and Clark have all admitted on oath that no record whatsoever exists to show that LASA duly took any such decision not to fill the posts. Discussed in paragraphs 83–5 below, such a decision would anyway have been *ipso facto* unlawful under the PFMA, as the Constitutional Court confirmed in the *Zungu* case.
[120] Annexure 'DM15' to Mtati's answering affidavit in the application to subpoena Mlambo JP for cross-examination at the trial of case LC D529/11. (LASA neglected to annex this confirmatory affidavit to the answering affidavit provided to the complainant, and only furnished it after the

Executive Thembile Mtati's truthful evidence on affidavit, given *qua* attorney on Mlambo JP's instructions, that the Pietermaritzburg and Durban 'recruitment ... was aborted immediately after the first round of interviews.'[121] In other words (LASA's words), it was 'immediately after the first round of interviews' that 'the decision to abort the recruitment of the Senior Litigator, Pietermaritzburg'[122] was taken, and with it the recruitment process for the Durban Senior Litigator post – off the record, without authority, and therefore unlawfully, as discussed below.

69. Many months later, under persistent, rising pressure to account – ultimately to the Minister and to the chairperson of the Portfolio Committee, both of whom had separately and independently instituted enquiries into the matter, and after that to several courts – LASA's top officers advanced a shambles of manifestly untruthful, shifting, vacillating, radically contradictory, mutually exclusive and destructive excuses, all objectively demonstrably false, for not completing the Pietermaritzburg and Durban Senior Litigator recruitments, and several months later for cancelling the transfer of the Mahikeng Senior Litigator to the new Mthatha Senior Litigator post, for which he'd been selected and recommended in May 2010. Another part of this complaint to follow will quote and refute, in light of LASA's own records, the profusion of chaotically inconsistent changing lies told by LASA's top officers to falsely justify the off-the-record, unauthorized, unlawful abortion of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments, and to cover ethical recruitment corruption (jobs for pals) in the case of the Pietermaritzburg post – starting with 'there was a funding shortage at the time that [the complainant] had applied for the Senior Litigator post',[123] i.e. on 2 October 2009,[124] which is to say 'there was no ... funding … to

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trial. So if it's not in the court file LASA will have a copy, otherwise the complainant can make his copy available.

[121] Paragraph 13.4 of Mtati's answering affidavit in the application to subpoena Mlambo JP in LC D529/11.

[122] Paragraph 28 of LASA's original response to the original statement of claim in LC D529/11.

[123] Paragraph 48.3.1 of LASA's original response in LC D529/11.

[124] Bundle 2, page 827.

fill the vacant posts'.[125] – which blatant lie was afterwards substituted with other completely different contradictory blatant lies.

70. The result of the illegal abortion of the three substantially complete recruitment operations for the Pietermaritzburg, Durban and Mthatha Senior Litigator posts, and the unlawful deliberate failure to complete LASA's Strategic Plan 2009–12 regarding the employment of Senior Litigators, is that these then and still budgeted and funded top critical specialist legal professional posts have unlawfully deliberately been left vacant for a decade since the due selection and recommendation of suitable candidates for the Pietermaritzburg and Durban posts in November 2009, and the irregular selection and recommendation of a suitable candidate for internal lateral transfer[126] and appointment[127] to the Mthatha post on 24 May 2010.[128]

71. LASA isn't a government department in the 'public service' according to the definition in sections 1 and 8 of the Public Service Act 103 of 1994, so neither the Public Service Regulations nor the SMS Handbook's 'Recruitment'[129] chapter applies directly to LASA as a public entity listed in Schedule 3 of the PFMA, but as quoted in paragraph 62 above, LASA's Recruitment code states that LASA's recruitment operations must be conducted in accordance with such regulations.

72. Official 'business practices'[130] for public sector recruitment prescribed by the Public Service Regulations, both in Part IV, section C.1A.2, of the former Regulations applicable in 2009 and 2010, and in section 65(7) of the new Regulations promulgated in 2016, with which LASA's Recruitment code is 'in line',[131] are: 'A funded vacant post ... shall be advertised within six months after becoming vacant and be filled within 12 months after becoming vacant.'[132] Indeed, LASA has acknowledged that 'the recruitment process for the senior

[125] Paragraph 49.6 of LASA's original response in LC D529/11.
[126] Paragraph 99.5 of Mtati's answering affidavit in the application to subpoena Mlambo JP in LC D529/11.
[127] Paragraph 92.1 of LASA's answer to pre-trial conference agenda in LC D529/11.
[128] Bundle 2, pages 994 and 996. The several material irregularities in the Mthatha recruitment will be addressed in another part of this complaint to follow.
[129] Bundle 2, pages 787–801.
[130] In the language of section 1.1.2 of LASA's Recruitment code. Bundle 1, page 228.
[131] Bundle 1, page 228, section 1.1.2.
[132] Bundle 3, pages 1115 and 1117.

litigator positions' was required to 'be completed within a reasonable time'[133] – in default of which, section C.1A.3 of the Regulations, applicable at the material time, required that 'the reasons for the non-compliance shall be recorded in writing.'[134] In breach of the Regulations, the Pietermaritzburg, Durban and Mthatha Senior Litigator posts were deliberately not filled 'within 12 months after becoming vacant' or at all, and no 'reasons for the non-compliance' were 'recorded in writing'.[135]

73. In unlawful contravention of official 'business practices' prescribed for the conduct of recruitment operations in the public sector – which LASA's Recruitment code, approved by the Board,[136] requires LASA's management executives to observe – three budgeted and funded Senior Litigator posts at LASA have been vacant since their creation in November 2006,[137] for over thirteen years now.

74. Very much more serious than unlawfully failing to comply with codified recruitment practice in the public service, and irrespective of the mess of contradictory lying excuses later forged and uttered by CLE Hundermark, CEO Vedalankar, NOE Nair and chairperson Mlambo JP under pressure to explain

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[133] Bundle 1, page 381, paragraph 15.
[134] Bundle 3, page 1115.
[135] In November 2011, two years after the abortion of the Pietermaritzburg and Durban Senior Litigator recruitment processes 'immediately' after the candidate recommendations were made in November 2009, followed by the abortion of the Mthatha recruitment several months later as CEO Vedalankar and NOE Nair came under pressure to finalise the Pietermaritzburg appointment – even as the Bloemfontein and Mahikeng Senior Litigator recruitments proceeded and were finalised with appointments made – NOE Nair made a 'Report to Board' (Bundle 2, page 869) alleging absolutely falsely that the three Senior Litigator posts at Pietermaritzburg, Durban and Mthatha 'have remained vacant due to recruitment challenges.' Nair compounded his lie to the Board by making up a second quite different, also absolutely false reason, unsupported by any records: 'We have since decided not to fill the remaining positions until we are satisfied that our objectives determined for this position [*sic*] is [*sic*] being achieved by the current incumbents.' Nair's lying spree continued with a third outright fabrication in which he absolutely falsely and slanderously alleged, contradicted by LASA's professional quality assessment reports, that LASA's incumbent six Senior Litigators were incompetent and underperforming and needed urgent professional auditing 'by a retired judge', which blatant lie he told about them Nair later retracted under oath in court. The several different lies Nair told the Board to justify not filling the Pietermaritzburg, Durban and Mthatha Senior Litigator posts, and his 'operational reasons' perjury in a subsequent affidavit, will be addressed and refuted with reference to material documents in another part of this complaint to follow.
[136] Bundle 1, page 228, footnote.
[137] As mentioned in paragraph 60 above, the original Kimberley Senior Litigator post was abolished and a new post created at Mthatha, with the budget for the former transferred to the latter.

why the selected and recommended candidates for the critical Pietermaritzburg, Durban and Mthatha Senior Litigator posts weren't appointed, LASA's deliberate failure to fill these budgeted and funded critical posts, and its failure to duly apply the salary revenue it budgets for the posts and receives for them from the Treasury via the Department, has unlawfully contravened and continues to unlawfully contravene the PFMA.

CRIMINAL AND OTHER CAPITAL CONTRAVENTIONS OF SECTIONS 53(3), 53(4), 55(1)(a) & 55(2)(a) OF THE PFMA, READ WITH SECTION 86 'OFFENCES AND PENALTIES'; AND CRIMINAL CONTRAVENTIONS OF SECTION 17(2) OF THE POWERS, PRIVILEGES AND IMMUNITIES OF PARLIAMENT AND PROVINCIAL LEGISLATURES ACT 4 OF 2004 IN FALSELY REPORTING TO MISLEAD THE JUSTICE PORTFOLIO COMMITTEE

75. Section 1 of the PFMA defines **'unauthorised expenditure'** *inter alia* as 'expenditure not in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the purpose of the main division'.

76. Presenting the then recently enacted PFMA to the Finance Portfolio Committee of the National Assembly on 19 March 2001, the Treasury explained the gravity of 'underexpenditure' as a form of unlawful 'unauthorised expenditure':

> [T]he definition of unauthorised expenditure is ... also not spending according to the programme description of the specific department. ... The Minister [of a Department; or, in the case of a public entity, its Board as accounting authority][138] must ensure budget is spent in accordance with the original budget plan. ... [N]o one is allowed to have unauthorised

[138] Quoted in paragraph 79 below, section 1 of the PFMA identifies the Board as LASA's 'accounting authority', and LASA stated accordingly in its annual report 2011/12: 'The Board is the accounting authority of Legal Aid South Africa under the Public Finance Management Act 1 of 1999 (as amended).' Bundle 2, page 1053, paragraph 2.2.3.

> expenditure. ... National Treasury ... will ... follow up should there be any indication of ... underexpenditure.[139]

77. When a member of the Portfolio Committee deplored that 'there are a few departments that repeatedly engage in underspending. This results in poor delivery', and he 'asked how the Act addresses this situation for the people on the ground who are suffering', the Treasury representative responded: 'The Minister must ensure that the budget is spent in accordance with the original budget plan. ... Should there be any underexpenditure, the Minister must report to the Cabinet.'[140]

78. LASA isn't a department of state, but the point is the same: 'underexpenditure' by a public entity like LASA and the failure of its Board to 'ensure that budget is spent in accordance with the original budget plan' is extraordinarily serious; indeed, shown below, it constitutes financial misconduct and a breach the PFMA. Aggravating this particular case, it 'results in poor delivery' and 'people on the ground who are suffering', namely the indigent in KwaZulu-Natal completely deprived, and in the Eastern Cape substantially deprived, of access to complex constitutional and other specialist litigation services pertinently envisaged by LASA's Strategic Plan 2009–12 and the two plans following it. The effect of this unlawful underexpenditure, as a result of corruption in LASA's top governing and executive ranks, is that these 'people on the ground ... are suffering' from 'poor delivery' of expert legal services, despite financial provision for them in LASA's annual budgets, met by the Treasury. Causing substantial harm to ... the general public' (per the definition of 'material irregularity' in section 1 of the PAA), LASA's corrupt and complicit officers named paragraphs 6 and 7 of this complaint have effectively denied any hope of 'social justice'[141] to these 'people on the ground who are suffering' when their

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[139] Bundle 3, page 1119. The transcript of the meeting doesn't identify which Portfolio Committee the Treasury representative addressed, but it looks certain to have been the Finance Committee.
[140] *Ibid*.
[141] Quoted in paragraph 55 above, LASA's Strategic Plan 2015–20 aims 'To give content to the Constitution through impact litigation – which is able to address Constitutional rights and socio-economic rights and develop jurisprudence on social justice matters.'

'Constitutional rights and socio-economic rights'[142] are violated, inasmuch as their state-funded access to the courts, which they can't themselves afford, has been practically blocked in furtherance of a cynical corruption cover-up.

79. Under section 1 of the PFMA, '**"accounting authority"** means a body or person mentioned in section 49', which section provides:

> (1) Every public entity must have an authority which must be accountable for the purposes of this Act.
>
> (2) If the public entity–
>
> (a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity[.]

80. Section 56(1)(a) of the PFMA provides: 'The accounting authority for a public entity may ... in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity'; and accordingly on 24 November 2007 the Board as LASA's accounting authority duly 'delegate[d] to the Chief Executive Officer all the powers entrusted or delegated to the accounting authority in terms of the Act'.[143]

81. Section 56(2)(c) of the PFMA provides that the delegation 'does not divest the accounting authority of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.' That is, the Board remains ultimately responsible for ensuring that the funds LASA receives from the Treasury are spent as budgeted, recommended, and approved.

82. Section 53 of the PFMA prescribes:

> ...
>
> (3) A public entity which must submit a budget in terms of subsection (1), may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the National Treasury has been obtained.

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[142] *Ibid*.
[143] Bundle 2, page 1040, Note 30.

(4) The accounting authority for such a public entity is responsible for ensuring that expenditure of that public entity is in accordance with the approved budget.

83. In contravention of section 53(3), LASA has been engaging in unauthorised expenditure in the form of underexpenditure, and in this manner accumulating millions of rands in unauthorised surplus over the past decade, by budgeting for nine Senior Litigator posts but only filling six of them with the salary budget received for them, and deliberately not filling its remaining three vacant Senior Litigator posts – following an unrecorded, unauthorised, backroom decision taken illegally (discussed below).

84. The Constitutional Court has unanimously affirmed in *Sibongile Zungu v Premier of the Province of KwaZulu-Natal and Others* [2018] ZACC 1 (22 January 2018) that deliberately not filling a budgeted and funded post in the public sector, and not spending the salary budget received for it on employing a suitable officer to fill it, contravenes the PFMA. Indeed, our apex court noted that this trite principle was beyond issue and common cause between the parties:

> [8] ... The Premier submitted that, had the position ... been left vacant, he would have been in breach of the provisions of the Public Finance Management Act (PFMA) which preclude him from leaving the position ... vacant. ...
>
> [9] ... The Labour Court further stated that the defence by the Premier that he was bound by the PFMA was not challenged by the applicant. ...

85. CEO Vedalankar's contravention of section 53(3) of the PFMA in not applying LASA's Senior Litigator budget to the employment of suitably qualified and experienced trial lawyers in its Pietermaritzburg, Durban and Mthatha Senior Litigator posts amounts to financial misconduct – for which Mlambo JP and the Board are ultimately responsible – in that section 83 of the PFMA provides:

(1) The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently–

(a) fails to comply with a requirement of section ... 53 ... or 55; or
(b) ...

(2) If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.

(3) An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.

(4) Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation.

86. Section 55(1)(a) of the PFMA prescribes:

> The accounting authority for a public entity ... must keep full and proper records of the financial affairs of the public entity.

87. Consistently with this provision, section 12 of LASA's Code of Conduct and Ethics requires:

> Accurate and reliable records of many kinds are necessary to meet the LEGAL AID BOARD's legal and financial obligations and to manage the affairs of the LEGAL AID BOARD. The LEGAL AID BOARD's books and records should reflect all business transactions ... and the employees responsible for accounting and record-keeping functions are expected to be diligent in enforcing proper practices.[144]

[144] Bundle 2, page 778, paragraph 12.

88. NOE Nair has repeatedly conceded,[145] and CEO Vedalankar[146] and HRE Clark[147] have likewise confirmed – all under oath – that no record whatsoever exists of any decision taken by any competent authority at LASA,[148] or indeed by anyone at all,[149] to abort LASA's substantially completed recruitment processes for its critical Senior Litigator posts at Pietermaritzburg, Durban and later on at Mthatha, for which suitable candidates had been selected and recommended, and to 'freeze'[150] the posts, for any reason.[151]

89. In sum, for ten years three budgeted and funded critical specialist legal professional posts have unlawfully deliberately been kept vacant without any record of any decision of this extraordinarily important financial and operational decision involving many millions of rands and hugely affecting critical service delivery.[152] Besides contravening section 12 of LASA's Code of Conduct and

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[145] Bundle 1, page 381, paragraphs 14, 15 and 16; page 382, paragraph 22; page 383, paragraph 29; page 385, paragraph 35.
[146] Bundle 1, pages 390–1.
[147] Bundle 1, pages 392–3.
[148] Annexure W to the Legal Aid Guide, titled 'Legal Services Technical Committee Terms of Reference', explains: 'The Board delegates authority to the CEO, the Management Exco [Management Executive Committee], LSTC ['Legal Services Technical Committee'], other committees and officials through its Approval Framework.' Bundle 2, page 767, section 3.2.3. Section 5 of the Guide specifies the 'Responsibilities of LSTC': 'The LSTC shall have collective responsibility for: … 5.3. the execution of Board strategy, policies, programmes and plans relating to the legal services delivery programme of the Legal Aid South Africa.' Bundle 2, pages 775–6. To be addressed in another part of this complaint to follow, a variety of false, contradictory claims have been made about who took the decision to abort the recruitments and to freeze the posts, and who was consulted about it. (About which no records exist.)
[149] To be discussed in another part of this complaint to follow, Vedalankar claimed (Hundermark almost certainly ghost-writing for her) that she and Nair decided this 'in July [2010]' – untruthfully and anyway *ultra vires* their powers and therefore illegally. *First*, as mentioned just above, the Legal Services Technical Committee is LASA's decision-making authority in regard to the implementation of Board policy to hire Senior Litigators – as illustrated by its abolition on 24 March 2010 of the Kimberley Senior Litigator post and its creation of the Mthatha one. *Second*, contradicting and refuting her (Hundermark's) claim that she was party to the original unrecorded, unauthorised decision to abort the Pietermaritzburg and Durban Senior Litigator recruitments, Vedalankar's email records show that by late July 2010 she wasn't even aware of the decision, not until October 2010, nearly a year later, when she wrote to the complainant (Hundermark almost certainly ghost-writing) alleging that she and Nair had taken this decision.
[150] *Ipso facto* illegal under the PFMA, as the Constitutional Court confirmed in *Zungu*.
[151] To be quoted and discussed in another part of this complaint to follow, the several untruthful, mutually contradictory and objectively contradicted, totally different reasons fabricated and advanced – including on affidavit, to the Minister, to the Portfolio Committee, and to the courts – have zigzagged wildly over time, ultimately criminally.
[152] Until the selection and recommendation of suitable candidates for appointment to the Pietermaritzburg and Durban Senior Litigator posts in November 2009, when the recruitment process was quietly halted, LASA had repeatedly tried filling the posts, as required by the PFMA and the Public Service Regulations, and had advertised them repeatedly: first in 2007 and twice

Ethics, this gross irregularity in not making and keeping a record of the decision to abort the recruitments and 'freeze' the posts (for wildly disparate reasons given much later under pressure to account) contravenes section 55(1)(a) of the PFMA and constitutes criminal financial misconduct under section 86(2):

> An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.

90. The unauthorised, off-the-record decision to abort the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments after the selection and recommendation of suitable candidates for appointment to the posts, and the indefinite and practically permanent 'freezing' of the top professional posts – for a decade now – was a major change to LASA's Strategic and Business Plans. Section 1.1 of the Approval Framework required the Board's 'Final approval'[153] for any change to LASA's 'Strategic Plan', and section 1.2 required that the Board 'Must be consulted (before)'[154] executive management changed the 'Business Plan'. But as NOE Nair confirmed on affidavit in April 2011: 'The Board was ... not informed of the decision'.[155] That is, the unrecorded decision was taken without necessary authority under the Approval Framework[156] (an internal regulation, a form of subordinate legislation) and was consequently illegal for that reason as well – and hence a 'material illegality' as defined by section 1 of the PAA and accordingly of concern to the Auditor-General.

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again in 2009 (Bundle 1, page 537, and pages 43 and 45). Created in March 2010 (Bundle 2, page 709, paragraph 4.1.7; and Bundle 3, page 1120), the Mthatha Senior Litigator post was advertised the following month in April (Bundle 3, page 1111: 'Closing date – 07 May 2010'), and after the short-listing of applicants in May (Bundle 3, pages 1122–3), interviews were held and a selection and recommendation made on 24 May (Bundle 3, page 1122; and Bundle 2, pages 994–7).

[153] Bundle 2, page 1034.

[154] Ibid.

[155] Bundle 1, page 385, paragraph 36.

[156] In November 2011, two years after the illegal, concealed abortion of the Pietermaritzburg and Durban Senior Litigator recruitments in November 2009, NOE Nair mentioned incidentally in a 'Report to Board' that the posts hadn't been filled – not because of lack of budget for them, as originally falsely alleged, but for other equally false reasons enumerated in footnote 135 above. All the chopping and changing excuses for not filling the three vacant posts will be treated in another part of this complaint to follow.

91. Section 55(2)(a) of the PFMA prescribes:

> The annual report and financial statements ... must ... fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned.

92. In its Annual Performance Report 2011–12 presented to the Portfolio Committee on 9 October 2012,[157] LASA's Board[158] misleadingly stated in its 'Report on Completion of Strategic Plan 2009–2012': 'Senior Litigators employed are working on complex matters and matters in higher courts'.[159] Vedalankar repeatedly made the same misleadingly allegation in her CEO Report included in LASA's Annual Report 2011/12, presented to the Portfolio Committee on the same day: 'Senior Litigators employed are working on complex matters in the higher courts.'[160] Again in her discussion of 'the completion of our three-year Strategic Plan period 2009–12', she claimed: 'To a large extent we were able to make the strategic shift that we mapped for the 2009–12 Strategic Plan (SP) period as indicated below ... We employed Senior Litigators who are working on complex matters and matters in higher courts.'[161]

93. These statements about the employment of Senior Litigators made by the Board in LASA's Annual Performance Report 2011/12, prefaced by Mlambo JP's chairperson's report, and by Vedalankar in her CEO report for 2011/12, were intended to imply to the Portfolio Committee and to induce it to believe that LASA's Strategic Plan 2009–12 regarding the recruitment of Senior Litigators to handle complex constitutional and other specialist litigation and to mentor LASA's legal staff in conducting it had been successfully implemented and completed. Indeed, Vedalankar's claim that 'Senior Litigators employed are working on complex matters in the higher courts'[162] was immediately preceded by the statement: 'Our specialist capacity to cover commercial crimes courts,

[157] Bundle 2, page 897.
[158] Bundle 3, paragraph 3.2.3.c.
[159] Bundle 2, page 897.
[160] Bundle 2, page 902.
[161] Bundle 2, page 1054.
[162] Bundle 2, page 902.

labour courts, sexual offences courts and children's matters is in place and practitioners are continuously trained in handling these specialist matters.'[163]

94. In truth and in fact, contrary to Vedalankar's false claim about this, such 'specialist capacity' wasn't 'in place', inasmuch as three of LASA's nine budgeted and funded Senior Litigator posts were still unfilled, then six years after the creation of the nine posts in 2006. As a result of recruitment corruption and a now disintegrated attempt to cover it up, KwaZulu-Natal had and still has no such 'specialist capacity' at all, and the Eastern Cape's 'specialist capacity' was and remains seriously constrained – ten years after the selection and recommendation of suitable candidates for appointment to the Pietermaritzburg, Durban and Mthatha Senior Litigator posts.

95. For the same reason, Vedalankar lied in her CEO Report in implying that in KwaZulu-Natal LASA's legal 'practitioners are continuously trained in handling these specialist matters', as in other provinces, because as a result of recruitment corruption and its fumbled cover-up, KwaZulu-Natal has no Senior Litigators at all to 'train' them, i.e. to 'Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff' as envisaged in the advertised job description;[164] to 'provide support for practitioners in more complex matters', as the respondent's Annual Report 2009/10 puts it;[165] and for 'protecting the rights of women and children ... In very complex matters, our Senior Litigators provide support and advice to practitioners that need it.'[166]

96. Mlambo JP and the Board well knew that these claims – that Senior Litigators had been employed in fulfilment of LASA's Strategic Plan 2009–12, and that specialist legal professional capacity was now in place for the conduct of complex litigation and for training LASA's practitioners – were false, because a year earlier in November 2011, NOE Nair presented a 'Report to Board' with the soporific title 'Senior Litigators Reporting Relationships and Job

[163] Ibid.
[164] Bundle 1, page 45.
[165] Bundle 1, page 142, paragraph 153.
[166] Bundle 2, pages 825–6.

Clarification',[167] in which he advanced new, quite different untruthful excuses (unsupported, contradicted and refuted by LASA's own records) having nothing whatsoever to do with the budgetary insufficiency story initially falsely alleged (also unsupported, contradicted and refuted by LASA's own records) to justify his failure (as chairperson of the Legal Services Technical Committee) to fill LASA's remaining three Senior Litigator posts with the candidates recommended for them by approving the selection panels' recommendations (his responsibility),[168] after the collapse, when tested and exposed, of the bogus financial insufficiency cover-story for 'freezing' the three vacant Senior Litigator posts at point that the recruitment processes had been completed. (All the different, clashing, chopping and changing cover-stories variously told in correspondence, on affidavit, to the Minister, to the Portfolio Committee, and in court will be quoted and treated in other parts of this complaint to follow.)

97. In short, in making their false annual report to the Minister and to the Portfolio Committee, Mlambo JP and the other members of the Board well knew, as CEO Vedalankar did, that their claims in it were substantially false and misleading, and accordingly they all contravened section 55(2)(a) of the PFMA (fully quoted above), requiring that their 'annual report and financial statements ... fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned.'

98. Section 83 of the PFMA (fully quoted above) provides that 'The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently ... fails to comply with a requirement of section ... 55' for which 'every ['board'] member is individually and severally liable[169] ... An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully

[167] Bundle 2, page 869.
[168] Under section 8.2.2.b of the Approval Framework, NOE Nair has 'Final approval' authority, subject to the assent of the CEO (then Vedalankar); she 'Must agree'. Bundle 2, page 1036.
[169] The Department's representative on the Board, Pieter du Rand, was then and is still a member.

or negligently fails to exercise that power or perform that duty. ... Financial misconduct is a ground for dismissal or suspension'.

99. Having since retired from LASA, Mlambo JP and Vedalankar can't be dismissed or suspended under section 83,[170] but they remain exposed to criminal prosecution under section 86 of the PFMA, 'Offences and penalties', subsection (2) of which provides:

> An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.

100. In sum, by dishonestly misrepresenting 'the state of affairs of [LASA], its business, its financial results, its performance against predetermined objectives [set out in its Strategic Plan 2009–12] and its financial position as at the end of the financial year concerned' in LASA's 'annual report and financial statements' for 2011/12, so as to mislead and defraud LASA's constitutional oversight authority, the Justice Portfolio of the National Assembly, and induce it to believe wrongly that (i) LASA's Strategic Plan 2009–12 regarding the employment of Senior Litigators had been implemented and that such specialist legal service delivery capacity was now in place, (ii) LASA had filled its vacant posts, especially its critical posts, and (iii) LASA was applying its Senior Litigator budget to the employment of Senior Litigators, Board chairperson Mlambo JP, his fellow directors in October 2012,[171] and CEO Vedalankar all committed financial misconduct and criminally contravened section 55 of the PFMA, for which they're liable to be jailed under section 86(2).

101. In deliberately falsely reporting to and misleading the Justice Portfolio Committee in LASA's annual report for 2011/12, prefaced with Vedalankar's CEO report, Mlambo JP, other members of the Board at the time and CEO Vedalankar furthermore criminally contravened section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of

[170] Du Rand can be.
[171] Including Du Rand.

2004 ('Powers, Privileges and Immunities Act'),[172] for which they're liable to be jailed:

> 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.

102. Mlambo JP's and the Board's and CEO Vedalankar's fraudulent deception of the Minister and the National Assembly regarding the employment of Senior Litigators and specialist legal professional capacity being in place additionally failed to comply with 'Strategy C4' of the respondent's Strategic Plan 2009–12, namely 'To timeously account to Parliament and the Executive Authority so they are well informed of Legal Aid South Africa strategy and programmes' – a material irregularity. 'Strategy C4' specifically required 'Timeous and Accurate … Interaction with Minister' and 'Accurate … Interaction with Parliamentary Committees'.[173] And section 1 of the PAA includes 'fraud' as a 'material irregularity' of concern to the Auditor-General.

103. Displaying a similar flagrant contempt for the truth[174] in her[175] entry in LASA's 'Business Plan 2011/12' in section P26–10 headed 'Talent acquisition and retention', HRE Clark dishonestly concealed from the Board, to which the plan was submitted for review,[176] that a third of LASA's critical Senior Litigator posts

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[172] Under section 1 of the PAA, a 'material irregularity' includes 'any ... contravention of ... legislation', and under section 5(1A) this statutory crime is of direct concern to the Auditor-General.
[173] Bundle 2, page 1058. More examples of their dishonestly false, criminal reporting to the Portfolio Committee on other occasions will be canvassed in other parts of this complaint to follow.
[174] Clark's deposition to conflicting false affidavits, a crime, will be treated in another part of this complaint to follow.
[175] Bundle 2, page 877, 'Responsible Executive': 'HRE'.
[176] Bundle 3, page 1104, paragraph 6.1.

had long been vacant since their creation in November 2006,[177] despite the selection and recommendation of suitable candidates for appointment to them in November 2009[178] and May 2010.[179] To the contrary, full well aware that the posts hadn't been filled, and in a fraud on the Board, and hence a 'material irregularity', Clark deliberately falsely claimed: 'No longstanding vacancies'.[180]

104. Profoundly aggravating Mlambo JP's and the Board's and CEO Vedalankar's criminal contraventions of the PFMA and of the Powers, Privileges and Immunities Act in their and their colleagues' fraudulent cover-up of ethical recruitment corruption (jobs for pals) gone wrong,[181] is their corrupt motive for dishonestly misleading the Portfolio Committee in their reports, namely to frustrate and defeat the National Assembly's constitutional oversight responsibility imposed by section 55(2)(b)(ii) of the Constitution 'to maintain oversight of ... organ[s] of state' like LASA, and to prevent the National Assembly holding them to account for unlawfully deliberately not filling LASA's three remaining Senior Litigator posts at Pietermaritzburg, Durban and Mthatha: (i) in contravention of the PFMA; (ii) in an illegal unauthorised deviation from LASA's Strategic Plan 2009–12 and Business Plans based on it; and (iii) in contemptuous disregard for both the Minister's and the Portfolio Committee's express wishes that LASA fill its vacant posts, especially critical posts, and that LASA hire Senior Litigators to ensure that the indigent have access to specialist litigation expertise and that LASA's lawyers have experienced litigation lawyers to mentor them.

105. Had chairperson Mlambo JP and the Board and CEO Vedalankar not criminally deceived and defrauded the Portfolio Committee it would have detected (i) their financial misconduct in unlawfully deliberately not filling LASA's three remaining vacant, budgeted and funded Senior Litigator posts, and

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[177] As mentioned in paragraph 60 above, in March 2010 the Kimberly post was abolished and a new post created at Mthatha, with the budget for the former transferred to the latter.
[178] Bundle 1, pages 244–8.
[179] Bundle 2, pages 994–7.
[180] Bundle 2, page 877. To be shown in another part of this complaint to follow, Clark mendaciously and later perjuriously participated in covering up the corrupt, illegal abortion of the Pietermaritzburg and Durban Senior Litigator recruitments.
[181] To be detailed with supporting documents in another part of this complaint to follow.

in not applying the budgeted revenue received for them to the employment of suitably senior lawyers to fill them, and (ii) the multitude of capital transgressions of the PFMA committed in corruptly and illegally cancelling – off the record and without authority – the substantially completed Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments after the selection and recommendation of suitable candidates for appointment to the posts.

106. Chairperson Mlambo JP's and the Board's and CEO Vedalankar's successful criminal fraud perpetrated on the National Assembly, by presenting to it a false and misleading annual report for 2011/12, constitutes a clear-cut 'material irregularity' on multiple scores within the definition given in section 1 of the PAA, including 'non-compliance with, or contravention of, legislation, fraud ... or a breach of fiduciary duty identified during an audit performed under this Act that resulted in or is likely to result in ... the misuse ... of a public resource or substantial harm to a public sector institution or the general public'.

CONCLUSION

107. In the language of section 20(2)(c) of the PAA, LASA's 'reported performance' repeatedly falsely described in its annual report for 2011/12 concerning the employment of Senior Litigators, in which it was alleged that LASA had completed its Strategic Plan 2009–12 and had put 'in place' its planned specialist litigation and professional mentoring capacity, is seriously at odds with 'its predetermined objectives' in this regard set out in the plan.

108. LASA's deliberate failure over the past ten years to fill its budgeted and funded Senior Litigator posts at Pietermaritzburg, Durban and Mthatha, created to provide expert constitutional and other specialist litigation services to the indigent, is a seriously unlawful dereliction of its obligation stipulated in section 20(3) of the PAA to ensure its 'resources [are] procured economically and utilised efficiently and effectively.'

109. This 'serious or persistent material breach of ... uniform treasury norms and standards', per section 216 of the Constitution, every year for the past

decade – 'compliance with' which 'norms and standards ... [t]he national treasury must enforce' – presents a constitutional basis for the Treasury to 'stop the transfer of funds to' LASA as a seriously and persistently delinquent 'organ of state'.

110. Section 5(3) of the PAA empowers the 'Auditor-General ... in the public interest [to] report on' Mlambo JP's, the Board's and Vedalankar's criminal and other contraventions both of the PFMA and of the Powers, Privileges and Immunities Act and to 'submit such a report to the relevant legislature', namely the National Assembly – specifically the Speaker and the Justice Portfolio Committee – 'and to any other organs of state with a direct interest in the matter', namely the Treasury; the Minister; the Department's Director: Third Party Funds; the Public Protector; the Judicial Service Commission; and the National Director of Public Prosecutions.

Signed at Eshowe on 19 February 2020

ANTHONY BRINK

Signed before me at Eshowe on 19 February 2020 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and who affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

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S. MSHALI CS

COMMISSIONER OF OATHS

Name: Siphiwe Mshali

Address: 73-79 Main Street

Capacity: Constable

SUPPORT SERVICE - SCM
2020 -02- 09
ESHOWE
KWAZULU-NATAL

2.4 REPORT BY CHIEF EXECUTIVE OFFICER
MS VIDHU VEDALANKAR

Legal Aid South Africa is proud to report on another year of high performance, delivering on our mandate and touching the lives of hundreds of thousands of South Africans by enabling them to access justice. We can report that, in this past year, we have achieved the objectives and targets we set in our Business Plan and were able to provide quality legal services to over four hundred thousand South Africans. We also maintained a strong governance platform and obtained a ninth year of unqualified audit report on our financial reports.

2009/2010 is the first year of our 2009-2012 Strategic Plan period. In our past strategic planning periods we established our National Footprint across the country and consolidated our systems and policies to ensure we are able to deliver on our mandate to provide quality legal services to indigent South Africans. Having consolidated our National Footprint our overall strategic shift for 2009-2012 is continuing high performance to become a mature organisation aiming for excellence in performance to reach many more South Africans. This will enable us to achieve our mission to be a leading provider of quality, professional legal services, ensuring effective access to justice for the poor and vulnerable, in an independent, efficient and caring manner.

Overall we are on target to make the strategic shift that we mapped for this period. In the 2009-2010 period, on the legal services delivery front we completed a 3-year expansion of our national footprint (6 new justice centres and 27 satellite offices), geared up to launch our client call c entre, the Legal Aid Advice Line, on 1 July 2010 and implemented a new delivery model through agency agreements with legal firms in rural areas. To support our legal practitioners in specialist matters we set up expert panels. Our practitioners exceeded their productivity level targets for new and finalised legal matters.

MS VIDHU VEDALANKAR
CHIEF EXECUTIVE OFFICER:
LEGAL AID SOUTH AFRICA

We also established our Legal Quality Assurance Unit which has completed the audit of files of 861 legal practitioners and audited performance of 230 practitioners in court in the 2009/10 year. Practitioner quality scores, as assessed by our Legal Quality Assurance Unit, were higher than target for all categories of practitioners. We have also significantly increased assistance on general legal advice matters. A revised civil legal aid strategy approved by the Board will restructure and increase, albeit in a limited way, our capacity to increase assistance in civil matters in the new financial year.

Our strategic shift also incorporated changes to our support platform to support the delivery of quality legal services. This ninth consecutive year of an unqualified audit by the Auditor-General attested to our strong financial management and governance record. This was further strengthened by a fifth consecutive year of no matters of emphasis. Our newly launched corporate identity and 'Legal Aid South Africa' brand was positively received. We successfully implemented matrix management to ensure a greater focus on legal matters by our legal managers while the administrative and non-legal responsibilities are attended to by our support managers. We also successfully implemented a risk based management approach to supervision and support of practitioners and managers to allow greater flexibility and align supervision and support to the level of risk of individual practitioners and managers. Our IT Platform was enhanced by upgrading our internet line to allow for greater use of technology in linking to clients and we also completed our Business Intelligence module which in the new year will allow online, real-time access to management information by managers and practitioners. Consolidation of our people development programmes allowed us to successfully accredit as a Best Employer.

Reporting in line with the components of the Balanced Scorecard used in our Strategic Plan, for our Client, Community and Stakeholder Strategies our priority continued to be increasing access to quality legal aid services. We continued a100% coverage of all criminal courts in the country. In the past year we expanded our national footprint by 2 justice centres (in Botshabelo and Malmesbury) to 64 justice centres and by 9 satellite offices (mostly in rural areas) to 64 satellite offices. In 2009/10 we provided legal assistance in 416,149 new legal matters and finalised 422,882 legal matters. Of the new legal matters 29,028 (7%) were civil legal matters. 93% of these new matters were delivered by our in-house lawyers based at our justice centres and satellite offices, 6% through outsourcing to private lawyers (judicare) and 1% through our co-operation partners (whose programmes are funded by us). 75% of the new legal matters we assisted in were in District Courts, 16% in Regional Courts, 2% in the High Courts and 6% in other courts. In addition to the new legal matters we also provided advice to 211,874 clients in the past year. Our programmes on legal quality contributed to all quality targets being achieved for all categories of practitioners.

Legal Aid South Africa participated in 44 backlog courts as part of the backlog project run by the Department of Justice. In addition to a general link to all awaiting trial prisoners through legal advice clinics at prisons and individual consultations, a special project focused on children awaiting trial continued as did the project focused on Awaiting Trial Prisoners who were in custody for more than two years. Our various interventions to reduce the number of unrepresented accused in courts contributed to a 17% reduction in automatic reviews in the past year. In the reporting period we assisted 59,266 children in criminal and civil legal matters. A pilot project with the Masters office in Bloemfontein working with the estates involving children was very successful. An improved networking with NGOs, CBOs and community advice offices is anticipated with the signing of a co-operation agreement with NADCAO, which has a presence in all the provinces.

This will allow a more effective link and support between community members seeking advice at advice offices and our legal professionals.

Despite these successes I am still concerned that limited funding is resulting in the practitioner per court ratio in criminal courts being insufficient to meet demand at courts. This results in high caseloads carried by practitioners in many justice centres and no relief capacity to replace staff who are away from the office. In this period of economic recession this is likely to continue. The lack of funding for civil legal matters has resulted in limited capacity to render civil legal aid services, impacting negatively on the number of clients assisted in civil legal matters as evident from the decline in number of persons assisted in civil matters. This limited capacity to undertake civil legal aid also results in a limited presence in rural areas making it difficult for clients in rural areas to access legal aid. The revised civil legal aid strategy mentioned above will to a certain extent increase capacity to assist clients in civil legal aid matters.

The Legal Aid Advice Line is also responding to this gap in reaching the poor and specifically the rural poor, by allowing them access to primary legal advice on the phone without having to travel to a justice centre or satellite office. The roll-out of a new corporate identity and brand resulted in partial delays to the branding of prisons, SAPS holding cells and Courts. This will be attended to in the new financial year.

Reporting on the second component of our Balanced Scorecard, in the Finance and Sustainability Strategies we continued our strong financial performance. Our ninth unqualified audit report went together with 99,5% of the budget being prudently spent. Payment of our creditors, including judicare practitioners, was within the 30 days target period. Compliance with our supply chain management policies and procedures also continued. A strong Legal Aid brand is part of our sustainability strategy and this was attended to through the successful roll-out of a new Legal Aid South Africa brand and advertising campaign reaching over 7 million households. This resulted in a 6% increase in awareness amongst the communities we serve, that is, lower LSM groups.

We ended the 2009/2010 year being affected by the global economic recession as were all other public sector departments and entities. The impact of the recession is significant for us, with no new government grants, cuts in our budget in real terms and an actual budget cut in the MTEF 2010-2013 cycle period. We have operated an economic budget with more than 99% of our budget being spent thus ensuring maximum delivery to our clients. These budget cuts will therefore affect our service delivery and our ability to continue to service our clients at the level we have done. Although we will make every effort to minimise the impact on delivery it remains unavoidable.

Having consolidated our delivery and support platforms we were able to successfully introduce and implement matrix management. This allowed for improved reporting and support relationships horizontally and vertically within the organisation, linking the function specific executives to managers at regional and local levels. This implementation of a matrix management approach increased management focus on legal matters with the responsibility of business unit managers at regional and local level being redefined to oversight of support roles and an increased responsibility for legal development and support within their regions and justice centres. This meant that support function executives at national level redefined and increased their responsibility for their functions and managers at regional and local level for example, for support functions like finance, human resources and communications.

The implementation of risk based management was also introduced and implemented in the past year. This introduced a more customised response to the managing of managers and of legal professionals based on their risk profile and the level of support each required. This allowed us to shift from a standard to a more customised response introducing increased flexibility and self-management for the more experienced and proficient managers and legal professionals. This resulted in management attention being focused on those staff in greater need of support. This is important for sustainability and long-term performance. Building and strengthening these approaches will continue in the next period.

We have placed a strong emphasis on accurate and timeous management information to inform our work. With the finalisation of Phase 1 of the Business Intelligence (BI) project in the past year our practitioners and managers will be able to access online real-time information on their performance and delivery data to assist them in self-management.

The staffing component of our national footprint grew only by 3% to 2,513 posts. At year end our staff recruitment was at 94% ensuring that our justice centres are capacitated to provide quality legal services to our clients. Our turnover rate, excluding our candidate attorneys who are employed on fixed-term contracts, was below 10% per annum. We finalised an employment equity audit to inform the Employment Equity Plan for 2010-2015. Overall we are achieving our targets for race and gender with the exception of the achievement of targets in respect of African females at the specialist technical and senior management levels and targets in respect of people with disabilities, which remained a challenge. These challenges continue to be addressed in our 2010-2015 Employment Equity Plan. The non-implementation of Phase 2 of the Occupation Specific Dispensation for our legal professionals due to lack of funds continues to impact negatively on staff morale.

Our people focused programmes were implemented to build a strong and positive organisational culture and brand. The programmes strive to create a work environment in which employees are engaged and satisfied thus choosing to remain with Legal Aid South Africa, as an employer of choice, and being motivated to deliver high quality services. The investment in our staff through our training and development programmes also continued with training for legal, non-legal and managerial staff being achieved. We re-energised our succession planning programme to create a talent pool able to succeed in key critical posts.

Having consolidated our performance and governance issues, the focus on developing our leadership to manage sustained performance year-on-year commenced with our leadership programme under the theme "from Compliance to Values Based Leadership". Our leadership programme extends from Executives, to JCEs, to Managers, to Principal Attorneys and SPAs. Through our Leadership Programme we aim to supplement our compliance approach with a values centred approach. Our Leadership Development Programme includes a Certificate Programme for Leadership Development which is run by one of the country's leading business schools. This allows for the training of 30 senior managers annually. It also includes assessments and self-development and training for each manager to assist them to embrace the values centred approach.

In the past few years we have become increasingly technology dependent and thus had to upgrade our IT Platform to support our business needs. The IT Investment plan approved by the Board for that purpose was implemented providing an upgraded VPN platform and increased bandwidth capacity. The high cost of technology however remains a challenge to optimising IT operational efficiencies and moving to a more integrated enterprise wide resource programme.

This is especially evident in the only issue that remains a challenge in the Auditor-General's report to management, namely the management and administration of leave. The migration to an electronic leave management system, a module within the HR-SAP application that we have implemented for HR payroll administration, remains unaffordable.

In reflecting on the past year and looking at the year ahead there is no doubt that the impact of the recession is the biggest factor looming over us and our continued performance. Our demonstrated capacity to deliver our business results and our financial results over the past year and the last few years will be tested in the period ahead. The major challenge will be minimising the cutting back of our services in response to the cuts in funding. Reduced funding will result in increased workload for our staff and inevitably a reduced service to our clients. While we will make every effort to minimise the impact it cannot be avoided.

Legal Aid South Africa is a successful high-performance organisation because of the efforts of our staff, the Legal Aid South Africa citizens. Legal Aid South Africa is a brand acknowledged for its performance generally but also for the quality of legal services delivered enabling many more South Africans to access justice. I would like to express my thanks to all Legal Aid South Africa citizens for your dedication and delivery of quality legal services, which contributes to upholding our constitutional values and rights. Thanks are also due to our Board and its Chairperson, Judge Mlambo for continuing to provide its oversight and support roles. I also want to acknowledge with appreciation the outstanding contribution of my management team across the country, who has unhesitatingly embraced a values based approach to leadership to ensure year-on-year of sustained performance.

Delivering quality legal aid services is part of protecting and defending the rights enshrined in our Constitution. We are pleased that our successful performance is able to give meaning to the Constitution and make it a living document for poor and vulnerable South Africans.

V. N. Vedalankar

Ms Vidhu Vedalankar
Chief Executive Officer:
Legal Aid South Africa.
19 August 2010

From: Vidhu Vedalankar [mailto:VidhuV@legal-aid.co.za]
Sent: 28 January 2011 02:25 PM
To: Anthony Brink
Cc: Justice Dunstan Mlambo; ckisoon@sahrc.org.za
Subject: PAIA: Brink - supplementary request for records

Dear Mr Brink

Please see attached a response to your letter.

Regards

Vidhu Vedalankar

CEO

www.legal-aid.co.za

Transcript of audio recording of CEO Vidhu Vedalankar's address to the Portfolio Committee for Justice and Constitutional Development on 12 October 2010 during LASA's briefing on its Annual and First Quarter Reports (audio recording: http://www.pmg.org.za/node/23447 ; transcript made by Adv Brink)

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

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

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

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

Portfolio Committee on Justice and Constitutional Development
12 October 2010
Legal Aid South Africa on their Annual and Quarterly Reports

Acting Chairperson: Mr J Jeffery (ANC)

Documents Handed Out:
Legal Aid South Africa (LASA) presentation on Annual Report 2009/2010
LASA First Quarter Report: April to June 2010

Relevant Document:
Legal Aid South Africa (LASA) Annual Report 2009/2010

Summary

The Committee on Justice and Constitutional development welcomed Legal Aid South Africa as they presented their annual report for the financial year 2009/2010 as well as the 1st quarterly report for April to June 2010/2011. In a nutshell Legal Aid South Africa had managed to achieve its targets and would now focus on finding new ways of increasing access to justice. On the support services front, the objective was to increase financial maturity. Six new justice centres had been built around the country as well as 27 satellite offices. The client call centre would be opened in two weeks time and Legal Aid South Africa was the first legal aid entity in the world to instill quality assurance structures to ensure that the quality of the services provided by its lawyers was monitored. Risk management and financial control were closely guarded and there was a strong corporate governance ethos. Only 29 000 new civil matters had been handled, this reflected that LASA was still struggling with the load where civil matters were concerned. Of all the matters undertaken by justice centres, in-house practitioners handled 93%, 6% were by Judicare lawyers and 1% were through co-operation with other partners. The general advice provided by paralegals figure for this financial year was 211 874. The number of automatic reviews had decreased to 8 770. A challenge that remained for Legal Aid South Africa was that there was a gap in terms of African females in senior management positions.

The non-current assets, which were less than 12 months old, amounted to R102 559 414. The current assets were R236 366 598. Revenue was R917 408 000; the main source of revenue was the government grant. The main source of expenditure was salaries, which consumed 70% of the budget. 99.5 % of the budget had been spent for the 2009/10 financial year and once again Legal Aid South Africa had received an unqualified audit report.

For the first quarter of the 2010/2011 (April to June) financial year Legal Aid South Africa was on track where New Legal Delivery Matters was concerned. Practitioners were performing well within target range and challenges were being resolved. The government

grant had increased by 21% and had been used to cover the various areas of operations, which included the reduction of case backlogs.

The Committee wanted more insight into the relationship between Legal Aid South Africa and private practitioners. There were also queries regarding the area of operation of the justice centres. The Committee wanted to know about the experience levels of Legal Aid South Africa practitioners as well as their ability to compete with lawyers from the private practice, this tied in with the query on the salary levels of practitioners. There were issues regarding the financial statement that the Committee raised. it was a concern that there was no mention of what the targets set were; especially where the challenges had been set out in the presentation for the annual report. The Committee requested feedback on the *Porrit* and *Boeremag* cases. The Committee suggested that media services available in Parliament such as Parliament Live should be used by Legal Aid South Africa. The entire Committee commended Legal Aid South Africa for its excellent work and congratulated them on an excellent Auditor General Report.

Minutes

Opening Remarks

Judge Dunstan Mlambo, Chairperson of Legal Aid South Africa (LASA) referred to slide 3 of the annual report presentation and said that overall, LASA had managed to achieve its strategic shift for the period leading up to 2012. The next strategic phase would be to try and find new ways of increasing access to justice. On the support services front, the objective was to increase the financial maturity of LASA. The risk-based management of the performance of lawyers at LASA would be perfected further. The Information Technology platform would be enhanced as well as the availability of the business intelligence facet. Six new justice centres had been built around the country as well as 27 satellite offices. The client call centre would be opened in two weeks time by the Minister of Justice and Constitutional Development. LASA was also the first legal aid entity in the world to instill quality assurance structures and thus ensuring that the quality of the services provided by its lawyers was monitored. LASA would like to embrace a more value centred approach.

Ms Noni Mgadza, Chairperson of the Audit Committee for the board of LASA elaborated on the audit focus of LASA. Risk management and financial control were closely guarded at LASA and there was a strong corporate governance ethos. The result of this was that in the past nine years LASA had received an unqualified report, in five of those there were no matters of emphasis. The various sub-committees of the board worked together to ensure that LASA functioned competently. The established corporate governance structures all worked towards servicing the various communities of South Africa.

Presentation: Annual Report 2009/2010

Ms Vidhu Vedelankar, Chief Executive Officer (CEO) of LASA addressed the Committee and saying that management had strived to turn the organisation around in order to

increase access to justice. The justice centres operated in all the criminal courts within the Republic. For the 2009/10 period there was a slight decrease in the number of new matters handled. 29 000 New civil matters had been handled, this reflected that LASA was still struggling with the load where civil matters were concerned. This was listed under the challenges that would be undertaken by the organisation. The call centre would assist in this regard as first level advice would be provided especially to those communities where LASA was not present. LASA's justice centres undertook 93% of all new matters, 6% were by Judicare lawyers and 1% were done through co-operation with other partners. There were 59 266 new matters that involved children. General advice was provided by paralegals and the figure for this financial year was 211 874. The number of automatic reviews had decreased to 8 770 as LASA had been working hard on reducing this. The quality of practitioners was tracked at justice centre levels. In order to increase awareness on its services, LASA had done branding in prison and police cells. Branding was also done in courts as well as at public lectures. Concerning the Business Processes Performance, LASA was aiming to improve the Matrix management and Risk Based Management, which were both successfully implemented.

The Business Intelligence model allowed management to have oversight over what was going on in the organisation at any time. It also allowed practitioners to know what their caseload was. Recruitment stood at 94% and the staff turnover rate – excluding Candidate Attorney's (CA) - was 9.6%. Lawyers constituted 69% of staff. There was a gap in terms of African females in senior management positions.

Presentation: Annual Financial Statements & Auditor General's Report

Ms Rebecca Hlabatau, Chief Financial Officer (CFO) of LASA informed the Committee that the non-current assets, which were less than 12 months old, amounted to R102 559 414. The current assets were R236 366 598. Revenue was R917 408 000, it should be noted that the main source of revenue was the government grant. The main source of expenditure was salaries, which consumed 70% of the budget. 99.5 % of the budget had been spent for the 2009/10 financial year. This had been the trend for the past six years as there was efficient management of all fixed assets and vehicle management. There were also functional and efficient supply chain management committees. 99.6% of trade creditors were paid within 30 days of the invoice date and 99% of judicare accounts were paid within 30 days of receipt of invoice. The 2009/10 financial year was the 9th year in succession that LASA had received an unqualified audit report and this was the 5th year in succession that there were no matters of emphasis.

The Chairperson commented that there was a lot of data in the quarterly report, in future the focus should only be a highlight of the trends and issues.

Presentation: Quarter 1 Report April to June 2010

Mr Brian Nair, National Operations Executive presented to the Committee that LASA was on track where New Legal Delivery Matters was concerned. Finalised matters were slightly lower but still within target range. Civil matters were extremely lower than criminal matters

as a result of the resource constraints. There was a good trend for quality monitoring and the practitioners were performing well within target range. There was still some work to be done concerning the branding for community outreach purposes. LASA was on track with addressing most of the challenges it faced.

Mr Jerry Makokoane, Chief Operations Officer for LASA continued with the presentation. The funding for case backlogs from the government assisted in the reduction of cases. The government grant had increased by 21% and had been used to cover the various areas of operations. 19% of the funding went to salaries. Direct expenditure increased by 70% due to the 2010 FIFA World Cup funding as well as funding for new legislation. 25 % of the budget had already been spent; this was in line with the trend of LASA's spending. Business continuity was being monitored in order to ensure that operations in LASA were being monitored.

Discussion

Mr J Sibanyoni (ANC) asked what kind of relationship existed between LASA and private practitioners. Did the private legal sector consider LASA as a rival competitor and was it easy for LASA to be able to obtain private practitioners for judicare? Taking into consideration the fact that LASA was freely available to the public, would a newly admitted attorney be able to successfully set up his or her own practice? The civil work that LASA was now undertaking was commendable. Were there LASA centres that provided services across two provinces or were they provincially bound?

Judge Mlambo replied that LASA did not have any problems with judicare. LASA had an accreditation system for private practitioners; from there instructions were issued to the various lawyers on the accreditation list. LASA was now accepted in the legal fraternity however there were still many lawyers in private practice that bad mouthed LASA. These lawyers did this for the simple reason that they did not have access to the work done by LASA. The justice centres were court based in terms of their coverage and they were not provincially bound.

Mr Nair replied that the relationship between LASA and private practitioners was not adversarial. More and more clients were asking for assistance from LASA. LASA provided assistance for clients who could not afford legal services; these were not the type of clients that comprised the market for private lawyers

Ms D Schaefer (DA) commented that she was concerned that the annual report was not made available to members on Friday. Were the salaries of LASA practitioners competitive when compared to the private sector? What were the experience levels of LASA practitioners and were they able to compete with private lawyers? Was LASA concerned about not providing services to persons other then indigenes that also could not afford legal services? On page 123 of the annual report LASA had an excess of R21 million rand access in the past financial year yet this year there was a deficit of R1.8 million, is there an explanation for this? On page 146 there were bad debts written off in 2009/10 to the tune

of R563 000 as opposed to R42 000 during the financial year before that, why was this the case?

Judge Mlambo replied that the best way to ascertain the quality of the work done by LASA practitioners rested with the judicial officers in front of whom LASA practitioners stood. One would find judicial officers in very remote areas traveling to LASA launches to commend me on the work done by LASA. There were many judges who would say that they did not want judicare in their courts because they were not committed and preferred LASA practitioners. LASA practitioners were monitored and if they had a higher number of guilty pleas they would be reined in. The group referred to that did not qualify for legal aid but also could not afford legal services would benefit a lot from the private legal profession increasing their *pro bono work*. Those who failed the means test could also appeal.

Mr Nair replied that LASA had no problems with regards to recruiting lawyers and the salary levels were an indication of this. LASA practitioners served in different types of courts, therefore there were different types of experience levels required. LASA would definitely expand from where it was right now.

Ms Hlabatau referred to the questions relating to finance and said that the reason for the deficit figure was because the income statement took into consideration depreciation. The deficit was not a reflection that LASA overspent on its budget during the past financial year. The bad debts written off related to old debts stretching back to 2000. The bad debts were written off after a considerable amount of time had been spent trying to recover the debts in terms of Treasury regulations. It came to a point where the costs of recovering these debts were now exceeding the benefits that would be derived in recovering them.

Mr M Gungubele (ANC) echoed the praise from Mr Sibanyoni on the excellent work done by LASA. Where the presentation focused on the challenges, it was a concern that there was no mention of what the targets set were. It would be useful if the challenges were articulated in a manner where the set targets were included so one could judge according to figures provided.

The Chairperson commented that there should be more information on the Co-operation agreements that LASA was entering in with other organisations. Could there be commentary on the *Porrit* case that just concluded and its impact on LASA. What was LASA trying to do in order to improve the figures for civil matters?

Judge Mlambo replied that the impact of the *Porrit* case would not affect the judicare instructions. The decision in the case would mean that courts would no longer force LASA to provide legal aid for non-qualifying persons. Cases like the *Porrit* one were going to be a threat and would have consumed a huge part of the budget.

Mr Nair said that last year the board had decided to review the civil matters strategy, which included looking at access and the quality of services for civil matters. Civil matters were

expected to grow, as there was now added capacity.

Advocate Peter Du Randt Chief Director for Court Services in the Department of Justice and Constitutional Development (DOJ & CD) also replied that some of the Co-operation agreements included an agreement with the National Prosecuting Authority (NPA). The agreements were to enhance coordination in how cases were dealt with and also for the reduction of cases on the court register. LASA practitioners were now also available as adjudicators in small claims court cases. This was also contributory towards the work being done where civil matters were concerned.

Ms C Silkstone, Content Advisor for the Committee asked why new matters had decreased.

Mr Nair said that the figures have generally decreased because the cases that should not be on the court roll were not. The Child Justice Act also meant that more and more cases involving children were being diverted

Mr Gungubele asked what mechanisms were in place for quality control purposes and how were the standards measured to determine consistency in the performance of practitioners.

Ms Vedelanker added that quality would remain on the agenda as a challenge because of the professional work done by LASA. The standard of LASA was improving; the target for Candidate Attorneys (CA's) was lower because they were fresh from university. The quality assessment now consisted of both file and court monitoring. This was not so successful in judicare because it was much harder to track matters.

Judge Mlambo added that the budget for judicare had been reduced. It should be noted by the Committee that whenever they read about LASA lawyers behaving inappropriately it was usually Judicare lawyers. This was why Judicial Officers always preferred LASA lawyers to Judicare.

Mr Sibanyoni asked for feedback on the *Boeremag* case.

The Chairperson suggested that LASA should make use of the media services available in Parliament such as Parliament Live especially when they come to present the quarterly reports. Were there amendments to the Legal Aid Guide that had to come before Parliament? LASA should report on the progress of the Child Justice Act in the next quarter. Were there any cases where LASA was suing the state especially Home Affairs? Had there been any forms of engagement with the Minister of Home Affairs so that court proceedings against the state can be avoided where Home Affairs was concerned. Another issue of concern was pensions, had LASA looked at engaging with the pensions ombudsmen to ensure that any queries from its clients were looked at? The work by LASA was once again commendable. It was important that Members also assisted in the quality

maintenance of LASA by conducting surprise visits to their offices.

Judge Mlambo replied that just under R27 million had been spent on the trial. The courts forced LASA to fund the *Boeremag* case the way it was being funded now despite the best efforts of LASA. The accused were 23 and all were represented by the state. It was difficult to handle more civil matters because the funding constraints. It was not clear if there were dedicated LASA units that dealt with pensions but they definitely dealt with estate matters.

Ms Vedelanker added that the Legal Aid guide was tabled before the Minister of Justice who would in turn table it before Parliament. There were not too many amendments.

Mr Nair replied that there were no statistics available for where LASA was suing the state on behalf of clients but one could not rule out the possibility that there would be such cases. The bulk of the matters involving Home Affairs and pensions would be handled at the advice stage where a paralegal would refer the client to the relevant person or body. The problems had not reached the stage where practitioners were involved.

The Chairperson asked if both Houses had to approve them.

Ms Vedelanker replied in the affirmative.

The Chairperson thanked LASA and once again congratulated them on their excellent work.

The meeting was adjourned.

Justice and Constitutional Development Portfolio Committee
31 March 2011
Legal Aid South Africa Strategic Plan and budget 2011

Chairperson: Mr L Landers (ANC)

Documents handed out
Legal Aid presentation: Strategic plans, Annual Performance Plan and budget 2011/12

Audio recording
(pm)

Summary
Legal Aid South Africa (LASA) briefed the Committee on its strategic plans, annual performance plans and budget for 2011/12. The strategies were grouped into various categories, and the programmes indicated how the strategies would be implemented. 94% of legal aid was rendered through Justice Centres employing lawyers in-house, which participated in case flow management teams in each region, as well as through 4% Judicare instructions to private practitioners. LASA was attempting to develop a strong and recognised brand. It placed great emphasis on its own financial strength and stability. It would constantly review its business processes to ensure that they remained relevant, had sought external reviews of the Board, and aimed to maintain its unqualified audit status of the past nine years. It was aware that it needed an expanded national footprint, to staff its 128 offices, and the programmes and initiatives to develop the staff were outlined.

The Annual Performance Plan illustrated strong links between objectives and programmes. LASA emphasised that quality of service was central to every programme. It tried to adopt a risk-based approach that sought to match services to staff with specific requirements. LASA had achieved 90% coverage of regional courts, and 80% coverage in district courts. It was trying to improve the practitioner to court ratio. LASA also aimed to increase its uptake of civil matters, by 10%, which was a high target. Its new call centre, handling up to 2 000 calls a day, increased its coverage and profile, and its paralegals also assisted at other advice centres and correctional service centres. It had set targets for completion of matters in the courts. All standard operating procedures in place were reviewed regularly, and great emphasis was placed on relevant and accurate management information and reporting. LASA also tried to give support to developing systems in other countries. The budget was tabled, with a line-item breakdown and comparisons to previous years. The biggest portion of the budget went to salaries and related costs, and direct expenditure was directly related to service delivery. In 2011/12, LASA had an allocation about 4% higher than the previous year, as some costs of 2010/11 were not carried forward. However this would result in negative real-term growth, since Public Service salary agreements and contract escalations were higher than the 4% budget increase. There were insufficient allocations for full implementation of the Child Justice Act. LASA usually managed to spend around 99.5% of its budget, and was expecting to do so in the 2010/11 financial year.

All Members expressed their congratulations both on the achievements and the report. They questioned possible overlaps with the work of other entities, particularly in training, asked whether LASA would be providing services to farm dwellers and proposed that this Committee discuss the issue with the Portfolio Committee on Rural Development and Land Reform. Members felt that the LASA could do more to promote itself, enquired about the vacancy rate, wondered if there was cooperation with the Legal Resources Centre on class action work, and where any recovery of costs in civil matters was reflected in the financial statements. Members noted the recent Supreme Court of Appeal judgment in favour of LASA, on the provision of legal aid to those who did not qualify under the means test, but who could be assisted and asked to contribute to costs. Members sought clarity on the annual salary adjustments and executive management remuneration. They questioned the anomalies in the location of courts and offices, asked whether the means test was the only criterion and called for an explanation of “substantial injustice” provisions. They also asked if LASA accepted all types of work, questioned whether salaries paid to candidate attorneys were now standardised across entities, and asked if LASA had a presence in deep rural areas, how the call centre operated, and its requirements. Members noted the impressive

numbers of cases handled, and also expressed appreciation that each of the 400 000 cases cost the taxpayer about R2 800, or less if the call centre advice was taken into account. Members also discussed how LASA set its targets. Finally, Members expressed their congratulations to Judge Mlambo on his appointment as Judge-President of the Labour Court, and recorded their good wishes to Mr Peter Brits, a long-standing LASA employee, on his move to a new position.

Minutes
Legal Aid South Africa (LASA) Strategic Plan and budget 2011/12
Judge Dunstan Mlambo, Chairperson, Legal Aid South Africa, congratulated Mr Landers on his appointment as Chairperson of this Committee.

He noted that the 2011/12 strategic plan of Legal Aid South Africa (LASA) represented the final year of a three-year plan, and that this would be followed by a five-year plan. The strategic plan was reviewed annually. He tabled the objectives, strategy and programmes (see attached document) and explained that the strategies were grouped into specific components, relating to broad overall topics, such as clients, community, stakeholders and shareholders, and financial sustainability. LASA followed the “SMART approach” as demanded by the Auditor-General (AG), and all strategies were achievable and time-bound.

In the area of clients, community, stakeholders and shareholders, LASA sought to provide increased access, and timeous legal services, with special focus on vulnerable groups, and an emphasis on quality. The programmes listed represented the way in which the strategies would be implemented. Legal Aid sought to provide education to clients and communities about the Constitution and legal aid services. The third and fourth strategies focused on the courts, and LASA’s contribution to the Justice, Crime Prevention and Security Cluster (JCPS), by way of trying to assist with improved functioning of the courts, improved co-ordination with stakeholders, advocacy and ensuring independence. Judge Mlambo explained that LASA’s Justice Centres (JC) were linked to case flow management teams that ran in each region, to ensure coordination between stakeholders. LASA sought to maintain timeous accountability to Parliament and the Minister. Programmes under the fifth to seventh strategy were aimed at maintaining a sustainable and financially stable LASA, with good governance, and developing a strong and recognised Legal Aid brand. He emphasised that LASA took financial strength and stability very seriously.

Judge Mlambo then outlined that the next group of strategies looked to business groupings and programmes to ensure that the business scheme of LASA remained effective, efficient, and professional, and that its business processes were sustainable. LASA maintained that the Justice Centres remained the best way to deliver services. LASA would constantly review the business processes to ensure that they remained on track, and relevant to delivery. LASA issued exhaustive Quarterly Reports, which were tabled to the Board and the Minister. It aimed to maintain its unqualified audit status.

The next component group of strategies dealt with internal matters of employees and support systems. LASA needed to have an expanded national footprint that would enable it to deliver, and support others in the delivery of legal services. LASA constantly looked at staffing and business models. It also wished to develop the competencies of the staff, through training programmes. Its attempts to have an enabling environment to deliver legal services meant that it had policies and targets around matters such as hours in court, research hours, and consulting hours for its legal staff. Human management and practices looked at the different needs of different staff groups. LASA aimed to remain an employer of choice, by having a people-centred organisational culture. It would support its staff also by ensuring that its IT platform remained responsive to the needs of employees, and encouraged and paid for its staff to go on courses and do research.

Judge Mlambo summarised that all these strategies were achievable, relevant and allowed LASA to perform correctly.

Ms Vidhu Vedalankar, Chief Executive Officer, LASA, noted that the Annual Performance Plan (APP), also referred to as the Business Plan, expanded on the strategies. While the document she would present was not fully comprehensive, and she did not intend to go into every programme in detail, she would be happy to answer any questions around the key deliverables that were set out here. This document, for the

first time, established the links between the objectives and the programmes. She emphasised that providing quality of service was central to every programme, assured both by constant monitoring and assessment, and by interventions to improve where any deficiencies were highlighted.

Ms Vedalankar explained how the targets were then derived from the outputs. She noted the use of the phrase “risk-based”, saying that this was used to emphasise that one size did not fit all. LASA would look at the support needed by staff – a “high-risk” practitioner, with little experience, would need greater support, including greater intervention by managers. This approach made better use of resources. She explained that lower targets, based on a scorecard, were set for candidate attorneys, in view of the fact that they would serve LASA under shorter-term contracts. The Internal Audit departments would independently assess quality, aiming to review 50% of all practitioners across all justice centres in each year. These reviews would then be compared to management’s independent assessments of quality.

Ms Vedalankar noted that LASA now had a presence at all criminal courts, and had 90% coverage of regional courts, with 80% coverage in district courts, with a practitioner present for 4 days a week. LASA was trying to improve the practitioner to court ratio. It achieved this through mixed delivery: Justice Centres (JC) were delivering 94% of services, while Judicare was delivering around 5%.

She said that LASA wanted to increase its civil matters by 10% from the previous year. She conceded that the targets for civil work had not been achieved in the past, but LASA still preferred to aim for high targets and strive to improve. It had also introduced a call centre, and had increased its marketing to achieve full capacity, up to around 2 000 calls a day. Although not all vacancies in the call centres had been filled initially, and LASA preferred to wait to assess the need, it had now decided to do so. LASA gave advice to the public, largely through paralegals, and hoped to increase this by 10%. Paralegals would also visit advice offices elsewhere and correctional service centres.

It was noted that some of the targets around cases had not been reached because they were linked to pro bono agreements and arrangements with the law societies and General Council of the Bar (GCB). LASA measured the turn around time of cases, and this linked to the case backlog project. LASA aimed to complete matters within six months in the District Court, nine months in the Regional Courts and twelve months in the High Court.

Ms Vedalankar said she did not wish to present all the slides exhaustively, but moved to slide 16, which dealt with how LASA worked in the Criminal Justice System (CJS) and its review. This would include screening of matters before they were put on the roll, case flow meetings at national level, and tabling of the Legal Aid Guide and annual reports to Parliament.

Ms Vedalankar said that although LASA could not determine the amounts it received, it would report and account fully for what it had received, and justify continued funding. LASA constantly sought to improve in its own handling of finances to ensure sustainability. Plans and measures were in place to ensure good governance. To ensure good functioning of the Board, an external evaluation was being done, and the resulting report would help the Board to improve its own governance. Brand management would ensure that services were provided, and that trust and relationships were built to improve its local and international status.

She highlighted the business processes in slide 23. LASA would ensure that standard operating procedures were in place, were reviewed regularly and were reported upon. Relevant and accurate management information and sound financial management would improve on its work, and enable good reporting to Parliament and the Minister. Ms Vedalankar explained that the “national footprint” related to the infrastructure of LASA. Shortly before the global recession, LASA had completed a three-year expansion process. There were currently 128 sites through which it reached clients, and expansion of services was also achieved through the call centre.

LASA sought to increase the capacity of its legal practitioners by giving them support through training, but also expected them to take responsibility for self- training through on-line self-learning models. Other programmes were also offered, covering aspects such as and self-learning models would be made

available on-line. LASA had other programmes such as organisational culture and wellness programmes, and tried to achieve standardised delivery. IT support was an important aspect.

LASA, as well as offering legal aid in South Africa, also tried to give support to developing systems in other countries, and was frequently visited by other jurisdictions wanting to study its models.

Ms Rebecca Hlabatau, Chief Financial Officer, LASA. tabled various slides on the budget. The first showed comparisons of new funding, case backlogs (funding from previous years), and total government grants, between 2010 and 2013. She noted that the amounts shown included allocations for Occupation Specific Dispensation (OSD) adjustments. She noted that about 94% of LASA's work was done through its in house legal practitioners, so the bulk of its budget (around 72%)went to salaries and related costs. 70% of its staff were lawyers. Direct expenditure was directly related to service delivery, including Judicare.

She then tabled slides showing the link between the strategies and budgets and components of the strategy. About R833 million was allocated to the strategies aimed at client, community, stakeholders and shareholders. She noted that the contribution to building a system was directly related to the backlog, and this had an allocation of R30 million. She noted that some programmes drew their resources from more than one programme – for instance, accounting to Parliament would be reflected under salaries, printing, travelling and other costs. She said that developing a strong LASA included the building of the brand and marketing, and R9.7 million was allocated to this. About R2.5 million was related to the business processes, including ensuring sound financial management and sustainable business processes. She noted that compensation of support staff related to those not directly involved in delivery of legal services, so this would include administrative and IT staff, for instance. R156.9 million was allocated to "additional" programmes that supported the running of LASA, and this included matters such as depreciation, office rental, travel and other costs.

Ms Hlabatau tabled a comparison of line-item budgets for 2010/11 and 2011/12, which showed a 4% increase, which had included the backlog for OSD funding, not carried forward to the 2011/12 year. Direct expenditure decreased by 16%, because the allocations for 2010/11 included once-off funding, such as World Cup funding, and implementation of the Child Justice Act. The reasons for the variances were shown.

Ms Hlabatau then described the challenges relating to funding. The government grants increase was about 6%, but annual salary adjustments were higher. Contract escalation, such as office rental, security and cleaning costs, amounted to about 12% increase, which again was higher than the macro-increase. This resulted in negative real-term growth. There was inadequate funding to implement the Child Justice Act.

She noted that over the last seven years, LASA had spent around 99% of its budget, and the as-yet-unaudited figures for the financial year ended 31 March 2011 indicated that it would spend about 99.6%. LASA had nine years of unqualified audit reports, with unqualified reports with no matters of emphasis for the past five years. All the AG's recommendations were implemented within the agreed timeframes.

Discussion
Mr Jeffrey commented LASA on yet another comprehensive and impressive report, noting that its reporting on quality control was most encouraging. He asked if the Committee's Budgetary Review and Recommendation Report (BRRR) had been sent to LASA.

Ms Vedalankar said that she had only just received it.

Mr Jeffrey appealed to the Chairperson that the Committee should, in future, ensure that this was set out to all entities. He noted that the Committee should be emphasising the quarterly reports as well. He said that the BRRR had made some recommendations in relation to OSD funding, additional funding for civil work and clarity on Child Justice Act implementation, but this could not be addressed in this meeting.

Mr Jeffrey wondered if there were potential overlaps with the work of other entities. The South African Human rights Commission (SAHRC) and the Department of Justice and Constitutional Development (DOJ) were already running education campaigns on the Constitution, and LASA indicated it was doing something similar. He urged that any public awareness on this issue should be coordinated. He also noted LASA's work in advice offices, but noted that the DOJ had received money from the European Union (EU) to set up advice offices through civil society structures, and asked if there were links.

Ms Vedalankar clarified that LASA was not setting up separate advice offices but was linking into existing offices, by sending paralegals and legal practitioners to provide extra legal capacity. A coordinating body of advice officers might be linking with DOJ on the EU funding. Educating the public about the Constitution was not really the responsibility of LASA, and it would not run direct campaigns but built an understanding of those rights as it marketed its own services. LASA was considering how best to cooperate with the SAHRC and others on specific programmes; although it did not have the capacity to run its own strategy, it would support others where it could.

Mr Jeffery asked if there had been any developments on the provision of legal services to farm dwellers, noting that a private firm had been asked by the Department of Rural Development and Land Reform (DRDLR) to set up a roster of private practitioners to handle this a while ago, after some concerns about LASA's ability and quality of services.

Judge Mlambo said that he was not aware of any further developments. LASA had not been approached again, after the appointment of attorneys Cheadle Thompson, and he was not aware how many farm dwellers they had reached. Land claims seemed to be receiving less media attention.

Ms Vedalankar added that LASA had read a report that this contractual arrangement was now coming to an end, and had written formally to the Director General of the DRDLR to investigate cooperation with LASA. There had been no suggestion made to the LASA that the DRDLR's decision was based on perceived lack of quality. LASA believed that it could achieve more, for less, than private firms, and would welcome support from this Committee in engaging with the Minister.

Mr Jeffrey suggested that it might be useful to discuss this with the Portfolio Committee on Rural Development and Land Reform. He could not recall exactly where the comments about quality had emanated, but perhaps it would be useful for LASA to consider employing more specialist people at a central level to advise and train practitioners. The State was obliged to provide legal support on a number of issues around land rights and evictions. He did not think that this issue needed to be included in the Committee Report, but that discussions should be held.

Mr Jeffery noted the references to the brand and publishing, said it was unfortunate that no journalists were present, and commented that perhaps LASA should have its own media officers or promote itself more.

Judge Mlambo responded that LASA had invited all media houses to the launch of Legal Aid Live, and LASA was receiving some attention in law report programmes, radio initiatives and other matters. However, he took the point.

Mr Jeffrey enquired about the vacancy rate, generally, and at professional assistant level.

Ms Vedalankar replied that in 2010/11, LASA had set a target of 96% of all posts being filled, although it had then held back on filling some of the vacancies because of the uncertainty of obtaining OSD funding in Phase 1, which, if not recovered, would have put the LASA into deficit. OSD was now settled in the baseline figures, and she thanked the Committee for its support in this regard. LASA now had 96% of all posts filled.

Mr Jerry Makokoane, Chief Operations Officer: LASA, added that the vacancy rate for professional staff was about 5.5%, for support staff it was 4% and there were no vacancies at executive level.

Mr S Swart (ACDP) noted that LASA had a high standard. He thought that the “impact legislation” in civil work was commendable. He noted, however, that the Legal Resources Centre (LRC) undertook similar class-action work, and he asked if LASA had discussed this with LRC, particularly as LASA had said that the number of applications received determined whether it could do the work.

Judge Mlambo said that there were discussions with the LRC. LASA funded some of this work through Judicare, and also had taken over one of the LRC’s senior lawyers.

Mr Swart asked where any possible recovery of costs in civil actions was reflected.

Ms Hlabatau noted that this appeared under “other income” on page 143 of the report. R28 000 was recovered in the last year.

Judge Mlambo informed the Committee that LASA had recently won a Supreme Court of Appeal matter in which it had appealed against a lower court ruling that it must give legal aid to those who did not necessarily meet the means test. The Supreme Court of Appeal had ruled that a person who did not qualify for the means test, but who could not fund his or her full costs for a protracted case, could be assisted but asked to contribute. LASA was looking at amending the provisions of the Legal Aid Guide, and was sensitising judicial officers to this point, asking that they order contributions where appropriate. LASA had always believed that it was unsustainable to require LASA to fund everything, and this ruling would assist it in stretching its budget further.

Mr Swart noted the financial constraints, but asked why annual salary adjustments were higher than increases in the overall allocation.

Ms Vedalankar said this was because the Public Sector Bargaining Council’s agreed settlement was higher.

Mr Swart questioned the Executive Management remuneration. Whilst he was aware of the need to retain highly skilled people, he called for explanation of what appeared in the “other” column, which cumulatively amounted to a fairly large percentage of the expenses.

Ms Hlabatau explained that Senior Management Staff could choose how to structure their salary, and that “other” would include matters such as the amounts allocated to, for instance, a thirteenth cheque, medical aid, pension, cash allowances or retirement. The total, including the “other” was informed by the Public Service salary levels.

Mr J Sibanyoni (ANC) congratulated Judge Mlambo on his appointment as Judge-President of the Labour Court, and expressed his gratitude that through Judge Mlambo’s interventions, many of the past problems with the former Legal Aid Board and late payments had been overcome. However, he asked that some delays in payments to practitioners in December 2010 should be investigated. He was pleased that LASA was now taking civil work.

Mr Sibanyoni said that there was still a problem with the former cross-border boundaries, as some LASA offices were based in places that were difficult for communities to access, since they may have to drive about 60 kilometres to the relevant office although another centre was geographically closer. This was particularly a problem in Witbank.

Judge Mlambo agreed that there were some anomalies. For instance, although King Williams Town was closest to the Bisho High Court, people preferred to institute action in the Grahamstown High Court, whilst a person committing a criminal offence in East London might be tried in Port Elizabeth, not Bisho. This was a hangover from the apartheid days, and it had cost implications for LASA. The Witbank issue had been discussed and hopefully should be resolved.

Mr Brian Nair, National Operations Director, LASA, added that 95% of Justice Centres did cover courts in that province, except where the court in another province might be closer. LASA tried to ensure that,

particularly in civil work, clients would not have to travel, especially for consultations. Justice Centres worked in clusters, so a client could visit the closest office and be advised by phone or by visiting practitioners. The DOJ was implementing rationalisation of courts, which should deal with the problems outlined by Judge Mlambo, and ensure that process was served at the court closest to the community.

Mr Sibanyoni noted that legal aid could be offered where failure to do so might result in “substantial injustice”, and asked if this implied that the means test was not the only qualifier, or if the nature of the case was also taken into account. He said that if LASA was to grant assistance on a wide scale, irrespective of means, this could result in legal practitioners being deprived of their client base.

Mr Mlambo said that the LASA Board had not changed its approach to applying the means test, other than instances that Mr Nair could outline.

Mr Nair added that LASA would apply the means test to Regional and High Court matters. LASA did not grant assistance for certain cases in the District Courts, as listed in the Legal Aid Guide, including traffic offences. The Justice Centre could, however, give legal assistance in cases where the local head office believed that substantial injustices would occur otherwise – for instance, where a particular court was handing down inappropriate sentences to those who were unrepresented. He reiterated that a person who did not qualify under the means test, but who also did not have the financial resources to run a long trial, could be asked to contribute some costs, on a monthly basis, to LASA for its help. The Board was considering introducing a contributions policy to deal with this in a more standardised way.

Mr Sibanyoni asked if candidate attorneys employed by the National Prosecuting Authority (NPA) were better paid that those articled to LASA.

Judge Mlambo said that OSD had been introduced to correct the situation, which was now equalised. Those who left LASA for NPA generally left for higher positions.

Mr Nair added that candidate attorneys, who were of course on contract for the duration of their articles, might move to the NPA to accept a position as an intern prosecutor, hoping that they would then be appointed permanently.

Ms S Shope-Sithole (ANC) also congratulated Judge Mlambo on his appointment and his impressive approach to financial issues. She asked if LASA had an office in Bushbuckridge.

Judge Mlambo replied that there was indeed a satellite office there, and that expansion outwards from Bushbuckridge probably justified establishment of a Justice Centre being established, but financial constraints were preventing this at the moment.

Ms Shope-Sithole asked that reports in terms of the Public Finance Management Act should be sent through regularly from LASA.

Judge Mlambo said that the reports were sent to the Minister, but that LASA would in future also send them to the Committee.

Ms D Schafer (DA) asked for an explanation of the percentage targets for quality of practitioners.

Ms Vedalankar said that LASA had standard instruments, or scorecards, to measure quality, such as court and file work, and these varied for the different categories of staff. These could be made available. There was substantial work done in preparing these and linking them to outputs.

Ms Schafer asked if anyone could phone LASA advice offices, or whether there was a means test for this.

Mr Nair noted that originally the toll-free number had played a recorded message stating that the advice was limited to people earning less than a certain amount, but it was found that asking people to choose an option to confirm this, and access an agent, was not practical. Currently, anyone could phone in for

advice, irrespective of their means, but would need to pass the means test in order to take the matters further through a Justice Centre.

Dr M Oriani-Ambrosini (IFP) asked how many clients had been served during 2010/11.

Mr Nair said the case figures were expected to be around 400 000 at the end of the financial year, compared to about 416 000 in the previous year, and should increase over the following years.

The Chairperson asked if the breakdown between civil and criminal matters was available.

Mr Nair said that at the end of the third quarter of 2010/11, 93% criminal and 7% civil matters were handled.

Dr Oriani-Ambrosini said that the figure of 400 000 cases was quite impressive, and noted that this meant about R2 800 was expended on each case. He congratulated LASA on its achievement.

Judge Mlambo added that the figure of R2 800 per case would drop if the legal advice was also factored in. This illustrated LASA's contention that the Justice Centre model was the best for South Africa.

Mr Jeffrey asked how civil matters were logged.

Mr Nair explained that they would be logged when the client was assessed as qualifying for legal aid and the file was opened. Most civil matters did not proceed through the full trial process, as most were resolved through mediation or negotiation.

Dr Oriani-Ambrosini noted that the performance of NPA was assessed by conviction rates, and asked how LASA was assessed.

The Chairperson pointed out that the National Director of Public Prosecutions had stressed that some people were prepared to use their positions to "stretch out" legal proceedings, knowing full well that LASA was limited in how far it could take matters.

Mr Jeffery said that the NPA could set targets for convictions, because this body decided what cases to prosecute. LASA was faced with a responsibility, but had no choice whether to take on the case.

Judge Mlambo said that the number of convictions or acquittals was not a true measure of effectiveness. He pointed out that those who had the resources would not approach LASA, but LASA was constitutionally obliged to deal with even cases that were unlikely to succeed. LASA was proud of its intervention and pointed out that it achieved acquittals, withdrawals or reduced sentences, in about 25% of the matters.

Judge Mlambo thanked Members for their guidance and comment, and hoped that Legal Aid would continue to be relevant to South African society. He agreed that there was much still to be done in reaching the rural poor, but LASA had realised, from comments made by traditional leaders, that it must also establish satellite offices in far-flung areas. LASA maintained its commitment to rendering legal aid services.

Judge Mlambo noted that he had asked to be released from his Chairmanship of the LASA. He also noted that a long-serving employee, Mr Peter Brits, would be leaving LASA, and would be sorely missed.

The Chairperson congratulated Judge Mlambo on his appointment at the Labour Court, and LASA on its excellent performance. The Committee would miss Judge Mlambo if he were no longer to chair the LASA Board. He also asked that the Committee's best wishes be conveyed to Mr Brits for his new endeavours.

The meeting was adjourned.

LEGAL AID BOARD

ADDITIONAL MTEF ALLOCATION FOR FY 07/08 - BUDGET PROPOSALS

No	Programme description	Kopanong	KZN/MP	EC/FS	WC/NC	Total	Cumulative Totals	% Split all prog.	% Split Avail. funds.	No of new Staff	No of new matters
1	Increasing ratio of PAs at Regional Court	R 7,490,000	R 4,815,000	R 6,955,000	R 4,280,000	R 23,540,000	R 23,540,000	18%	49%	88	4400
2	Strengthening CA capacity at reception courts	R 1,425,000	R 1,200,000	R 975,000	R 750,000	R 4,350,000	R 27,890,000	3%	9%	58	
3	Increase number of satellite offices	R 1,640,000	R 1,640,000	R 1,640,000	R 1,640,000	R 6,560,000	R 34,450,000	5%	14%	24	1600
4	Provision for admin staff at JC to match increase in legal staff					R 2,550,000	R 37,000,000	2%	5%	34	
5	Increasing senior litigation capacity	R 1,065,000	R 1,065,000	R 1,065,000	R 1,597,500	R 4,792,500	R 41,792,500	4%	10%	9	450
6	Group Life provision					R 1,629,000	R 43,421,500	1%	3%		
7	Funding of new posts, including COO, MSP & Financial posts					R 1,900,000	R 46,321,500	1%	4%		
8	Provision to fund performance incentive bonus shortfall					R 2,388,000	R 47,709,500	2%	5%		
9	CA replacement programme at Satellite Offices	R 1,155,000	R 3,465,000	R 982,500	R 3,465,000	R 9,047,500	R 56,757,000	7%		48	
10	Establishment of Land Units	R 755,000	R 1,132,500	R 1,510,000	R 1,887,500	R 5,285,000	R 62,042,000	4%		14	1400
11	Addressing gaps in regional coordination of Justice Centres	R 973,000	R 973,000	R 973,000	R 1,631,000	R 4,550,000	R 66,592,000	3%		9	
12	Alignment of Legal Practitioner salaries to Justice Cluster					R 66,075,000	R 132,667,000	50%			
		R 11,620,000	R 8,720,000	R 10,635,000	R 8,267,500	R 132,667,000		100%	99%	213	6450

Available funding R 46,250,000

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LEGAL AID BOARD

ADDITIONAL MTEF FY07/08 - JUSTICE CENTRE CONSOLIDATION

(ONLY PROJECT 1, 2 & 7 INCLUDED IN CONSOLIDATION)

Region	Province	No	Justice Centre	Number of new staff positions: Senior Litigators	PAs	CA's	Para-legals	Admin staff	Totals	Operations Budget: Staffing costs	Operations Budget: Other costs	Capital Budget	Total budget
Kopanong	Gauteng	1	Alexandra	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
		2	Benoni	0	2	2			4	R 550,000	R 95,000	R 40,000	R 685,000
		3	Germiston	0	2	2			4	R 550,000	R 95,000	R 40,000	R 685,000
		4	Johannesburg	1	3	2			6	R 1,250,000	R 185,000	R 50,000	R 1,485,000
		5	Krugersdorp	0	2	1			3	R 500,000	R 80,000	R 30,000	R 610,000
		6	Pretoria	0	4	2			6	R 1,000,000	R 160,000	R 60,000	R 1,220,000
		7	Soweto	0	3	1			4	R 725,000	R 112,500	R 40,000	R 877,500
		8	Vereeniging	0	3	2			5	R 775,000	R 127,500	R 50,000	R 952,500
	Limpopo	9	Makhadu	1	1	0			2	R 700,000	R 90,000	R 10,000	R 800,000
		10	Modimolle	0	0	0			0	R 0	R 0	R 0	R 0
		11	Polokwane	0	2	2			4	R 550,000	R 95,000	R 40,000	R 685,000
		12	Thohoyandou	0	2	1			3	R 500,000	R 80,000	R 30,000	R 610,000
		13	Tzaneen	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
	NW	14	Ga-rankuwa	0	1	3			4	R 375,000	R 77,500	R 40,000	R 492,500
		15	Rustenburg	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
			Regional Total	2	28	19	0		49	R 8,200,000	R 1,310,000	R 470,000	R 9,980,000
KZN/MP	KZN	1	Durban	1	3	3			7	R 1,300,000	R 200,000	R 60,000	R 1,560,000
		2	Empangeni	0	3	0			3	R 675,000	R 97,500	R 30,000	R 802,500
		3	Ladysmith	0	0	0			0	R 0	R 0	R 0	R 0
		4	Newcastle	0	0	2			2	R 100,000	R 30,000	R 20,000	R 150,000
		5	Pietermaritzburg	0	2	2			4	R 550,000	R 95,000	R 40,000	R 685,000
		6	Pinetown	0	1	2			3	R 325,000	R 62,500	R 30,000	R 417,500
		7	Port Shepstone	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
		8	Umlazi	0	1	2			3	R 325,000	R 62,500	R 30,000	R 417,500
		9	Verulam	0	1	2			3	R 325,000	R 62,500	R 30,000	R 417,500
		10	Vryheid	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
	MP	11	Ermelo	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
		12	Middelburg	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
		13	Nelspruit	1	2	0			3	R 925,000	R 122,500	R 20,000	R 1,067,500
		14	Witbank	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
			Regional Total	2	18	16	0		36	R 5,800,000	R 940,000	R 340,000	R 7,080,000
EC/FS	EC	1	Aliwal North	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
		2	Butterworth	0	2	0			2	R 450,000	R 65,000	R 20,000	R 535,000
		3	East London	0	2	2			4	R 550,000	R 95,000	R 40,000	R 685,000
		4	Graaff-Reinet	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
		5	Grahamstown	0	2	1			3	R 500,000	R 80,000	R 30,000	R 610,000
		6	King Williams Town	0	2	1			3	R 600,000	R 80,000	R 30,000	R 610,000
		7	Mthatha	0	3	1			4	R 725,000	R 112,500	R 40,000	R 877,500
		8	Port Elizabeth	1	3	2			6	R 1,250,000	R 185,000	R 50,000	R 1,485,000
		9	Queenstown	0	2	0			2	R 450,000	R 65,000	R 20,000	R 535,000
		10	Uitenhage	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
	FS	11	Bloemfontein	1	3	2			6	R 1,250,000	R 185,000	R 50,000	R 1,485,000
		12	Kroonstad	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
		13	Phuthaditjhaba	0	2	1			3	R 500,000	R 80,000	R 30,000	R 610,000
		14	Welkom	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
			Regional Total	2	26	13	0		41	R 7,450,000	R 1,155,000	R 390,000	R 8,995,000
WC/NC	WC	1	Athlone	0	3	4			7	R 875,000	R 157,500	R 70,000	R 1,102,500
		2	Caledon	0	0	0			0	R 0	R 0	R 0	R 0
		3	Cape Town	1	3	2			6	R 1,250,000	R 185,000	R 50,000	R 1,485,000
		5	George	0	2	0			2	R 450,000	R 65,000	R 20,000	R 535,000
		11	Stellenbosch	0	2	0			2	R 450,000	R 65,000	R 20,000	R 535,000
		13	Vredendal	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
		15	Worcester	0	0	0			0	R 0	R 0	R 0	R 0
	NC	4	Colesberg	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
		6	Kimberley	1	2	1			4	R 975,000	R 137,500	R 30,000	R 1,142,500
		12	Upington	0	0	1			1	R 50,000	R 15,000	R 10,000	R 75,000
	NW	7	Klerksdorp	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
		8	Lichtenburg	0	0	0			0	R 0	R 0	R 0	R 0
		9	Mafikeng	1	0	1			2	R 525,000	R 72,500	R 10,000	R 607,500
		10	Potchefstroom	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
		14	Vryburg	0	0	0			0	R 0	R 0	R 0	R 0
			Regional Total	3	18	10	0		29	R 5,525,000	R 842,500	R 260,000	R 6,627,500
			National Total	9	90	58	0		155	R 26,975,000	R 4,247,500	R 1,460,000	R 32,682,500

LEGAL AID BOARD
STRENGTHENING SENIOR LITIGATION CAPACITY

Reg		No	Justice Centre	No of PAs required	Operations Budget		Capital Budget	Total budget
					Staffing costs	Other costs		
Kopanong	Gauteng	1	Alexandra					
		2	Benoni					
		3	Germiston					
		4	Johannesburg	1	R 475,000	R 57,500		R 532,500
		5	Krugersdorp					
		6	Pretoria					
		7	Soweto					
		8	Vereeniging					
	Limpopo	9	Makhadu	1	R 475,000	R 57,500		R 532,500
		10	Modimolle					
		11	Polokwane					
		12	Thohoyandou					
		13	Tzaneen					
	NW	14	Ga-rankuwa					
		15	Rustenburg					
			Regional Total	2	R 950,000	R 115,000	R 0	R 1,065,000
KZN/MP	KZN	1	Durban	1	R 475,000	R 57,500		R 532,500
		2	Empangeni					
		3	Ladysmith					
		4	Newcastle					
		5	Pietermaritzburg					
		6	Pinetown					
		7	Port Shepstone					
		8	Umlazi					
		9	Verulam					
		10	Vryheid					
	MP	11	Ermelo					
		12	Middelburg					
		13	Nelspruit	1	R 475,000	R 57,500		R 532,500
		14	Witbank					
			Regional Total	2	R 950,000	R 115,000	R 0	R 1,065,000
EC/FS	EC	1	Alwal North					
		2	Butterworth					
		3	East London					
		4	Graaff-Reinet					
		5	Grahamstown					
		6	King Williams Town					
		7	Mthatha					
		8	Port Elizabeth	1	R 475,000	R 57,500		R 532,500
		9	Queenstown					
		10	Uitenhage					
	FS	11	Bloemfontein	1	R 475,000	R 57,500		R 532,500
		12	Kroonstad					
		13	Phuthaditjhaba					
		14	Welkom					
			Regional Total	2	R 950,000	R 115,000	R 0	R 1,065,000
WC/NC	WC	1	Athlone					
		2	Caledon					
		3	Cape Town	1	R 475,000	R 57,500		R 532,500
		4	George					
		5	Stellenbosch					
		6	Vredendal					
		7	Worcester					
	NC	8	Colesberg					
		9	Kimberley	1	R 475,000	R 57,500		R 532,500
		10	Upington					
	NW	11	Klerksdorp					
		12	Lichtenburg					
		13	Mafikeng	1	R 475,000	R 57,500		R 532,500
		14	Potchefstroom					
		15	Vryburg					
			Regional Total	3	R 1,425,000	R 172,500	R 0	R 1,597,500
			National Total	9	R 4,275,000	R 517,500	R 0	R 4,792,500

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Legal Aid
South Africa
Your voice. For justice.

Independent and within reach

Business Plan 2011/12

Legal Aid South Africa

Legal Aid South Africa

Your voice. For justice.

BUSINESS PLAN PLAN 2011 - 2012

(SMART Compliant)

(31 March 2011 - based on Strategic Plan 9 March 2011)

Notes:

1. With effect from 2011/12 the SMART compliant corporate plan, including the priority/key programmes of Legal Aid SA, is called the Annual Performance Plan (APP).

2. Performance will be reported on quarterly in terms of the programmes and KPIs of the APP to the Board and to the Executive Authority.

3. The programmes and KPIs in the APP forms the reporting basis for the Annual Performance Report, which is published in the Annual Report.

4. Key to the row colours in this document :

	Indicates rows in the expanded APP
	Indicates rows in the APP

S	Specific
M	Measurable
A	Achievable
R	Relevant
T	Time-bound

Projects		KPIs			Outputs	Proof of Delivery	Time-frames				Budget	Respon-sible Exec
		Measures	Targets				Q1	Q2	Q3	Q4		
			Quality	Quantity								
P26-5	Leadership Development	Develop the Legal Aid SA Leadership Pipeline	Maintain Legal Aid SA Leadership Pipeline	Ongoing	Management and Leadership Competencies Developed across pipeline	Focussed management and leadership training appropriate to the level of management	*	*				HRE
P26-6	Management of training	Training addresses the competency gaps of Legal Aid SA Employees	Assessed skills improved appropriately	All Training interventions	Conduct a needs analysis amongst practitioners regarding their training and development needs and include their proposals in the training	Legal Training Plan	*					LDE
P26-7	Accreditation of training providers	Training Providers comply with SETA requirements	As per the unit standards	All training service providers	Source and maintain relationships with accredited training service providers in order to obtain formal recognition	Training Provider Expert Locator	*					LDE
P26-8	Skills Development Compliance	Improved skills level of work force	Relevant and responsive ATP	1	Submission of revised annual training plan	ATP and ATR prepared and finalised to be submitted to Seta on time		*				HRE
P26-9	Employment Equity	Targets as per Justice Centre, Regional Offices and Departments at National Office, to be defined in the performance contract, met and adhered to	Reflect demographics	As per the five-year plan	Diverse workforce in line with annual targets to achieve EE goals	5 Year EE Plan implemented and monitored	*	*	*	*		HRE
P26-10	Talent acquisition & retention	Effective and efficient recruitment processes	Efficient recruitment processes	No longstanding vacancies	Effective and efficient recruitment processes	Monthly reports	*	*	*	*		HRE
P26-11	Retaining Talent	Talent risk profile monitored and mitigated	Retention risk monitored	Annual omnibus survey conducted	Ensuring staff retention	i. High risk employees identified ii.Retention interviews conducted iii. Mitigation measures implemented	*	*	*	*		HRE

DOC 3

LEGAL AID BOARD

Justice for all

REPORT TO THE BOARD

November 2006

ADDITIONAL MTEF FUNDING – BUDGET PROPOSALS

1 Introduction

On an annual basis, the Legal Aid Board submits motivations to National Treasury via the Department of Justice for additional funding for the Medium Term Expenditure Framework (MTEF) period. These motivations are essentially to increase the capacity of the LAB to deliver legal services, as well as to address gaps in its current service delivery programme.

The following additional MTEF funds, over and above the baseline, have been allocated to the LAB for each of the following financial periods:

Allocations	FY 06/07 R,000	FY 07/08 R,000	FY 08/09 R,000	FY 09/10 R,000
2005 MTEF	R15,000	R5,000		
2006 MTEF	R20,000	R25,000	25,000	
2007 MTEF*		R20,000	R20,000	R40,000
TOTAL	**R35,000**	**R50,000**	**R45,000**	**R40,000**

* 2007 allocation letter not yet received

As per the above table, the LAB has R50m additional funds available in the new financial year to fund its activities. However, noting that the cost of living (COL) adjustment of 5% for the baseline for the new financial year did not include the R35m additional funding received for the last financial year, provision of R1.75m was made to cater for COL costs for projects funded during the 06/07 period. Hence, the amount available for additional projects for the new year is R48,250m.

The 2006 MTEF allocation letter made a sum of R5m available in FY 07/08 for the representation of children. However, noting that we have rolled out children's units/PAs to 20 JCs this financial year, most of whom are still struggling to increase demand at these units, it was considered prudent not to increase Justice Centre capacity for children's representation more than what is currently provided, and to rather increase our use of judicare for the representation of children.

2. Proposals for Additional funding

2.1 Increasing ratio of PAs for Regional Court

In terms of our court coverage plan, as well as the demands from the courts, most of our practitioners are expected to be in court every day of the week. This requirement to be at court every day of the week impacts very negatively on the quality of our representation of clients, especially with regards adequate consultation and preparation for cases. Court time is also sometimes disrupted because of the need for our lawyers to consult with clients.

In terms of our motivations to National Treasury, it was proposed that our staff ratio per court is amended from 1 PA per regional court and 1 CA per 2 district courts to 1.25 PAs per regional court and 1 CA per 1 district court. However, due to limited funding, this proposal targets only our representation at regional courts and aims to achieve a ratio of 1.25 PAs per regional court.

2.2 Strengthening capacity at Reception Courts

Reception courts have been established at most court seats with multiple court rooms. These courts act as channelisation courts where all new matters are processed and then distributed to the other court rooms to be heard. Hence, it is critical that we have a good presence at these courts to ensure that all accused who make their first appearance are able to apply for legal aid immediately. Where possible, we will also try to represent clients at their first appearance. This will ensure that more clients have access to justice and will contribute greatly to reducing the levels of unrepresented accused. In terms of this proposal, it is suggested to staff all reception courts with 2 CAs on a full time basis, especially noting the large number of clients that are processed daily at these courts.

2.3 Increase the number of satellite offices/Justice Centres.

An ongoing strategy of the LAB is to increase access to its services. The establishment of satellite offices has been found to greatly improve our delivery to more outlying courts as well as provide an access point to communities. We are currently reviewing our national coverage footprint and we expect to identify gaps where our services could be better served by opening new satellite offices/Justice centres. Provision has been made to open a further 8 satellite offices in this budget.

2.4 Provision for admin staff at Justice Centres to match the increase in legal staff

Many of our Justice Centres have complained about their limited admin capacity to support the delivery of legal services. The LAB recently contracted National Productivity Institute (NPI) to conduct an independent study into the admin capacity needs of small, medium and large justice centres. This study was conducted by doing workload assessments of all admin positions at a sample of justice centres. Arising out of this study an admin staffing model for Justice Centres was developed. This proposal provides for admin staffing positions to match the new legal posts created on a ratio of 1 admin post for every 5 legal posts created, as per the staffing model.

2.5 Group Life Provision

During the September 2006 Board meeting, the Board approved a sum of R1,629m to be taken from the unallocated MTEF funding to pay for the shortfall in the group life as a result of the increased participation levels of staff as well as some enhanced benefits chosen.

2.6 Funding for new posts

During the September 2006 Board meeting, the Board approved a sum of R1,9m to be taken from the unallocated MTEF funding to pay for new staff positions created, including the COO post, the Manager Special Projects as well as new finance posts.

2.7 Increasing Senior Litigation capacity

The LAB often has cases of a highly complex nature. However, we do not have professional staff that are senior enough to take on such matters. 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 the more complex work as well as support and mentor our other High Court unit staff. This programme will also provide content to our dual career path option whereby technical specialists do not have to switch to management jobs in order to earn more in our organisation.

2.8 Provision to fund Performance Incentive Bonus shortfall

During the last financial year, 141 new posts were funded from additional MTEF funding. However, whilst provision was made for their salary budget as well as certain operational and capital costs, no provision was unfortunately made for their incentive bonus costs. This has therefore resulted in a shortfall in the budget for this expense. Provision is now being made to fund this shortfall. It must also be noted that incentive bonus costs will henceforth be included in all new posts proposed.

2.9 CA Replacement programme at Satellite offices

Many of our district courts linked to our satellite offices are served by candidate attorneys. This has created problems with supervision of these candidates, especially with their principal attorneys being located at the justice centre. It is proposed that these CAs be replaced with PAs, which will result in reduced supervision needs and better quality of service.

2.10 Establishment of Land Units

The need for dedicated capacity at identified justice centres to deal specifically with land related matters has been identified. Currently, most of the land legal work for the LAB is handled by our co-operation partners. However, there is still need for more capacity in order to meet this increasing demand in land related matters.

2.11 Addressing gaps in the regional co-ordination of Justice Centres

We are currently in the process of reviewing the our National Coverage Footprint with regards our delivery points across the country. Currently, out four regional offices currently co-ordinate the justice centres located at all nine provinces in the country although they are currently only located in four provinces. Regional office staff therefore have to travel to provinces in addition to their base province in order to provide a support and monitoring function. Whilst this has proved adequate for the support functions of a justice centre such as monitoring finance, HR and administration, the monitoring and support of the legal programme requires additional engagement and interaction. This review of our National Coverage Footprint will point the way forward with regards how to better support our Justice Centres by regional offices. However, the costing for this proposal is based on creating new provincial principal attorney positions. These new positions will be based in the five provinces where there are no regional offices. They will operate from a justice centre within the province and will be assisted by an additional supervisory attorney. The review of the National Coverage Footprint may however alter this proposal.

2.12. Provision for the alignment of salaries of legal staff within the Justice cluster

The DPSA is currently coordinating a task team to make recommendations for the alignment of salaries within the public service. This is in terms of a decision taken at a cabinet legotla in January 2006. The Legal Aid Board has been advocating for such an alignment for some time, especially noting the fact that we are continuously losing staff to other justice cluster stakeholders, especially the NPA. The costing for this exercise is based on aligning our salaries to the salaries currently paid to legal staff within the Department of Justice.

3. Summary of projects

The following is the summary of the projects proposed for consideration by the Board:

No	Programme description	Total	Cumulative Totals	% Split	No of new Staff	No of new matters	
1	Increasing ratio of PAs at Regional Court	R 23,540,000	R 23,540,000	18%	88	4400	Funding available
2	Strengthening CA capacity at reception courts	R 4,350,000	R 27,890,000	3%	58		
3	Increase number of satellite offices	R 6,560,000	R 34,450,000	5%	24	1600	
4	Provision for admin staff at JC to match increase in legal staff	R 2,550,000	R 37,000,000	2%	34		
5	Group Life provision	R 1,629,000	R 38,629,000	1%			
6	Funding of new posts, including COO, MSP & Financial posts	R 1,900,000	R 40,529,000	1%			
7	Increasing senior litigation capacity	R 4,792,500	R 45,321,500	4%	9	450	
8	Provision to fund Performance Incentive Bonus shortfall	R 2,388,000	R 47,709,500	2%			
9	CA replacement programme at Satellite Offices	R 9,047,500	R 56,757,000	7%	48		Funds unavailable
10	Establishment of Land Units	R 5,285,000	R 62,042,000	4%	14	1400	
11	Addressing gaps in regional coordination of Justice Centres	R 4,550,000	R 66,592,000	3%	9		
12	Alignment of Legal Practitioner salaries to Justice Cluster	R 66,075,000	R132,667,000	50%			
		R 132,279,000		100%	213	6450	

LEGAL AID BOARD

Legal Aid South Africa

LA2

RESOLUTION OF THE BOARD OF LEGAL AID SOUTH AFRICA

Board agenda item 4.6: Additional Programmes in Budget 2007/08 of the Board meeting held on 24 November 2006:

I, Bee-Mari Schoeman, in my capacity as Board Secretary, hereby confirm that in the meeting held on 24 November 2006, the Board of Legal Aid South Africa considered and approved item 4.6 of the Board agenda as per the extract of the minutes of the Board meeting attached hereto.

Bee-Mari Schoeman
Board Secretary

2011/11/04
Date

TUESDAY, 7 JUNE 2011

_____

PROCEEDINGS OF THE EXTENDED PUBLIC COMMITTEE – GOOD HOPE CHAMBER

_____

Members of Extended Public Committee met in the Good Hope Chamber at 10:05.

The House Chairperson Mr C T Frolick, as Chairperson, took the Chair and requested members to observe a moment of silence for prayers or meditation.

APPROPRIATION BILL

Debate on Vote No 24 – Justice and Constitutional Development:

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT: Chairperson, hon members, Chief Justice and members of the judiciary, heads of constitutional institutions, distinguished guests, comrades, friends, ladies and gentlemen, it is an honour and a privilege to be afforded this opportunity to present to you the budget of the Department of Justice and Constitutional Development for the coming year.

years of generalised larceny as the cost of the revolution. It happened, historically.

This has been a bloodless revolution, but we need to turn a new page, otherwise we are going to have a parallel system of power fuelled by corruption, akin to what there is in Russia, which will undermine the democratic system of power which we try to uphold within Parliament. This is an issue that I will be carrying forward in further debates. Thank you, Mr Chairman. I see my time has expired. [Time expired.]

Nom J B SIBANYONI: Sihlalo, ngisikima nokuthokoza, bengiyalotjhisa kuNgqongqotjhe wezoBulungiswa nokuThuthukiswa komThethosisekelo, uMhlonitjhwa uJeff Radebe, kunye nomndenakhe, ngilotjhise kuSekela lakhe uMhlonitjhwa u-Andries Nel, godu namajaji akhona njenganje, namajaji wakade, begodu nakiwo woke amaLunga ahloniphekileko wePalamende akhona namhlanjesi. (*Translation of isiNdebele paragraph follows.)*

[Mr J B SIBANYONI: Chairperson, I stand to thank and greet the Minister of Justice and Constitutional Development, hon Jeff Radebe, his family, with greetings to his Deputy hon Andries Nel, and all judges present here, retired judges, and all hon Members of Parliament present today.]

Minister, we thank you so much. I understood you as you were speaking, even when you said the programme will not be used to postpone the cases only, but as time goes by there will be prosecution of cases through a satellite linked-up of a person sitting in the cells where he is kept. So we thank you.]

With regard to Legal Aid SA, Lasa, led by the honourable Mr Justice Dunstan Mlambo, the report of the Portfolio Committee on Justice and Constitutional Development indicates that, during its presentation, Legal Aid SA indicated that it received additional funds to improve its practitioner-per-court ratio, accommodate occupational-specific dispensation, OSD, funding and increase its civil work. Additional amounts of R44,6 million, R90,8 million and R106,3 million have been allocated to Legal Aid SA to increase capacity, improve conditions of service and implement phase 2 of the OSD for legally qualified professionals.

The Justice and Constitutional Development portfolio committee, as in previous years, has been impressed by Lasa’s presentation of its strategic and annual performance plan.

Umsebenzi wenu eniwenzako muhle, Jaji Mlambo, begodu uyakarisa. [Judge Mlambo, the work you are doing is commendable and impressive.]

Lasa should be proactive in seeking out opportunities to promote what it does. The report states that the committee is encouraged by the strong emphasis that emerged on the quality of services that Legal Aid SA provides. The ANC supports Lasa's goal of expanding its civil work and impact litigation, despite the financial constraints that it faces in this regard. Therefore, the ANC supports Lasa's aim to reach the rural poor.

I will be very brief on the matter of the Small Claims Courts. We commend the hon Andries Nel for championing the establishment of Small Claims Courts throughout South Africa. Thank you very much. [Applause.]

The extension of the civil jurisdiction of regional courts has been a resounding success. It is opening up access to justice for the rural poor.

I want to end by reflecting on the concept of freedom of expression versus the sub judice or *pendente lite* principle. The question is: Does the media respect the sub judice or *pendente lite* rule? *The Sunday Independent* newspaper of 29 May 2011 carried a front-page story with its heading in bold and huge letters. It said: "Hlophe must go: Ramphele". The question is ...

Service Commission Amendment Act, the Child Justice Act and the Children's Act of 2005.

Consultations on the Muslim Marriages Bill is also ongoing, and we do hope that the consultations will recognise Muslim marriages, the absence of which gives rise to countless instances of hardship, particularly in the case of women and children who find themselves in distressing situations when these marriages fail and are terminated.

Hon members, allow me to provide you with the budget allocation relative to the programmes and commitments that have been made. A total budget of R13,5 billion has been allocated to the department for the 2011-12 financial year. Of this budget allocation, R4,3 billion is allocated to court services, R2,6 billion for the National Prosecuting Authority and R1,6 billion for public entities and Chapter 9 institutions.

The 2011 budget also sets out additional allocations of R477 million for this financial year, R1,2 million for 2012-13, and R1,4 million for 2013-14: for increasing regional capacity, R490 million for building new courts, R175 million for implementing legislation concerning vulnerable groups, R210 million for renewing our information and communications technology infrastructure, R45 million for the United in

Diversity presidential initiative, R938,4 million for improving conditions of service and implementing the second phase of the occupation-specific dispensation for legally qualified professionals, R240 million for increasing the department's baseline for accommodation charges, R437,5 million for appointing more judges and magistrates, including secretarial support, and R405 million for adding capacity for Legal Aid SA, the Special Investigating Unit, the SA Human Rights Commission and the Office of the Public Protector. Over the next three years, the department will spend R2, 5 billion constructing new courts, and so on.

Before I conclude, allow me to convey my gratitude to Chief Justice Ngcobo for his profound leadership. We also congratulate him on the extension of his tenure as Chief Justice for a further five years. Allow me also to thank my Deputy, Mr Nel, the justice, crime prevention and security cluster, the Director-General, Ms Sindane, and the whole management team, heads and chairpersons of statutory bodies, heads of courts and members of the judiciary as a whole, and the entire staff of the justice family.

Lastly and most importantly, I would like to thank my wife, Bridgette, who is here today, and my family who are always at my side throughout the many challenges that I face in the execution of my responsibilities. Thank you. [Applause.]

working now. So that when there are talks, it will be known what he has done.]

In conclusion, hon Chair, I would like to say that I also looked at an article written by the author Mr Moya in the *City Press* of 5 June 2011, which says, “Hlophe deserves fair treatment”. The ANC supports the Budget Vote. [Time expired.] [Applause.]

The DEPUTY MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT: Hon Chairperson, hon Minister, hon members, heads of court and other members of the judiciary, heads of constitutional institutions, distinguished guests, comrades and friends, ladies and gentlemen, 27 years ago, in 1984, the people of South Africa marked the first anniversary of the United Democratic Front, UDF. On this occasion, one of its co-presidents said:

> Sons and daughters, to me today I’m a great big mother, for today our multiracial baby is born. For today our baby that will rule this South Africa in future is born. The multiracial baby, the United Democratic Front, which is uniting the people to speak with one voice, which is uniting the people with the truth, which is uniting the people to say no to the Koornhof laws, which is uniting the people to

households, people affected by violations of human rights, the aged, persons with disabilities, the youth including children in prisons, and foreign nationals in need of assistance. We thank the European Union for their support and partnership in this vitally important programme.

Legal Aid SA has been very effective in utilising a budget of more than R1 billion to execute the constitutional imperative of providing legal aid to indigent accused persons and vulnerable litigants. Legal Aid SA now provides legal aid services at all our criminal courts through a national network of 64 justice centres and 64 satellite offices staffed by 1 600 salaried in-house legal representatives and by access to over 4 500 accredited lawyers.

During the 2010-11 financial year, Legal Aid SA provided legal services in 421 365 matters, comprising assistance in 389 914 criminal matters and 31 451 civil legal matters. Through these legal services, 25 586 children were assisted in criminal matters and 2 529 children in civil matters.

The Legal Aid Advice Line was launched in November 2010, facilitating telephonic access to primary legal assistance by persons from across the country and especially from rural areas. Since then, the Legal Aid Advice Line has assisted over 13 926 callers. We thank the Judge President of the Labour

Mr S N SWART: Chairperson, the ACDP shares in expressing our condolences to the family and friends on the passing of Ma Albertina Sisulu. Our prayers are with you at this time.

Chairperson, hon Minister, court performance lies at the heart of this department. The committee has, for some years, expressed its dissatisfaction at ongoing poor court performance despite many initiatives. We are, however, pleased that the Chief Justice has now taken on the responsibility of monitoring performance in all the courts and we look forward to an improvement in this area.

We also support the three prioritised projects, namely to achieve a no-audit qualification by 2012-2013, a service turnaround in maintenance services, and a turnaround in the Master’s branch. These are crucial areas in terms of service delivery and financial accountability.

One of the shining stars is clearly Legal Aid SA, whose presentation greatly impressed many members. It shows that a state organ can be turned around and effectively run consistently over a period of years, and serves as an inspiration to other organs and departments that service delivery can be effectively provided. Well done, Judge Mlambo and your team! [Applause.]

R55
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Budget 2011/12
Legal Aid South Africa

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Legal Aid South Africa

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BUDGET 2011/12

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1 April 2011

Legal Aid South Africa

Your voice. For justice.

BUDGET 2011/12

EXECUTIVE SUMMARY

1 April 2011

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1. BACKGROUND

The Board approved Legal Aid South Africa's 2011/12 Budget at its 26 November 2010 meeting. The budget was prepared on various assumptions due to the fact that the MTEF allocation letters were not yet issued by National Treasury. The MTEF Allocation letters: 2011/12 – 2013/14 were subsequently issued by National Treasury on 3 December 2010.

Subsequent to the Allocation Letter being issued, Management sent an allocation letter executive summary to the Board, detailing the funds allocated for 2011/2012 Budget.

This budget has now incorporated the allocation of funds as per National Treasury letter dated 3 December 2010.

The following considerations were made when preparing the 2011/12 Budget:

1.1 Legal Aid South Africa Strategic Plan 2009/12.

1.2 The year on year increase of the National Treasury allocation including additional funding over the MTEF period.

1.3 Future financial sustainability of the organisation.

1.4 The proportion of direct service delivery costs to administration support costs.

1.5 The Capital Asset Replacement Programme.

2. KEY ASSUMPTIONS MADE WHEN PREPARING THE BUDGET

2.1 As per National Treasury guidelines, the budget was prepared under the assumption that inflation increase is 6,4% for the budget period under review with salary increases budgeted at 6%. The CPI was 3.7% as at end of July 2010.

2.2 In 2010/11 salaries for regional and justice centres were budgeted at 97%. This recruitment rate was increased to 100% in the 2011/12 financial year.

2.3 The standard unit costs were applied on the following line items.

a) Disbursements
b) Education and training
c) Printing and stationery
d) Public Relations
e) Staff refreshments
f) Subscriptions and membership fees
g) Telephone and faxes
h) Tools and equipment
i) Vehicle licences
j) Workshops

2.4 In instances where contracts are in place, the budget was based on our contractual obligations. We have contractual obligations on the following line items:

a) Audit fees – (Dependent on external audit strategic plan)
b) Cleaning materials and services
c) Computer disaster recovery
d) Computer software licences – (Dependent on foreign currency exchange rate)
e) Document exchange
f) Insurance – Group Life - (Dependent on the wage settlement agreements)
g) Insurance – Short term- (Budget dependent on the annual premium reviews)
h) IT Support
i) Office rental and operating costs
j) Postage and courier
k) Rental office equipment
l) Security costs
m) Storage costs
n) Vehicle tracking
o) Wide area network

2.5 Other operating budget items were increased by 6%.

3. SALIENT FIGURES OF THE BUDGET

Budget allocations for the years 2008-2014 are tabled below.

YEAR	LEGAL AID SOUTH AFRICA REVISED BASELINE	NEW FUNDING	BASELINE ADJUSTMENT	LEGAL AID SOUTH AFRICA MTEF PER ALLOCATION LETTER	ONCE OFF /CHILD ACT & CHILD JUSTICE ACT	ROLL OVER FUNDING	OCCUPATIONAL SPECIFIC DISPENSATION (OSD)	COST OF LIVING INCREASE (COLI)	SUBTOTAL BEFORE CASE BACKLOG MTEF LETTER	% CHANGE GRANT	CASE BACKLOG	LEGAL AID SOUTH AFRICA REVISED MTEF
2008/09	605,312,000	55,000,000		660,312,000		31,431,083	Note 1 144,604,000	8,604,000	844,951,083	22.8%	24,600,000	**869,551,083**
2009/10	718,547,000	60,000,000		778,547,000	1,600,000		Note 2 106,000,000	11,261,000	897,408,000	8.7%	20,000,000	**917,408,000**
2010/11	937,309,000	40,000,000		977,309,000	24,916,000	17,980,871	Note 3 72,000,000	24,130,000	1,116,335,871	10.7%	25,000,000	**1,141,335,871**
2011/12	1,081,438,000	Note 4 20,000,000		1,081,438,000	13,715,000		30,000,000	14,619,000	1,139,772,000	8.6%	30,000,000	**1,169,772,000**
2012/13	1,197,099,000	Note 5 20,000,000	Note 6 (34,308,000)	1,182,781,000	14,401,000		5,000,000	15,555,000	1,217,717,000	6.4%	32,000,000	**1,249,717,000**
2013/14	1,248,963,000	10,000,000		1,258,963,000	15,121,000		5,000,000	16,275,000	1,295,359,000	6.8%	34,000,000	**1,329,359,000**
TOTAL	**5,788,638,000**	**205,000,000**	**-34,308,000**	**5,939,330,000**	**69,753,000**	**49,411,954**	**362,604,000**	**96,444,000**	**6,511,542,954**		**165,600,000**	**6,677,142,954**

Notes

1. This figure relates to OSD Phase I funding - R44.6 million for 2007/08 back pay and R100 million for 2008/09.
2. The amount relates to OSD Phase I carry through costs.
3. The amount relates to OSD Phase II back pay of R42 million from 2007/08 to 2009/10 financial years and R30 million for the current financial year, i.e. 2010/11.
4. The amount relates to new funding allocated for increase in legal capacity as per allocation letter for 2010/11 - 2012/13 MTEF.
5. The amount relates to new funding allocated for increase in legal capacity as per allocation letter for 2011/12 - 2013/14 MTEF.
6. The budget cut of R34.3 million for financial 2012/13 is as per 2010 allocation letter.
7. In 2008/9 the grant increased by 22.8% due to the first time allocation of R100 million for OSD Phase I.
8. In 2010/11 the grant increased by 10.7% due to the first time allocation of R30 million allocation for OSD Phase II.

3.1 The Budget allocation of R1,169,772,000 for **2011/12** includes:

R1,081,438,000	Revised Baseline funding
R30,000, 000	OSD Phase II funding
R14,619,000	Cost of living adjustment
R30,000,000	Case backlog funding to be allocated from DoJ's budget
R 13,715,000	Implementation of new legislation i.e. Child Act & Child Justice Act

4. ANALYSIS OF BUDGET

The analysis below relates to 2011/12 Budget – National Consolidation attached as Annexure A.

EXPENDITURE ITEM	2010/2011 BUDGET	2011/2012 BUDGET	INCREASE/ DECREASE	% CHANGE
Total salaries and related costs	**835,887,752**	**867,887,364**	**31,999,613**	**4%**
Salaries and related costs	*753,343,752*	*833,268,364*	*79,924,613*	*11%*
OSD funding Phase 1 & 2 / Increase in legal capacity	*72,000,000*	*20,000,000*	*-52,000,000*	*-72%*
COLI	*10,544,000*	*14,619,000*	*4,075,000*	*39%*
Other direct expenditure	**115,777,741**	**110,397,229**	**-5,380,512**	**-5%**
Recurring direct expenditure	*103,861,741*	*110,397,229*	*6,535,488*	*6%*
Once off direct expenditure	*11,916,000*	-	*-11,916,000*	*-100%*
Operating budget	**165,068,257**	**195,825,608**	**30,757,351**	**19%**
Non contractual expenditure	*66,188,847*	*70,811,089*	*4,622,242*	*7%*
Contractual expenditure	*78,464,600*	*88,534,571*	*10,069,971*	*13%*
Depreciation	*20,414,810*	*36,479,948*	*16,065,138*	*79%*
Total Capital budget	**37,516,932**	**17,741,747**	**-19,775,185**	**-53%**
Capital budget	19,536,061	17,741,747	*-1,794,314*	-9%
Rollover funds capital budget	17,980,871	-	-17,980,871	-100%
Total excluding Case Backlog	**1,154,250,681**	**1,191,851,948**	**37,601,267**	**3.3%**
Case backlog	**25,000,000**	**30,000,000**	**5,000,000**	**20%**
Total Including Case Backlog	**1,179,250,681**	**1,221,851,948**	**42,601,267**	**4%**

Major variances are explained below

COMMENTS	VARIANCE
4.1 Salaries and related costs increased by 4% when compared to the previous financial year. This is due to the R42 million once off backlog funding for OSD Phase 2, which has been included in the 2010/11 budget. The recruitment level was also increased from 97% in 2010/11 financial year to 100% in 2011/12. Salaries for 2011/12 include the cost of living increment (COLI) of 6% and the performance progression increase (PPI) at an *average of* 1.5%.	31,999,613

Transcript of:

(a) question by Justice and Constitutional Portfolio Committee member John Jeffrey MP on impact litigation, answered by LASA Legal Development Executive Patrick Hundermark; and,
(b) Chief Executive Officer Vidhu Vedalankar on LASA's budget and its implications for recruitment

at the presentation of LASA's annual report 2010/11 to the National Assembly on 11 October 2011

(Audio recording online at http://www.pmg.org.za/node/28680)

John Jeffrey MP
(56 minutes, 10 seconds into the recording)

I just have a question on the impact litigation. I see there was a booklet in the bag you gave us on impact litigation, and I think it's a good concept, but the booklet refers to a number of cases, I sort of just wanted to find out: was LASA involved in these cases referred to in the booklet, but that's from 6.1 on page 14 of the booklet, I mean in terms of, in what way, was it LASA employees or was it Judicare effectively because I see that the, if I'm understanding it correctly on page 101 of your report, you don't seem to be spending the money allocated to impact litigation, so if you can give clarity on that, thanks Chair.

Patrick Hundermark, LASA Legal Development Executive
(82 minutes, 43 seconds into the recording)

Thank you Chair, I think in terms of impact litigation, in terms of the matters in which Legal Aid is specifically involved, there are three ways in which we can do impact litigation, firstly, err, and obviously the initial stages were that we would be funding, err, whether it was NGOs or private law firms to be involved in the impact litigation, so firstly it would be a model in terms of where we fund specific cases where they come and motivate for a budget in terms of litigation in certain cases. In other instances we can then, our justice centres or high court units, that's specifically our senior litigators, themselves can do the impact litigation and then the unit itself in terms of that can be involved in the impact litigation. So there are different ways in

which we can render the services, so then in terms of the booklet some of the cases we would have done ourselves, some of it was funded NGOs or private practitioners to render those specific services. In terms of us spending the money the one real problem we have in each case we require a budget so sometimes litigation doesn't always happen as we anticipated and not all, the full budget is not always used in some of the instances, so that's difficult, you've got to try and manage the case and the progression of the case to understand where the funds are allocated to a specific case but we don't overspend on the overall budget that we manage involving it, so we try and do, see if we can, err, if they are not going to spend the whole budget, reallocate it, but we don't always have new and other impact cases to which to allocate it at quite short notice, so that's the problem in terms of the spending of the budget and the money issues and you very often find lawyers are not very good in terms of budgeting so we do find ourselves scrutinising the budgets that come and cutting them significantly because we are not always then able to use the money.

Vidhu Vedalankar, LASA CEO
(68 minutes, 7 seconds into the recording)

As far as the budget cut is concerned what we did do and I think that you're right it was across all departments but that we what we did do and respect in the 2012 financial year for everything in the operational expenditure which was not contractual we clearly did the only thing, so that in effect is a budget cut, if it's below inflation it's anyway a budget cut but this is clearly one, and so that wasn't adequate. Now we run quite a tight operation as you can see and it's very hard for us and what we will do is so that we don't jeopardise our service delivery we won't cut in [inaudible] all we do is manage our recruitment level so that we don't overspend in terms of what we have, so that is where we, we hold recruitment levels until we can get some additional funds [inaudible] as you can see our recruitment levels are high at 96%, we were intending to increase it to 98% because we are able to recruit but now that we have this we will probably keep it at around 97%, so that is one way just of managing it without, without jeopardising the service delivery, but in terms of our discussions with treasury and the rest of what else we can do, let's start with that because that's one sector with Jerry [inaudible. (She hands over to COO Jerry Makokoane.)]

25 Baker Road
Prestbury
Pietermaritzburg 3201
29 July 2011

The Board of Directors
Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

Dear Board Members

BRINK/LASA/LABOUR COURT

I have commenced my action in the Labour Court for an order instating me to the Pietermaritzburg Senior Litigator post for which I was duly selected and recommended for appointment in November 2009 by the KwaZulu-Natal regional professional selection panel. Although my statement of claim was mailed to the Board secretary by registered post on Wednesday last week, I see from the post office tracking system that it's yet to be collected from the Braamfontein post office. In the meantime it's available in PDF at www.tig.org.za/LASA username: lasa password: LASA2010.

Last month Justice and Constitutional Development Portfolio Committee chairperson Luwellyn Landers MP provided me with a copy of a 'Confidential … Report … Re: Adv Anthony Brink' drawn by LASA chairperson Judge Mlambo without the knowledge or authority of the Board and sent to the Minister in March and to chairperson Landers in June.

Judge Mlambo's several false allegations in the 'Report' are the subject of my letters on Friday and Monday to Judicial Services Commission chairperson Chief Justice Ngcobo, to Minister Radebe, and to chairperson Landers. All may be read at the above-mentioned internet archive, and Board members would be well advised to do so.

On 24 November 2008 the Board delegated the authority to litigate on behalf of LASA to the CEO and CSE. CEO Vedalankar's conflict of interest obviously

disqualifies her from taking an objective decision in LASA's interest whether to oppose and defend my claim in the Labour Court, because her unlawful abortion of my recruitment behind the scenes and off the record, and her subsequent fabrication of a plainly false alibi to camouflage her reason for doing so – unsupported and contradicted by LASA's own records – lies at the heart of my case.

It therefore falls to the Board to resolve whether to conciliate or to defend my claim. For the reasons indicated in my letters to the Chief Justice, to the Minister, and to the chairperson of the Portfolio Committee, Judge Mlambo will be disqualified from participating in the Board's deliberations, and will necessarily have to recuse himself.

It remains to be seen whether the Board at last resolves to put right what has been done wrong, and prevent LASA suffering any further harm, or whether it votes to defend my claim for my appointment and other relief on the basis of a concocted version of events it well knows to be false, thereby increasing LASA's exposure in special and general damages, and dragging LASA very publicly into the mud when the matter goes to trial. Concerning the financial implications of the latter course, I respectfully call your attention to the joint and several personal liability provisions of the Public Finance Management Act, mentioned in paragraph 273 of my statement of claim.

Yours sincerely

ADV ANTHONY BRINK

Cc: The chairperson of the Portfolio Committee on Justice and Constitutional Development, Luwellyn Landers MP, and all committee members

The chairperson of the Public Service Commission, Dr Ralph Mgijima

The Auditor General, Terence Nombembe

Portfolio Committee on Justice and Constitutional Development
9 October 2012
Legal Aid South Africa 2011/12 Annual report

Chairperson: Mr L Landers (ANC)

Documents Handed Out:
Pres Release on Legal Aid South Africa (LASA) 2011/12 Annual Report
Power point presentation on the Annual Report
Legal Aid South Africa 2011/12 Annual Report

Summary

Legal Aid South Africa reported that it had successfully completed the third year of its 2009-2012 Strategic Plan period and was able to achieve most of the strategic shift it had set to achieve in that period. In 2011/12 it provided access to legal aid to indigent clients – handling 682 962 legal and legal advice matters. It increased civil legal aid by 48% due to increased civil practitioner capacity. Legal quality remained a focus and a priority and generally legal practitioners met their quality targets. Strong financial management and governance were reflected in the 11th unqualified audit and 7th year of no matters of emphasis. The non-compliance with tax clearance certificates in judicare matters was being attended to. A people-development focus continued as confirmed by the successful accreditation for the third year as a Best Employer.

The Committee members congratulated Legal Aid South Africa on its accomplishments. Members asked about the use of agencies where there were already Legal Aid Centres present. There was also an exchange about the exact numbers of employees versus the number of budgeted posts and how Legal Aid managed their expenditure for its number of employees. Questions also included requests for detail on the Children's Act and the allegation published about the Boeremag. There was a suggestion that because of Legal Aid's large footprint in the country, its offices be used as a gateway for people to reach other agencies such as Chapter 9 organisations.

Minutes

The Chairperson said he had been informed that the Chairperson of the Board would not be able to attend the meeting but that was fine as he was sure that Legal Aid SA had brought qualified people.

Presentation by Legal Aid South Africa (LASA)

Mr Jan Maree, Non-Executive Director and Committee Member, LASA, introduced the report with a short overview. This was the second integrated report that reported on financial and non-financial performance against the Strategic Plan 2009-12 as well as the Annual Performance Plan 2011-12. The integrated report reported on social, economic and environmental considerations that had a bearing on the future of the organisation, the environment within which they operated and the communities they served. It included reports on an overview of the organisation as well as issues and trends impacting on it, sustainability, corporate social investment and stakeholder engagement. LASA reported on its compliance with Global Sustainability Reporting Initiatives (GSRI). The Integrated Report included a statement from the governing board acknowledging its responsibility for ensuring the integrity of the report. 2011-12 completed the three-year period of the LASA Strategic Plan 2009-12. The presentation also reported on progress against the recommendations of Budgetary Review Recommendation Report (BRRR) of the Justice Portfolio Committee dated 26 October 2011.

LASA operated within a strong governance framework which included an effective and functioning governing board and audit committee, compliance with the Legal Aid Act, Public Finance Management Act and National Treasury regulations, 100% implementation of all recommendations of the King III Report on Corporate Governance, compliance with the Promotion of Access to Information Act (PAIA), and an effective and independent internal audit department. The Legal Aid Act was in the process of being redrafted and a new Legal Aid Bill was expected to be tabled before Parliament in 2012.

Ms Vidhu Vedalankar, CEO: LASA, went through the statistics that Legal Aid had produced over the year. Legal Aid now had 2 470 people working in 64 Justice Centres and Satellite Offices and 13 high court and civil units. They had covered 428 653 criminal and civil cases. 95% of these matters were handled by the Justice Centres while the remaining 5% was handled via Judicare, coops or agency agreements. There was also a 50% drop in children cases handled by Legal Aid.

Regarding non-legal functions delivery, Matrix Management had been further consolidated. Functional management committees continued to assist in monitoring performance of support staff at both Justice Centre level and regional office level. The matrix function had been fully embedded resulting in effective

Challenges

▪ Capacity at regional and district courts was insufficient to adequately meet the demand as well as provide a limited relief capacity to deal with staff absence.
▪ High turnaround times at Regional Court and High Court led to increased backlogs at court.
▪ There was also insufficient civil capacity to meet increased demand for civil legal aid services.
▪ There were high numbers of awaiting trial detainees in custody for excess periods.
▪ There was non-compliance on tax clearance certificates in judicare matters as noted by Auditor General. ▪ The IT challenge: problems with K2 patching, finalisation of K2 upgrade, finalisation of switch to sharepoint platform which all impacted on speed and stability of the IT system.
▪ Dependence on candidate attorneys to render services at district courts negatively impacts on perception and sometimes service delivery

Ms Vedalankar concluded by reminding Members that LASA had provided access to legal aid for indigent clients with 682 962 legal and legal advice matters – which was a notable achievement – as was the increase in civil legal aid by 48% due to increased civil practitioner capacity.

Discussion

Mr J Jeffrey (ANC) said that he was extremely pleased with Legal Aid but it was the Committee's job to make sure they did oversight. He was curious about a Promotion of Access to Information Act (PAIA) report that was released that stated the South African Human Rights Commission was unhappy with LASA and their cooperation in terms of PAIA. He also noticed that the slide on Child Justice was the exact same slide from their presentation. That did not seem to make sense neither did their allocation of funds for Child Justice. They created 23 district and six regional posts in both 2011 and 2012 and that did not seem possible.

Mr Jeffrey said that the Committee had asked for quarterly reports from Legal Aid not just annual ones. He asked why there was not a cooperation agency agreement and asked how much it cost. The use of agency agreements was also questioned. On a more particular note, he said that Legal Aid could not say technically that they were compliant with the Legal Aid Act because according to the Act, an updated version must be published annually which had not occurred.

The Chairperson told the delegation that they would arrange for Legal Aid to view the PAIA report.

Ms D Schafer (DA) congratulated LASA on their annual achievements. She had a question about the tax sheets that the legal providers were not giving to Legal Aid. She asked if the huge lack of them was because of a lack of oversight. Also, did the trust deposits create a problem for LASA?

Mr J Sibanyoni (ANC) asked specifically about agency agreements. He was curious as to why there were agency agreements in areas where there was already a LASA office. The time limit that came with these agency agreements was also brought into question. He was curious to know about some of the success stories with the agency agreements.

Ms C Pilane-Majake (ANC) asked about LASA's internal audit and how many people on the audit committee were external from LASA. She also congratulated LASA on their report.

Ms M Smuts (DA) congratulated LASA on a sensational report. She was curious what LASA thought about the news article on Sunday about the Boeremag which she believed that LASA had represented. She explained that there was a sensational story that reported that legal information between the members of the Boeremag and their legal team had been intercepted by the police and turned over to the prosecution. She was also curious about what role LASA could play in the unclogging of the legal system particularly the issue with accused being detained, trial times, and missing trial transcripts.

Mr Jeffrey interjected saying that this happened often with awaiting trialists who should not even be there because their crime was not even punishable by prison time.

Response

Ms Vedalankar told the Committee that they had provided quarterly reports and had sent them to the Committee.

Mr Jeffrey interrupted, asking whether anyone in the Committee had received the reports which none of them had or could recollect.

Ms Vedalankar apologised and said that the reports would be sent. She went on to say that the Children's Act expenditures were basically the same because that was how much it cost to keep to the employees on

for the financial year with a slight increase for property costs.

Mr Jeffrey said that the wording was wrong and wanted the CEO to be clear that new positions had not been created but merely maintained. He said that they merely “cut and pasted” from last year’s report which created wrong information.

Ms Vedalankar said they had not cut and pasted but they merely had worded the information wrongly.

Mr Jeffrey said that he did not agree with that.

Ms Vedalankar said they would agree to disagree and that she knew that the Committee did not like cutting and pasting.

The Chairperson said that he wanted to know about the PAIA report.

Ms Vedalankar said that she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgement about this. In terms of the audit reports, she explained that one of the members of the audit committee had resigned so currently there were five members on the audit committee, of which three were external members.

Ms Pilane-Majake thanked the CEO for the clarification but said that the report seemed to show only what was desirable.

Mr Jeffrey said that he wanted LASA’s statistics on children because those of the South African Police Service seemed to be off. He again asked the question about the successfulness of service agencies.

Ms Vedalankar said that they did not have the statistics on children in the report but that they wanted to do more in terms of domestic violence. In terms of the alignment of services, she said that just because a town was in a province, it did not mean that the closest office was in the same province and that there were no provincial boundaries. She also agreed that the lost records of trials especially in Gauteng was an issue. She then handed over to her colleague.

Adv Wilna Lambley, Regional Operations Executive, explained the issue of proximity. There had been reshuffling of offices and agency agreements. There was constant oversight and discussion about which offices should serve which communities. In terms of the lost transcripts, most of these had occurred in Gauteng. It was due to a turnover in terms of the people who managed the transcripts. As of now, most of the transcripts had been found but there were still 40 to 50 missing.

She went onto say that the Boeremag practitioners were only briefed by Legal Aid but they would be looking into reports that an alleged witness had come forward with this information. This however would probably not create any appeals different from the law’s regular appeals process The Judge would have to make a decision about this and what the law said.

Ms Vedalankar said that 25% of their legal providers had applied for tax sheets while 25% had said that they would not provide LASA with any of them.

The Chairperson asked if these legal providers would be used by LASA if they failed to produce tax clearance certificates.

Ms Vedalankar said, yes, they would be terminated if they were in the middle of any trial proceedings.

Mr Maree added that a tax clearance certificate had never been required for a legal provider.

Mr Jeffrey asked about the discrepancy between staff and number of posts in terms of their expenditure in their budget for each. He also asked if Legal Aid had been in touch with Chapter 9 organisations and if Legal Aid could accept complaints on behalf of a Chapter 9 organisation if such organisation did not have an office in the area. Legal Aid’s footprint throughout the country could make this cost effective and he asked if Legal Aid would be open to the idea.

Mr Jeffrey asked why land cases were up so dramatically this year or last year and their status in relationship with rural development, and also why had Duty Care gone up. He also inquired about the costs of cooperation agreements and the status of the criminal justice review.

Ms Vedalankar said that she could not comment on helping with Chapter 9 organisations because she would have to discuss it with her staff first. In terms of the discrepancy with the posts and employees, it was very clear in the report. They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.

Mr Jeffrey said that the expenditure could not be 99% with the figures that they had.

Ms Vedalankar said she would send the information to the Committee.

Mr Jeffrey then asked for clarification on the IT budget.

Ms Vedalankar said that they had not been given the proper budget for IT and thus Legal Aid had suffered because of it.

Mr Jeffrey said that the Committee would get in touch with the Treasury and find out why the IT budget for LASA had not been fulfilled.

The Chairperson adjourned the meeting.

5.2 Chief Executive Officer's Statement

It is an inspiring and humbling experience to lead a successful organisation able to continue to deliver on its mandate each year and present a pleasing set of performance results. Inspiring because it raises the performance platform higher and enables and empowers us to strive for further excellence in the next period. Humbling because we are mindful that our services impact directly on many South Africans and can positively touch their lives to improve the quality of their lives and ensure they are able to live with dignity and be treated as equals before the law. In making the constitutional values of human dignity, equality and access to justice a reality for our people and our communities we contribute to making our Constitution a living document for many of the poorest and most vulnerable South Africans.

Legal Aid South Africa has completed another successful year 2011-2012 in which it delivered legal aid services to thousands of people within a sound financial and governance framework.

It continues to do so with a strong people centred approach ensuring that our clients remain the core focus of our delivery while our employees are also empowered to perform optimally in a work environment where the organisational culture is one of high performance and service excellence with integrity.

In the 2011-12 financial year we have achieved our targets on performance in all aspects of our business. We continue to increase access to justice by our presence in all the criminal courts in the country ensuring that no person is unrepresented because they are not able to afford the cost of their legal defence. We increased our capacity to assist clients in civil matters resulting in a 48% increase in the number of civil legal aid matters we were able to take on. In giving effect to Section 28 of the Constitution, we assisted 22,376 children in conflict with the law and 5,584 children in civil matters, including Estates matters. In total we were

"By ensuring access to justice for poor and vulnerable South Africans, we contribute towards making our Constitution a living document for many."

able to assist clients in 428,653 legal matters of which 89% were criminal and 11% were civil legal aid matters. We also took on 23 Impact Litigation matters. In addition we assisted 254,286 clients with legal advice. We were thus able to increase access to justice for 682,962 persons in South Africa.

We were also pleased to achieve another year of excellent financial results with our eleventh unqualified audit and seventh year of no matters of emphasis. A spend of more than 99% of our Budget ensured that resources were directed to the much needed delivery of legal aid services. This is testimony to our sound financial management and governance practices all of which contribute to our sustainability in ensuring our continued capacity to deliver legal aid services to the indigent. A strong financial management and governance ethos is complemented by our commitment to a people-focussed development linking both to our clients and our employees. This commitment ensured that we were able to be accredited as a Best Employer for the third consecutive year.

Our practitioners handled 382,125 new matters in criminal courts in this period. We were able to increase our civil legal practitioner capacity which enabled us to expand our assistance in civil legal aid matters to take on 46,528 new matters. Our call centre advice matters increased in the past year but advice matters handled at Justice Centres and Satellite Offices did not grow. Although demand for legal advice remained low at our Satellite Offices a basic level of service is being maintained to provide assistance especially to rural communities.

We continued to cover all courts but because of budget constraints were not able to increase practitioner per court ratios. No increased capacity in criminal courts has meant a marginal increase of 2% in new criminal matters over the past year. Our Impact Litigation Unit is now fully functional and it assessed and took on 23 new matters affecting vulnerable groups. Our specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts and children's matters is in place and practitioners are continuously trained in handling these specialist matters. Senior Litigators employed are working on complex matters and matters in higher courts.

We continued our various quality improvement programmes, including training and development, monitoring and supervision, case dicussion, expert legal advice support, legal research and legal newsletters. In addition to the monitoring of quality by our Justice Centre and Regional legal management, our independent legal quality assurance unit also continues to cross-audit the quality of our legal practitioners thus providing assurance on the case file and court based performance of our legal practitioners. Our independent legal quality assurance unit further expanded its coverage to also assess our paralegals, judicare practitioners and agency agreements. Quality targets are being met by legal practitioners in assessments done by both our Justice Centre (JC) management and our Independent Legal Quality Assurance Unit. The small minority not meeting quality targets are supported and developed to ensure their quality is improved.

Our success in criminal matters is assessed by the quality of the defence we are able to provide to our clients to best protect their interests and where convicted to argue for the appropriate sentence noting the individual circumstances of our clients. This cannot be judged by acquittals alone and is a lot more complex. We were however pleased to achieve a 66% success rate in the criminal appeal matters that our practitioners argued in the Supreme Court of Appeal (SCA) with a 100% success rate in the SCA in its first term in 2012. This is higher than the average 54% success rate in criminal appeals in the SCA in that year. We were also successful in 94% of the impact matters that we finalised.

Our lawyers continued to play a significant role in representing poor clients in the Criminal Courts and influencing the course of our legal jurisprudence. In the high profile matter of S v Hendriks that was handled by our Cape Town Justice Centre, we challenged the validity of the use of Drager breathalyser device in drunken driving cases. The Western Cape High Court upheld our argument and ruled that the device was not reliable in its present form. We also contributed to bringing certainty to our legal system when we argued successfully in S v Baartman 2011(2) SACR 79 (WC) that the Minimum Sentences Act, which sets out 15 years as a minimum sentence for certain offences, was not applicable in Firearm Control Act matters since a maximum sentence of 15 years is set out for those matters in terms of this act.

Our lawyers appeared in a number of cases that caught the imagination of many South Africans. In what is now widely known as the Tereblanche murder case, our Pretoria High Court Unit appeared

for Chris Mahlangu whilst the legal representation for the second child accused was funded by us on brief to Judicare practitioners. Whilst Chris Mahlangu was found guilty in this matter, we were successful in ensuring that the child accused was acquitted of the murder charge.

In what is a significant civil judgment for security guards who transport money, our Port Elizabeth Justice Centre in Kogana v SBV Security, challenged a High Court decision in which a security guard was held liable to pay over R5million to his employer after a robbery. Our client stood to lose his house and his pension fund. The Supreme Court of Appeal ruled in our favour and saved a number of other security guards who would have found themselves liable to their employers for failing to prevent robberies.

In Jonker v Manager Gali Thembani and 4 others, our Queenstown Justice Centre vigorously opposed the Eastern Cape Department of Education's attempts to close down the provinces only school of industry, Gali Thembani School, and to move all the children at this school to a facility in Bhisho which housed children in need of care. Our view was that this arrangement would not have been in the best interest of both groups of children and it would also have been contrary to the provisions of the Child Justice Act and the Children's Act. The Eastern Cape High court agreed with our submissions and ruled in our favour.

Legal Aid South Africa was involved in a number of high impact cases in the past year. The unit was involved in the Pioneer Hi Bred International Inc. and Pannar Seed Merger which was heard in the Competition Tribunal. Our Impact Litigation Unit represented the African Centre for Bio-safety, an NGO that specialises in research on food security, protection of the indigenous seed and germplasm of staple food such as maize in Southern Africa. It was the first time since its inception that the Competition Tribunal allowed a third party to intervene in a merger hearing. In refusing the merger the Competition Tribunal took into account our submission that the merger would have a negative effect on subsistence farmers and food security in South Africa. The Competition Appeal Court subsequently set aside this decision allowing the merger but incorporating various measures to protect the interests of the subsistence farmers.

We also took on a number of impact matters relating to housing, the rights of children in need of care, as well as the rights of children in conflict with the law. Of importance is the rights of children not to be treated as adults and to be incarcerated for the shortest possible time in compliance with section 28 (1) g of the Constitution of the Republic of South Africa. The unit intervened in the prosecution of a young female Zimbabwean refugee who was treated as an adult by the justice system. The decision of the Magistrate to prosecute the young offender without considering whether she was an appropriate candidate for diversion out of the justice penal system was set aside in a review application.

In the year under review we continued to give support to developing legal aid systems, hosting 14 international delegations visiting us to study our legal aid delivery model. A significant impact on increasing access to justice internationally was made with an international instrument, the UN Principles and Guidelines on access to legal aid in criminal matters being adopted by the United Nations Commission on Crime Prevention and Criminal Justice in Vienna in April 2012. This will facilitate the development of legal aid systems and increased access to justice by indigent persons, in all member countries, if these principles and guidelines are adopted by the UN General Assembly later this year.

In the year under review we achieved our targets for community outreach programmes promoting an understanding of our constitutional rights as well as marketing the services of Legal Aid South Africa. Our successful branding at courts, prisons cells and police cells increased awareness of our services to our clients. In the past year our brand strategy showed positive responses with awareness of Legal Aid South Africa growing by 7% to 56% amongst the lower LSM groups.

Our audit report confirmed our financial management and compliance being in place as well as prudent expenditure management ensuring that more than 99% of our budget was spent. The mention by the Auditor-General of non-compliance of a specific supply change management process for certain of our procurement transactions has been explained in the notes to our Annual Financial Statements. The majority of this non-compliance resulted from not obtaining tax clearance certificates from judicare practitioners in matters costing us more than R30,000 per matter. In all instances where tax clearance certificates were not obtained, it is confirmed that services were rendered by the judicare practitioners

to clients who therefore received legal aid services. This situation has been addressed with a change to our judicare accreditation policy which requires practitioners to submit tax clearance certificates to be accredited to be part of our judicare data base to receive judicare instructions. The condonement of the National Treasury for the non-compliance will also be attended to in the near future. Our comprehensive risk management also ensured that our managers were able to anticipate and mitigate risks and potential fraud resulting in only one minor fraud matter involving R2000 being reported in this period. The increasing number of civil matters resulted in an increase in the quantum of funds in our Trust Account holding clients' monies. The related challenge of unaccounted for deposits is being addressed to ensure that all funds are accounted for and directed to the right clients.

Our IT Platform was enhanced and upgraded with K2-workflow software upgrade and a switch to a SharePoint platform. However this caused challenges to stability and speed of the IT platform in the year. This has subsequently been addressed. A few delays in payments and data capture were also addressed within the financial year. Our increased user volumes and transactions and dependence on our IT platform for our business needs require a further expansion of our VPN bandwidth capacity in the new financial year. Our electronic links to clients using our websites was delayed due to the IT challenges mentioned above.

The 2011-2012 year marked the completion of our three-year Strategic Plan period 2009-2012. In this year we prepared a new Strategic Plan 2012-2017 for the next five-year period. Details of the process and content of this Strategic Plan are provided in this Annual Report. To a large extent we were able to make the strategic shift that we mapped for the 2009-12 Strategic Plan (SP) period as indicated below.

We aimed in the 2009-2012 period to explore and implement new ways of increasing access to justice within resource constraints. In the SP period we completed the expansion of the National Footprint (6 new JCs and 27 Satellite Offices), launched our Client Call Centre – the Legal Aid Advice Line in November 2010 and implemented a new delivery model using Agency Agreements with Legal Firms to improve coverage of courts in rural areas. No staffing increase in criminal courts, due to budget constraints, resulted in only a marginal increase of 1-2% in new criminal matters over this SP period. We were able to expand civil legal aid capacity and establish civil units to improve coverage of civil matters which resulted in a 60% increase in the number of persons assisted in civil legal matters in the SP period [FY 2009/10 (29,024), FY 2010/11 (31,451) and 2011/12 (46,528)].

Our aim to increase the practitioner per court ratio and thus improve caseload management and quality was partially successful. Although we continued to cover all courts, because of budget constraints we were not able to increase practitioner per court ratios. Our court coverage ratio increased marginally per court type as follows: District Courts FY 2009/10 (80%), FY 2010/11 (83%) and 2011/12 (89%) and Regional Courts FY 2009/10 (94%), FY 2010/11 (96%) and 2011/12 (97.5%).

Improving specialist capacity to serve vulnerable groups was achieved with the specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts and children's matters all in place. Our Impact Litigation Unit became fully functional and is assessing and taking on new matters affecting vulnerable groups. We employed Senior Litigators who are working on complex matters and matters in higher courts. Our practitioners have been trained in specialist matters and continuing training is also implemented. Expert panels were established to support our legal practitioners in specialist matters.

An independent legal quality assurance unit was also implemented and became fully functional in the SP period. This quality assurance is expanding to cover quality assessments of all aspects of legal services delivery including paralegals, judicare practitioners and agency agreements. Quality targets are being met by legal practitioners as assessed by both JC management quality assessments as well as independent legal quality assurance unit assessments.

Our aim to consolidate the Legal Aid brand thus increasing public awareness of independent quality legal aid services was realised by the launch of our new corporate identity and 'Legal Aid South Africa' brand in this period. Brand awareness has increased each year FY 2009/10 (43%), FY 2010/11 (49%) and 2011/12 (56%) with an overall increase of 19% over 3 years to 56% awareness of Legal Aid South Africa amongst lower LSM groups.

In contributing to the functioning of the Criminal Justice System, the Criminal Justice System review protocols, legislative proposals and other interventions to improve case flow and the efficiency of the criminal justice system were monitored and implemented as they were rolled out.

Our aim to increase the financial maturity of the organisation and improve risk based management in all facets of the business, as well as maintain unqualified audits was achieved with unqualified audits and no matters of emphasis in each of the years in the SP period.

We were able to achieve our aim of consolidating and aligning our people development programmes. We developed our Competency Profiles and identified talent pools in the Leadership Pipeline and began a process of identifying and implementing development programmes for each talent pool. In this three-year SP period we were successfully accredited as a Best Employer for each year. Our recruitment levels were maintained at 95-96% year on year to ensure optimum resourcing directed to delivery. Our Leadership Programme was also successfully implemented with a focus on a training and development phase for individual managers and leaders.

Enhancing our IT platform from serving internal need to also increase access to justice that is to play a role in the delivery of services was partially achieved. We upgraded our Internet Line, upgraded to the Virtual Private Network, upgraded K2 workflow and SharePoint software. The latter two upgrades in the third year caused challenges to stability and speed of platform in that year which was subsequently addressed. Further upgrade of the VPN will be required in the next period. A link to clients with self-help modules will be further developed in the next period. A Judicare practitioner link was developed and implemented but usage is low on the part of judicare practitioners.

Business Intelligence is available to all staff providing online real-time access to management data. Our Corporate Dashboard is compiled electronically but all components of the dashboard are not electronically linked.

We successfully improved our Business Processes by implementing a risk based management of performance with individual responsibility for tracking performance and allowing greater flexibility and also aligning supervision and support to the level of risk of individual practitioners and managers. A matrix management system was also successfully implemented to ensure greater focus on legal matters by our legal managers.

As we commence the first year of our new 5-year Strategic Plan period our greatest challenge continues to be inadequate funding. In our 2012/13 budget we have a R34million efficiency cut from government as well as a reduction of R30million which was meant for the continued implementation of OSD Phase I. This constrains our ability to achieve, in particular, improved court coverage as well as the necessary IT and support platform capabilities.

Our key focus areas in the next period will be sustainability and integrated planning and implementation as well as excellence, continued learning and improvement.

In presenting the pleasing results in this report I record my appreciation to all our stakeholders with whom we work and who in the past year shared their experience and wisdom with us in the formulation of our Strategic Plan for the next period. With them we collectively strive to increase access to justice in our country. The guidance and leadership of our Board of Directors, under the leadership of Judge President Dunstan Mlambo is always appreciated. I wish to sincerely thank all the employees of Legal Aid South Africa that contribute to the excellent performance which has come to be accepted as the norm for us at Legal Aid South Africa. The collective leadership of Legal Aid South Africa is to be credited for the success of this organisation. Every leader in our team works diligently and tirelessly to ensure that we can reach many more South Africans to achieve our vision of equality, justice and a quality life for all. Legal Aid South Africa citizens, you make us proud and ensure that we remain a leader in the provision of accessible and independent quality legal services to the poor and vulnerable. My heartfelt thanks to each one of you!

Ms Vidhu Vedalankar
Chief Executive Officer: Legal Aid South Africa

Legal Aid South Africa

Annual Performance Report 2011-12

Briefing of

Portfolio Committee on Justice & Constitutional Development

9 October 2012

Legal Aid South Africa

Report on completion of Strategic Plan 2009-2012

	2009-12 SP period legal services delivery shift planned	2009-12 SP period legal services delivery shift achieved
3	Improve specialist capacity to serve vulnerable groups	•Specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts, children's matters, all in place; •Impact Litigation Unit fully functional and assessing and taking on new matters affecting vulnerable groups •senior litigators employed and working on complex matters and matters in higher courts •practitioners trained in specialist matters and continuous training also continues •Expert panels established to support our legal practitioners in specialist matters;
4	Independent quality assurance implemented and functional	•Independent legal quality assurance unit fully functional and expanding to cover all quality assessment of aspects of legal services delivery including paralegals, judicare practitioners and agency agreements •Quality targets are being met by legal practitioners -both JC management quality assessment and independent legal quality assurance unit assessment
5	Consolidate the Legal Aid brand thus increasing public awareness of independent quality legal aid services	•Launched our new corporate identity and 'Legal Aid SA' brand which has been positively received •Brand awareness has increased each year - overall increase of 19% over 3 years to 56% awareness of Legal Aid SA in lower LSM groups •Brand awareness in lower LSM Groups: FY 2009/10 (43%), FY 2010/11 (49%) and 2011/12 (56%)
6	To implement programmes and projects from the CJS Review	•Criminal Justice System review, protocols, legislative proposals and other interventions to improve case flow and the efficiency of the criminal justice system were monitored and implemented as they were rolled out.

STRATEGY C1: TO DELIVER CLIENT FOCUSED AND QUALITY LEGAL SERVICES							
Projects		**KPIs**			**Outputs**	**Performance against KPIs**	**Variance in performance against target**
		Measures	**Targets**				
			Quality	**Quantity**			
	Proactive Supervision at courts	Court observations		CA Risk Profile H - bi-Monthly; M - monthly; L - quarterly;	Court observation model implemented	All JCs were required to conduct court observation reviews based on a model developed for practitioners. 94% of JCs that were audited upto Q4 were found to have implemented proper controls to manage the performance of practitioners at court.	Only 4 of the 64 JCs did not implement this programme fully. A lack of management oversight would be one reason why this programme was not fully implemented at these 4 JCs. Regional legal teams will ensure that JC legal managers are made aware of their requirements in monitoring practitioner performance at court.
				CA Risk Profile		According to the quarterly court observation quality scores all categories of practitioners achieved their targets. It has been noted that the court observation scores are generally better than the file audit scores for practitioners. The actual numbers of practitioners that have achieved their targets was monitored. Greater attention will be focused on assisting and supporting those practitioners who have not achieved the required quality levels.	Targets were exceeded. This can be primarily attributed to the quality intervention and monitoring programme which is diligently followed at all JCs.
	Consultation & preparation for cases			One day a week per practitioner reserved for consultation and preparation	Increased practitioner consultation & preparation time	RO legal audits confirmed that 98% of JCs set aside a day per week per practitioner for the purposes of consultation and preparation of their cases. However, low practitioner per court ratios have created challenges at a few JCs with regards the full implementation of this programme. A JC management survey conducted in Q2 confirmed the implementation of this requirement. A follow up survey done in Q4 confirmed that 95% of JCs plan a weekly consultation/preparation day.	A few JCs have reported that due to insufficient practitioner per court ratios, it was not possible to allow the one day per week consultation and preparation day. In these instances, it could have been extended to once every forthnight.
	Preparation of cases for high courts and higher courts	Support programme in place for all HCU practitioners			HCU practitioners supported in all their matters	HCU managers supported HCU practitioners in the performance of their work. This included the review of all heads of arguments prior to filing them at court. The recent appointment of senior litigators increased suppport for practitioners in more complex matters.	

Legal Aid South Africa

Your voice. For justice.

5 March 2012

FOR IMMEDIATE RELEASE

Child support & maintenance issues to be tackled head on at Legal Aid SA hosted Colloquium

Child support and maintenance are at present some of the most contentious areas of family law, with regulation governing them always a subject of debate.

Critics cite the apparent lack of priority given to the legal enforcement of women's and children's rights under the Maintenance Law Act.

As part of on-going efforts to help children that are most disadvantaged by the systemic challenges of the current child support and maintenance regime, the issue of child maintenance will be put under the spotlight during a Child Support and Maintenance Colloquium to be hosted by Legal Aid South Africa's Impact Litigation Unit.

To be held at the organisation's Braamfontein head office in Johannesburg on Tuesday 6 March, 2012, the meeting will bring together key stakeholders and decision makers in the justice system, to discuss the challenges and evident loopholes in child support legislation.

Participants include representatives from NGO's, academics, government actors, claimants, etc. who will discuss and contribute to an open forum and strategy workshop, on issues relating to child support and maintenance.

"Through the colloquium, the Impact Litigation Unit hopes to initiate a multipronged strategy to confront and address challenges in child support and maintenance, highlighting the dynamic methods that the legal community and civil society can employ in protecting the rights of women and children," says Legal development Executive, Patrick Hundermark.

He adds: “Our vision as an organisation is for the implementation of a child-centred justice strategy that ensures the best interests of the child in all legal matters.”

To drive home the gravity of the issue, the day will commence with personal accounts by two Johannesburg mothers who have been unable to access child support and maintenance, and the detrimental impact this has had on their livelihoods, particularly the lives of their children.

The first-hand accounts by the women will highlight to the stakeholders in the justice system, the grim reality of the situation, as experienced by women and children.

-Ends-

Notes to editors:

- Participants in the colloquium include representatives from the Department of Justice, the Market Street Maintenance Court, Tshwaranang Legal Advocacy Centre, the South African Law Reform Commission and the Centre for Child Law, the Women’s Legal Centre and the Legal Resources Centre.
- This is the second Colloquium focusing on children, to be hosted by Legal Aid SA. The first was held in 2009 and focused on Child Law.
-
- With children being a key area of focus for Legal Aid South Africa, the organisation has established dedicated children’s units in some of its justice centres. These units focus exclusively on providing representation to children in both criminal and civil matters. Based in these units are specialist child law practitioners who have had advanced training and research background in child law. In very complex matters, our Senior Litigators provide support and advice to practitioners that need it.

Portfolio Committee on Justice and Constitutional Development
9 October 2012
Legal Aid South Africa 2011/12 Annual report

Chairperson: Mr L Landers (ANC)

Documents Handed Out:
Pres Release on Legal Aid South Africa (LASA) 2011/12 Annual Report
Power point presentation on the Annual Report
Legal Aid South Africa 2011/12 Annual Report

Summary

Legal Aid South Africa reported that it had successfully completed the third year of its 2009-2012 Strategic Plan period and was able to achieve most of the strategic shift it had set to achieve in that period. In 2011/12 it provided access to legal aid to indigent clients – handling 682 962 legal and legal advice matters. It increased civil legal aid by 48% due to increased civil practitioner capacity. Legal quality remained a focus and a priority and generally legal practitioners met their quality targets. Strong financial management and governance were reflected in the 11th unqualified audit and 7th year of no matters of emphasis. The non-compliance with tax clearance certificates in judicare matters was being attended to. A people-development focus continued as confirmed by the successful accreditation for the third year as a Best Employer.

The Committee members congratulated Legal Aid South Africa on its accomplishments. Members asked about the use of agencies where there were already Legal Aid Centres present. There was also an exchange about the exact numbers of employees versus the number of budgeted posts and how Legal Aid managed their expenditure for its number of employees. Questions also included requests for detail on the Children's Act and the allegation published about the Boeremag. There was a suggestion that because of Legal Aid's large footprint in the country, its offices be used as a gateway for people to reach other agencies such as Chapter 9 organisations.

Minutes
The Chairperson said he had been informed that the Chairperson of the Board would not be able to attend the meeting but that was fine as he was sure that Legal Aid SA had brought qualified people.

Presentation by Legal Aid South Africa (LASA)
Mr Jan Maree, Non-Executive Director and Committee Member, LASA, introduced the report with a short overview. This was the second integrated report that reported on financial and non-financial performance against the Strategic Plan 2009-12 as well as the Annual Performance Plan 2011-12. The integrated report reported on social, economic and environmental considerations that had a bearing on the future of the organisation, the environment within which they operated and the communities they served. It included reports on an overview of the organisation as well as issues and trends impacting on it, sustainability, corporate social investment and stakeholder engagement. LASA reported on its compliance with Global Sustainability Reporting Initiatives (GSRI). The Integrated Report included a statement from the governing board acknowledging its responsibility for ensuring the integrity of the report. 2011-12 completed the three-year period of the LASA Strategic Plan 2009-12. The presentation also reported on progress against the recommendations of Budgetary Review Recommendation Report (BRRR) of the Justice Portfolio Committee dated 26 October 2011.

LASA operated within a strong governance framework which included an effective and functioning governing board and audit committee, compliance with the Legal Aid Act, Public Finance Management Act and National Treasury regulations, 100% implementation of all recommendations of the King III Report on Corporate Governance, compliance with the Promotion of Access to Information Act (PAIA), and an effective and independent internal audit department. The Legal Aid Act was in the process of being redrafted and a new Legal Aid Bill was expected to be tabled before Parliament in 2012.

Ms Vidhu Vedalankar, CEO: LASA, went through the statistics that Legal Aid had produced over the year. Legal Aid now had 2 470 people working in 64 Justice Centres and Satellite Offices and 13 high court and civil units. They had covered 428 653 criminal and civil cases. 95% of these matters were handled by the Justice Centres while the remaining 5% was handled via Judicare, coops or agency agreements. There was also a 50% drop in children cases handled by Legal Aid.

Regarding non-legal functions delivery, Matrix Management had been further consolidated. Functional management committees continued to assist in monitoring performance of support staff at both Justice Centre level and regional office level. The matrix function had been fully embedded resulting in effective

Challenges

▪ Capacity at regional and district courts was insufficient to adequately meet the demand as well as provide a limited relief capacity to deal with staff absence.
▪ High turnaround times at Regional Court and High Court led to increased backlogs at court.
▪ There was also insufficient civil capacity to meet increased demand for civil legal aid services.
▪ There were high numbers of awaiting trial detainees in custody for excess periods.
▪ There was non-compliance on tax clearance certificates in judicare matters as noted by Auditor General. ▪ The IT challenge: problems with K2 patching, finalisation of K2 upgrade, finalisation of switch to sharepoint platform which all impacted on speed and stability of the IT system.
▪ Dependence on candidate attorneys to render services at district courts negatively impacts on perception and sometimes service delivery

Ms Vedalankar concluded by reminding Members that LASA had provided access to legal aid for indigent clients with 682 962 legal and legal advice matters – which was a notable achievement – as was the increase in civil legal aid by 48% due to increased civil practitioner capacity.

Discussion

Mr J Jeffrey (ANC) said that he was extremely pleased with Legal Aid but it was the Committee's job to make sure they did oversight. He was curious about a Promotion of Access to Information Act (PAIA) report that was released that stated the South African Human Rights Commission was unhappy with LASA and their cooperation in terms of PAIA. He also noticed that the slide on Child Justice was the exact same slide from their presentation. That did not seem to make sense neither did their allocation of funds for Child Justice. They created 23 district and six regional posts in both 2011 and 2012 and that did not seem possible.

Mr Jeffrey said that the Committee had asked for quarterly reports from Legal Aid not just annual ones. He asked why there was not a cooperation agency agreement and asked how much it cost. The use of agency agreements was also questioned. On a more particular note, he said that Legal Aid could not say technically that they were compliant with the Legal Aid Act because according to the Act, an updated version must be published annually which had not occurred.

The Chairperson told the delegation that they would arrange for Legal Aid to view the PAIA report.

Ms D Schafer (DA) congratulated LASA on their annual achievements. She had a question about the tax sheets that the legal providers were not giving to Legal Aid. She asked if the huge lack of them was because of a lack of oversight. Also, did the trust deposits create a problem for LASA?

Mr J Sibanyoni (ANC) asked specifically about agency agreements. He was curious as to why there were agency agreements in areas where there was already a LASA office. The time limit that came with these agency agreements was also brought into question. He was curious to know about some of the success stories with the agency agreements.

Ms C Pilane-Majake (ANC) asked about LASA's internal audit and how many people on the audit committee were external from LASA. She also congratulated LASA on their report.

Ms M Smuts (DA) congratulated LASA on a sensational report. She was curious what LASA thought about the news article on Sunday about the Boeremag which she believed that LASA had represented. She explained that there was a sensational story that reported that legal information between the members of the Boeremag and their legal team had been intercepted by the police and turned over to the prosecution. She was also curious about what role LASA could play in the unclogging of the legal system particularly the issue with accused being detained, trial times, and missing trial transcripts.

Mr Jeffrey interjected saying that this happened often with awaiting trialists who should not even be there because their crime was not even punishable by prison time.

Response

Ms Vedalankar told the Committee that they had provided quarterly reports and had sent them to the Committee.

Mr Jeffrey interrupted, asking whether anyone in the Committee had received the reports which none of them had or could recollect.

Ms Vedalankar apologised and said that the reports would be sent. She went on to say that the Children's Act expenditures were basically the same because that was how much it cost to keep to the employees on

for the financial year with a slight increase for property costs.

Mr Jeffrey said that the wording was wrong and wanted the CEO to be clear that new positions had not been created but merely maintained. He said that they merely “cut and pasted” from last year’s report which created wrong information.

Ms Vedalankar said they had not cut and pasted but they merely had worded the information wrongly.

Mr Jeffrey said that he did not agree with that.

Ms Vedalankar said they would agree to disagree and that she knew that the Committee did not like cutting and pasting.

The Chairperson said that he wanted to know about the PAIA report.

Ms Vedalankar said that she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgement about this. In terms of the audit reports, she explained that one of the members of the audit committee had resigned so currently there were five members on the audit committee, of which three were external members.

Ms Pilane-Majake thanked the CEO for the clarification but said that the report seemed to show only what was desirable.

Mr Jeffrey said that he wanted LASA’s statistics on children because those of the South African Police Service seemed to be off. He again asked the question about the successfulness of service agencies.

Ms Vedalankar said that they did not have the statistics on children in the report but that they wanted to do more in terms of domestic violence. In terms of the alignment of services, she said that just because a town was in a province, it did not mean that the closest office was in the same province and that there were no provincial boundaries. She also agreed that the lost records of trials especially in Gauteng was an issue. She then handed over to her colleague.

Adv Wilna Lambley, Regional Operations Executive, explained the issue of proximity. There had been reshuffling of offices and agency agreements. There was constant oversight and discussion about which offices should serve which communities. In terms of the lost transcripts, most of these had occurred in Gauteng. It was due to a turnover in terms of the people who managed the transcripts. As of now, most of the transcripts had been found but there were still 40 to 50 missing.

She went onto say that the Boeremag practitioners were only briefed by Legal Aid but they would be looking into reports that an alleged witness had come forward with this information. This however would probably not create any appeals different from the law’s regular appeals process The Judge would have to make a decision about this and what the law said.

Ms Vedalankar said that 25% of their legal providers had applied for tax sheets while 25% had said that they would not provide LASA with any of them.

The Chairperson asked if these legal providers would be used by LASA if they failed to produce tax clearance certificates.

Ms Vedalankar said, yes, they would be terminated if they were in the middle of any trial proceedings.

Mr Maree added that a tax clearance certificate had never been required for a legal provider.

Mr Jeffrey asked about the discrepancy between staff and number of posts in terms of their expenditure in their budget for each. He also asked if Legal Aid had been in touch with Chapter 9 organisations and if Legal Aid could accept complaints on behalf of a Chapter 9 organisation if such organisation did not have an office in the area. Legal Aid’s footprint throughout the country could make this cost effective and he asked if Legal Aid would be open to the idea.

Mr Jeffrey asked why land cases were up so dramatically this year or last year and their status in relationship with rural development, and also why had Duty Care gone up. He also inquired about the costs of cooperation agreements and the status of the criminal justice review.

Ms Vedalankar said that she could not comment on helping with Chapter 9 organisations because she would have to discuss it with her staff first. In terms of the discrepancy with the posts and employees, it was very clear in the report. They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.

Mr Jeffrey said that the expenditure could not be 99% with the figures that they had.

Ms Vedalankar said she would send the information to the Committee.

Mr Jeffrey then asked for clarification on the IT budget.

Ms Vedalankar said that they had not been given the proper budget for IT and thus Legal Aid had suffered because of it.

Mr Jeffrey said that the Committee would get in touch with the Treasury and find out why the IT budget for LASA had not been fulfilled.

The Chairperson adjourned the meeting.

PARLIAMENT
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LUWELLYN LANDERS MP
National Assembly
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llanders@parliament.gov.za

Ref.: Brink(1)

Judge D. Mlambo
Chairperson: Legal Aid Board of S.A.
P/Bag X76
BRAAMFONTEIN 2017

23 March 2011

Dear Judge Mlambo

ADVOCATE ANTHONY BRINK

Attached for your attention please find copies of correspondence relating to a complaint comprising allegations made against the Legal Aid Board and it's CEO, Ms. Vidhu Vedalanker, with specific reference to his recruitment as Senior Litigator in Pietermaritzburg and refusal to comply with the provisions of the Promotion of Access to Information Act, amongst other things.

Having received Advocate Brink's letter you will understand that I must ask you, your Board and the Board's CEO for a formal response to these allegations, please.

Thank you.

Yours faithfully

_____

LUWELLYN LANDERS MP
Chairperson:
Justice Portfolio Committee,
National Assembly

Legal Aid South Africa

National Office
29 De Beer Street
Braamfontein
2017
Tel: 011-877-2055
Fax: 011-877-2222
www.legal-aid.co.za

22 June 2011

Mr L Landers MP
Chairperson Justice Portfolio Committee
National Assembly
P O Box 15
Cape Town
8000

Dear Mr Landers

Adv A Brink

Your letter dated 23 March 2011 on the above matter refers. Please accept my sincere apology for the delay in responding to your letter. Attached please find a report on this matter which was submitted to the Minister of Justice and Constitutional Development in March 2011 and which has since been updated. In summary I wish to reiterate what I said to Mr Brink when he wrote and complained to me :

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

I trust that the attached report and this letter clarify the matter concerning Mr Brink.

Yours faithfully

Judge Dunstan Mlambo
Chairperson
Legal Aid South Africa

Confidential

Legal Aid South Africa

REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Re: Adv Anthony Brink

1. Background

On 12 July 2010 Advocate Anthony Brink wrote to the CEO expressing his concern with regards the delays in the finalisation of the recruitment process for the senior litigator position at our Pietermaritzburg Justice Centre. Adv Brink was an applicant for this position and he was interviewed by our regional selection panel. He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted interview panel.

This nationally constituted panel did not however sit to consider applicants recommended for the second stage of interviews. Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts. Adv Brink was subsequently informed of this decision.

This resulted in him generating numerous requests for information in terms of PAIA, arising from his discontent with not being appointed to this post. He also wrote several lengthy letters to various individuals and organisations, including to the Chairperson and other Directors of the Board of Legal Aid SA. In his letter to the Board, Adv Brink also made allegations relating to multiple contraventions of the PFMA, including the presentation of false financial information in our 2009/10 Annual Report.

2. Adv Brink's discontent with non-appointment to Senior Litigator Position

From the many letters received from Adv Brink, it is clear that he believes that he was not appointed because of a racial and political bias against him resulting in a conspiracy to exclude him from Legal Aid SA. The conspiracy he alleges relates to his political views against the use of anti-retro viral drugs for HIV AIDS and also discrimination against him as a white male. He incorrectly believes that the second round of interviews was simply a confirmation process where he appears before the Chairperson of our Board who must ratify his appointment. This however is incorrect. All executives involved in this matter have confirmed that this individual was not known to them, nor his political views or publications, and that the first time they came across his name was when his letter of complaint about his non-appointment was received.

The reason for freezing of senior litigator posts was that Legal Aid SA was going through a very uncertain period with regards the provision of funding by the DoJ to finance our OSD phase 1 implementation, which was resulting in an unbalanced budget for 2010/11. As a result various options to make up for the shortfall in our funding, including the freezing of posts, were considered. Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time, as well as contingency measures that we were contemplating to cater for this, including

the freezing of many positions, were shared with Adv Brink in response to his request for information in terms of PAIA.

Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he remains convinced that there is a conspiracy against him. Legal Aid SA, has under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views. He is currently pursuing his requests for further information with the Human Rights Commission and has threatened litigation. We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA. We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act. We copied these responses to the SA Human Rights Commission to confirm our compliance with PAIA.

Adv A Brink subsequently referred a dispute against Legal Aid SA in the CCMA on 20 April 2011. He alleged unfair discrimination on the basis of political conscience, belief and activism on the issue of HIV Aids and to a lesser extent race. He further contended that he held the belief that this alleged unfair discrimination resulted in him not being appointed to the position of Senior Litigator at Legal Aid SA – a position for which he applied and was interviewed. The relief he sought was monetary in the amount of R55 000 per month from January 2011 (he avers to have become aware of the alleged discrimination at this point) to the date of the conciliation which totalled R220 000. The dispute could not be resolved as Legal Aid SA submitted that it believed that it had not directly or indirectly discriminated unfairly against Mr Brink on the basis averred by him or on any other basis. A certificate of non-resolution was thus issued by the CCMA on 20 April 2011 which paved the way for Mr Brink to refer the dispute for adjudication to the Labour Court, a route he has to date not pursued.

3. <u>Allegations of multiple contraventions of the PFMA</u>

In Adv Brink's November correspondence to the Board Chairperson and members of the Board, he draws attention to the fact that Table 3 in Section 4.1 at page 106 of Legal Aid SA's Annual Report for 2009/10,relating to executives remuneration, contains incorrect column totals for basic salaries, bonuses, incentives, expenses/allowances and other unspecified payments.

An examination of this table has revealed that these four column totals are indeed incorrect, although the last column relating to total expenditure is correct. It must also be noted that the row totals which show individual executives remuneration is correct. We have since been able to determine that the source of this problem was caused by human error at the time when the annual report was being prepared for printing.

This table is however not a part of the Annual Financial Statements (AFS) nor is it material to the AFS presented later in that section. They therefore do not alter any of the AFS, which do not have any errors. These are the AFS that were audited by the Auditor-General and found to 'present fairly, in all material respects, the financial position of Legal Aid SA as at 31 March 2010…".

The executives' remuneration is also referred to in Note 18.2 of the AFS (page 145 of the Annual Report) in which the total per executive as well as the overall total is indicated. The total per

executive as well as the overall total in Note 18.2 of the AFS is the same as the row totals and overall total in Table 3. This confirms that the material amount included in the AFS was not incorrect and therefore our AFS 2009/10 remain correct.

Given that the AFS remain correct and that the error in Table 3 is not material to the AFS, the allegations by Brink of 'false and misleading figures' being a serious criminal offence and that our Annual Financial Statements in our Annual Report are not a 'true and fair representation' are unfounded.

4. Conclusion

Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems in this matter that Adv Brink would be well advised to approach the courts to ventilate his issues. We are however comfortable that we would be able to show to a court of law that the decisions we took on this matter made good business sense and were in the best interests of our organisation at the time. As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

This report is sent to the Ministry to provide the necessary background to this matter as well as to contextualise and clarify the allegations by Mr Brink re contravention of the PFMA and provides the necessary reassurance that no contravention occurred in this regard.

Judge D Mlambo
Chairperson

Legal Aid SA

9 March 2011

Updated with sections in blue font

22 June 2011

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

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

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number:

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

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

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

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

Legal Aid South Africa

29 De Beer Street

Braamfontein

Johannesburg

B. Particulars of person requesting access to the record

(a) The particulars of the person who requests access to the record must be recorded below.
(b) Furnish an address and/or fax number in the Republic to which information must be sent.

Full names and surname	: Anthony Robin Brink
Identity number	: 5902255116081
Postal address	: 36 Pearson Street, Eshowe 3815, KwaZulu-Natal
Fax number	: N/A
Telephone number	: 083 779 4174
E-mail address	: anthonybrink.sa@gmail.com

With typo fixes

C. Particulars of person on whose behalf request is made:

N/A

D. Particulars of record

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

PART ONE

CONTEXTUAL NOTE:

On 15 March 2019, upon application made to the High Court at Pietermaritzburg, Legal Aid SA ('LASA') was granted an order postponing three opposed applications brought by the requester under section 78 of the Promotion of Access to Information Act 2 of 2000 ('PAIA') under case numbers 11187/16P; 14224/17P and 5239/18P to compel compliance with his requests for access to certain of LASA's public records, duly set down for argument on that day.

RECORDS REQUESTED:

1. **All LASA's counsels' fee-notes for their services in drawing or settling the said postponement application papers, and for arguing the application.**

2. **All travel expense and subsistence vouchers reflecting what LASA disbursed on travel and subsistence expenses for LASA's junior advocate and two in-house attorneys to attend the said postponement application.**

PART TWO

RECORDS REQUESTED:

3. **LASA's annual reports made under section 32 of PAIA to the South African Human Rights Commission for:**
   - **3.1. 2016/17;**
   - **3.2. 2017/18;**
   - **3.3. 2018/19.**

PART THREE

CONTEXTUAL NOTE:

On 9 October 2012, at a meeting with the National Assembly's Portfolio Committee on Justice and Constitutional Development (since renamed '-and Correctional Services'; hereafter 'the Committee'), LASA CEO Vidhu Vedalankar presented LASA's annual performance report for 2011/12.

The Committee had called the meeting in the exercise of its oversight responsibility over LASA imposed by section 55(2)(b)(ii) of the Constitution.

The Parliamentary Monitoring Group ('PMG') kept a minute of the meeting, a material excerpt of which follows:

> Ms Vedalankar said that she could not comment on helping with Chapter 9 organisations because she would have to discuss it with her staff first. In terms of the discrepancy with the posts and employees, it was very clear in the report. They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.
>
> Mr Jeffrey said that the expenditure could not be 99% with the figures that they had.
>
> Ms Vedalankar said she would send the information to the Committee.

The PMG's minute records that Committee member Hon John Jeffery MP (now Justice Deputy Minister) had queried 'the discrepancy with the posts and employees', i.e. the discrepancy between reported budget expenditure and reported post occupancy, to which Vedalankar responded that 'it was very clear in the report. They [LASA's management executives] had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.'

The minute reflects that Hon Jeffery didn't believe and accept this information given by Vedalankar to the Committee. To the contrary, 'Mr Jeffery said that the expenditure could not be 99% with the [post occupancy] figures that they had.'

The minute further records that 'Ms Vedalankar said she would send the information to the Committee' – in addition to the 'very clear' information alleged to have been contained 'in the report' – to persuade Hon Jeffery, and to overcome his incredulity as to the truth of Vedalankar's information to the Committee that 'They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.'

RECORDS REQUESTED:

4. **Any record identifying what vacant 'positions could not be filled' at LASA that 'they [Vedalankar and other LASA officers] knew' about.**

5. **Any record reflecting the reason these vacant 'positions could not be filled' that 'they knew'.**

6. **The record of executive management's decision to 'adjust.. the budget' because 'they knew that those positions could not be filled'.**

7. **The Board's resolution to approve the 'adjust[ment of] the budget' because the vacant 'positions could not be filled', if, per LASA's Approval Framework, this entailed a 'Reallocation of budget in excess of 8% between cost centres'.**

8. **'[T]he information' about LASA's 'adjust[ment of] the budget' (because 'they knew that those positions could not be filled') that Vedalankar sent the Committee after the meeting, as undertaken to Hon Jeffery; and its covering letter.**

CONTEXTUAL NOTE CONTINUED:

The reason Hon Jeffery clearly didn't believe the said information Vedalankar gave the Committee may be because, inter alia, in truth and in fact 'the report' said nothing at all about LASA having 'adjusted the budget' – either for the reason Vedalankar alleged, namely that 'they knew that those [unspecified vacant] positions could not be filled' or for any other.

That is, Vedalankar's statement to the Committee that 'it was very clear in the report' why there was a 'discrepancy with the posts and employees' was absolutely false.

Vedalankar didn't specify to the Committee 'those positions' that 'they knew ... could not be filled'.

Certainly she didn't have in mind any of LASA's public defender 'positions' serving the lower criminal courts, recruitment to which had briefly and temporarily been frozen by executive management with Board approval on 30 July 2010 for a couple of months until provision was made in the national mid-term budget in October 2010 for the payment of legal staff salary increases under the OSD scheme, because by October 2012 when

Vedalankar appeared before the Committee and claimed to it, 'They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget', the hiccup over the delayed transfer of LASA's OSD budget for 2010/11 and the transient freeze on lower criminal public defender recruitment was distant history.

It seems likely that 'those positions' to which Vedalankar was alluding and implicitly claiming to the Committee 'could not be filled' (for some unstated reason 'they knew') were LASA's three remaining, very long vacant Senior Litigator posts at Pietermaritzburg, Durban and Mthatha at the top of its legal professional staff establishment, to which the requester had called both Hon Jeffery's and the Committee chairperson's attention.

Indeed, like Vedalankar's information to the Committee that 'those positions could not be filled so they adjusted the budget', LASA's annual report to the South African Human Rights Commission ('the Commission') under section 32 of PAIA for 2010/11 told a similar lie: 'the decision to freeze the [Pietermaritzburg Senior Litigator] post due to change in business needs budget.'

In truth and in fact, as LASA National Operations Executive and deputy information officer Brian Nair repeatedly confirmed on affidavit in April 2011 and again in evidence in court in mid-2013, no record whatsoever exists of any such 'decision to freeze the post', as falsely and dishonestly alleged to the Commission for the intended misinformation of the Committee in turn.

And LASA's financial records show that there's been no 'change in business needs budget' concerning the Pietermaritzburg Senior Litigator post and those at Durban and Mthatha. Quite the contrary, since their creation by Board resolution in November 2006, LASA has applied and continues applying to the Justice Department every year, and has received and continues receiving millions of rands in salary funding for all nine of its Senior Litigator posts, including its three now very long vacant Pietermaritzburg, Durban and Mthatha posts.

And whereas in her total refusals in October 2010 and January 2011 of the requester's PAIA requests in August and December 2010 interrogating the reason the substantially complete recruitments to the said three posts had been aborted (off the record), Vedalankar repeatedly falsely alleged *insufficient budget* received from the Justice

Department as the reason for not proceeding to appoint the three candidates recommended by selection panels for LASA's three remaining vacant Senior Litigator posts and for freezing recruitment to them – which story she confirmed on affidavit under penalty of perjury in April 2011, as did Nair and Human Resources Executive Amanda Clark – Nair totally changed the alibi in his 'Report to Board' in November 2011 to account for why LASA's three remaining top professional posts had not been filled, after the *budgetary insufficiency* excuse had been completely discredited, and now falsely alleged '*recruitment challenges*', even as three eminently suitably qualified and experienced candidates had been selected and recommended for the posts – consistent with Vedalankar's absolutely false and untruthful claim to the Committee that 'they knew that those positions could not be filled'.

Hon Jeffery was pertinently aware of LASA's unlawful failure to finalize its successful, substantially complete recruitments to its Pietermaritzburg, Durban and Mthatha Senior Litigator posts under cover of a bogus financial insufficiency excuse eventually fed to the requester, and Vedalankar appreciated that Hon Jeffery was aware of this, because at her presentation on 11 October 2011 of LASA's annual report for 2010/11 the year before, Hon Jeffery pointedly raised the fact, reported to him by the requester, that LASA wasn't 'spending its money allocated to impact litigation'.

Which fact Chief Legal Executive Hundermark (then called 'Legal Development Executive'), also present at the meeting, conceded to the Committee, mentioning 'our senior litigators' performing this 'impact litigation', without disclosing to the Committee (i.e. concealing from it) that three Senior Litigator appointments had been illegally aborted and the three posts practically permanently frozen: wholly off the record in criminal contravention of section 55(1)(a) read with section 86(2) of the Public Finance Management Act 1 of 1999 ('PFMA') (quoted below); unlawfully without Board authority under the Approval Framework (quoted below); and unlawfully under section 53(4) of the PFMA (quoted below) – as the Constitutional Court confirmed in Zungu v Premier of the Province of KwaZulu-Natal and Others (CCT136/17) [2018] ZACC 1 (22 January 2018): in the case of public entities, 'leaving' a budgeted and funded 'position' 'vacant' is a 'breach of the provisions of the Public Finance Management Act (PFMA)'.

Section 55(1)(a) of the PFMA requires that 'The accounting authority for a public entity ... must keep full and proper records of the financial affairs of the public entity'. Not to do so is a serious crime under section 86(2): 'An accounting authority is guilty of an

offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.'

So if Vedalankar told the Committee the truth when responding to Hon Jeffery's query about 'the discrepancy with the posts and employees', by stating that she and her management colleagues 'had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget', records will exist to vouch that they had indeed 'adjusted' LASA's salary 'budget' sought from the National Treasury, voted by the National Assembly, and paid over via the Justice Department's Third Party Funds Division during or before the 2011/12 financial year (because 'they knew that those positions could not be filled').

And records will exist to show that that 'they adjusted the budget' by reallocating to other cost centres the salary 'budget' applied for and received for 'those positions' that 'they knew ... could not be filled'.

Certainly LASA's 'budget' has never been 'adjusted' downwards in regard to its three Senior Litigator 'positions' that 'they' allegedly 'knew ... could not be filled', because LASA's annual budget records reveal that it has always budgeted for and has always received salary budget from the Treasury via the Justice Department for all nine of its Senior Litigator posts, including its three now very long vacant posts at Durban, Pietermaritzburg and Mthatha. And it continues to do so.

Section 2.3 of LASA's Approval Framework governing 'Reallocation of budget – Operational expenditure' prescribes different levels of executive approval required for the reallocation of different amounts of LASA's budget, and it requires Board approval for any 'Reallocation of budget in excess of 8% between cost centres'.

So if Vedalankar and her fellow management executives 'adjusted' LASA's salary 'budget', not by lowering it (because they never did) but by reallocating part of it, and this entailed a 'Reallocation of budget in excess of 8% between cost centres', a record will exist to vouch that the Board approved this – unless she and they 'adjusted' LASA's salary 'budget' in regard to 'those positions' that 'they knew ... could not be filled' by reallocating 33.3% of it (one third of the salary budget for the nine Senior Litigator posts – three vacant) without Board approval in an unlawful contravention of section 2.3 of LASA's Approval Framework.

Section 53(4) of the PFMA prescribes: ‘The accounting authority for such a public entity is responsible for ensuring that expenditure of that public entity is in accordance with the approved budget.’

By definition under section 1, the Board is LASA’s ‘accounting authority’; and as authorised to do so by section 56(1)(a), the Board has delegated its powers as such to Vedalankar.

Under section 56(2)(c), the Board retains ultimate ‘responsibility concerning the exercise of the delegated power or the performance of the assigned duty’ as ‘accounting authority’, of which ‘responsibility’ its delegation to Vedalankar doesn’t ‘divest’ it.

Consistently with section 56(1)(a) of the PFMA, section 16 of the Legal Aid South Africa Act 39 of 2014 stipulates under the heading ‘Functions of chief executive officer’ in subsection (2): ‘Subject to the provisions of section 56 of the Public Finance Management Act, the chief executive officer has such powers and duties as may, in writing, be delegated or assigned to him or her by the Board.’

At the trial of case DLC 529/11 in mid-2013, a copy of the Board’s delegation to Vedalankar of its ‘powers and duties’ as ‘accounting authority’ was handed into court by LASA’s counsel.

If the requested records specified in this Part don’t exist, section 23 of PAIA requires that this be certified on affidavit – categorically and unambiguously: Section 23(1)(b) draws a clear and crucial distinction between a record that ‘(i) is in the public body’s possession but cannot be found’ and one that ‘(ii) does not exist’.

The two categories are distinguished by ‘or’, so an affidavit complying with section 23 may not conflate non-existent records with extant but lost records.

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

Albeit irrelevant under section 11(3) of PAIA to the decision of the request, the requester records that his reason for requesting the records specified in this Part is to establish whether Vedalankar told the Committee the truth in responding to Hon Jeffery’s query about ‘the discrepancy with the posts and employees’ when she stated, ‘They had

allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget' (certainly untruthfully false was her statement that 'In terms of the discrepancy with the posts and employees, it was very clear in the report'), or whether, as Hon Jeffery suggested, she lied to the Committee in making this statement – in furtherance of a cover-up of top-level recruitment corruption entailing multiple criminal and other illegal contraventions of the PFMA (illustrating the adage coined after Watergate: 'The cover-up is always worse than the crime') to defeat the Committee's constitutional oversight mandate over LASA and to evade detection and being held to account – in criminal contravention of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.

Which provides: 'A person who ... wilfully furnishes a House or committee with information, or makes a statement before it, 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.' In which case, the requester intends referring the matter to the Committee and to the National Director of Public Prosecutions.

E. Fees

*(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid. (b) You will be notified of the amount required to be paid as the request fee. (c) The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.*

The R35 request fee prescribed by section 22 of PAIA was paid into Legal Aid SA's bank account on even date under reference number: PAIA_Brink_2019.

F. Form of access to record

Mark the appropriate box with an "X". *(a) Your indication as to the required form of access depends on the form in which the record is available.* *(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.* *(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.*

1. If the record is in written or printed form -			
X	copies of records		inspection of record

2. If record consists of visual images - N/A

3. If record consists of recorded words or information which can be reproduced in sound - N/A

4. If record is held on computer or in an electronic form -					
	printed copy of record		printed copy of information derived from the record*	X	copies in computer readable form – to be emailed as file attachments.

G. Notice of decision regarding request for access

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

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

By email.

Signed at Eshowe on 12 April 2019

SIGNATURE OF REQUESTER

Legal Aid South Africa
Your voice. For justice.
Independent and within reach.

Mr. Anthony Brink
36 Pearson Street
Eshowe,
Kwazulu Natal
3815
Tel: 083 779 4174
Email: anthonybrink.sa.gmail.com

29 De Beer Street
Braamfontein, 2017
Private Bag X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

Dear Mr. Brink,

REQUEST FOR ACCESS TO RECORDS OF LEGAL AID SA: AR BRINK

1. I refer to the above matter and to your request of access to records of Legal Aid SA dated **12 April 2019** addressed to the Information Officer, Ms Vedalankar and further record that such request was received on **25 April 2019** after we had requested same.

2. The request has been referred to me as the Deputy Information Officer for reply.

3. Before I reply to your requests for records, I wish to place on record that Legal Aid SA will not comment on the allegations and conclusions that you have made relating to your requests, except to state that such assertions and conclusions are baseless and defamatory, and that the veracity of same are denied. Legal Aid SA and its officials reserves their rights in law and will, if they elect to do so, respond at the appropriate forum and time.

4. I hereby reply to your requests in the table below-

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Number	Record requested	Reply
PART ONE		
1.	All Legal Aid SA's counsels' fees for their services in drawing or settling the said postponement application papers, and for arguing the application.	The record is refused. The request is manifestly frivolous and vexatious. Secondly, the information falls within the prescripts of personal information of third parties and they refused to grant permission to release such information as required in terms of section 47 of PAIA.
2.	All travel expense and subsistence vouchers reflecting what Legal Aid SA's junior advocate and two in house attorneys to attend the said postponement application.	The record relating to junior counsels records refused on the basis that she has refused to grant permission to release such information as required in terms of section 47 of PAIA. The records relating two in house attorneys is refused on the basis that it is manifestly frivolous and vexatious and further seeks to substantially and unreasonable divert the resources of Legal Aid SA and furthermore such request does not align to the prescripts and objectives of PAIA, namely to enable the requester to fully exercise his rights and protect such rights.

PART TWO		
3.	Legal Aid SA's annual reports made under section 32 of PAIA to the South African Human Rights Commission for:	
3.1	2016/17	Access to the record is granted. The copy of the record is attached as Annexure **PH1**.This record was submitted to SAHRC and can be accessible from SAHRC.
3.2	2017/18	Access to the record is granted. The record is attached as Annexure **PH2**. This record was submitted to SAHRC and can be accessible from SAHRC.
3.3	2018/19	Access to the record is granted. The record is attached as Annexure **PH3**. This record was submitted to SAHRC and can be accessible from SAHRC

PART THREE		
4	Any record identifying what vacant 'positions could not be filled' at Legal Aid SA that 'they' [Vedalankar and other Legal Aid Sa officers] knew about.	The record is refused. The record requested is similar, ancillary or connected to the legal proceedings at the Durban Labour Court under case 529/11 which matter was ventilated and finalised by a decision of the Labour Appeal Court. The request is therefore manifestly frivolous and vexatious and seeks to substantially and unreasonably divert the limited resources of Legal Aid SA.
5	Any record reflecting the reason these vacant 'positions could not be filled' that 'they knew'.	The record is refused. The record requested is similar, ancillary or connected to the legal proceedings at the Durban Labour Court under case 529/11 which matter was ventilated and finalised by a decision of the Labour Appeal Court. The request is therefore manifestly frivolous and vexatious and seeks to substantially and unreasonably divert the limited resources of Legal Aid SA.
6	The record of executive management's decision to 'adjust the budget' because 'they knew that those positions could not be filled'.	The record is refused. The record requested is similar, ancillary or connected to the legal proceedings at the Durban Labour Court under case 529/11 which matter was ventilated and finalised by a decision of the Labour Appeal Court. The request is therefore manifestly frivolous and vexatious

		and seeks to substantially and unreasonably divert the resources of Legal Aid SA.
7	The boards resolution to approve the 'adjustment of] the budget because the vacant 'positions could not be filled', if, per Legal Aid SA's Approval Framework, this entailed a 'Reallocation of budget in excess of 8% between cost centres'.	The record is refused. The record requested is similar, ancillary or connected to the legal proceedings at the Durban Labour Court under case 529/11 which matter was ventilated and finalised by a decision of the Labour Appeal Court. The request is therefore manifestly frivolous and vexatious and seeks to substantially and unreasonably divert the limited resources of Legal Aid SA.
8	'[T]he information' about Legal Aid SA's adjustment of] that Vedalankar sent the Committee after the meeting, as undertaken to Hon Jeffrey; And its covering letter.	The record is refused. The record requested is similar, ancillary or connected to the legal proceedings at the Durban Labour Court under case 529/11 which matter was ventilated and finalised by a decision of the Labour Appeal Court. The request is therefore manifestly frivolous and vexatious and seeks to substantially and unreasonably divert the resources of Legal Aid SA.

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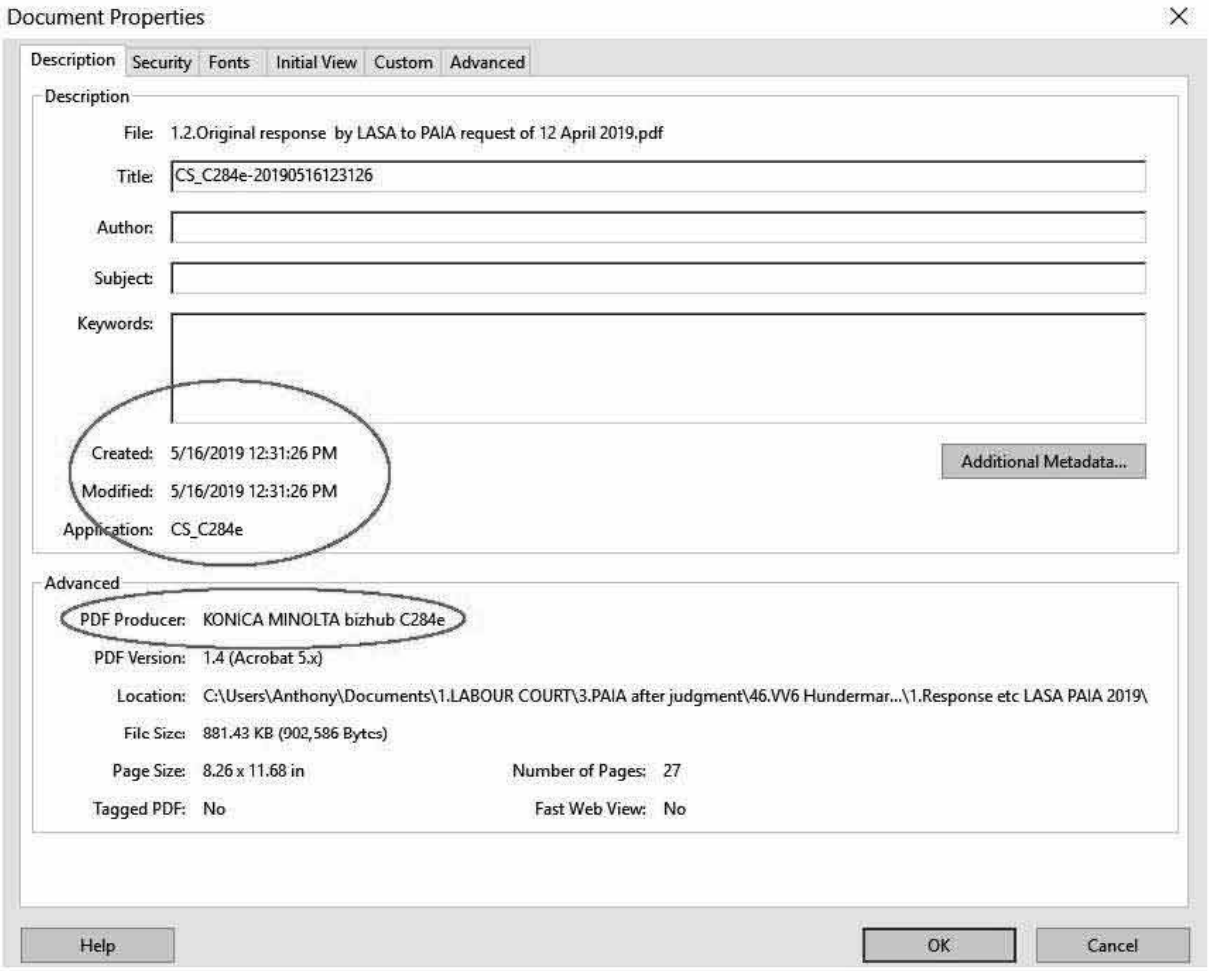
Yours Faithfully,

Mr. Patrick Hundermark

Deputy Information Officer.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Author:
Subject:
Keywords:
Created: 5/16/2019 12:31:26 PM
Modified: 5/16/2019 12:31:26 PM
Application: CS_C284e
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File Size: 881.43 KB (902,586 Bytes)
Page Size: 8.26 x 11.68 in
Number of Pages: 27
Tagged PDF: No
Fast Web View: No
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Legal Aid South Africa

National Office
29 De Beer Street
Braamfontein
2017
Tel: 011-877-2000
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www.legal-aid.co.za

8 April 2011

South African Human Rights Commission
PAJA Unit
P/Bag 2700
Houghton
2041
paja@sahrc.org.za

Dear Commissioner

REPORT IN TERMS OF SECTION 32 OF THE PROMOTION OF ACCESS TO INFROMATION ACT 2 OF 2000: LEGAL AID SOUTH AFRICA

Please find the report for Legal Aid South Africa in compliance with section 32 of the Promotion of Access to Information Act, 20 of 2000 as amended.

Regards

Solly Sekgota
Corporate Legal Manager
Legal Aid South Africa

Received by.....on this.....day of April 2011

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Legal Aid South Africa

LIST OF REQUESTS IN TERMS OF PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

Name of requester	Type of request	Outcome of the request	Comments	Date when request made.	Date when the request responded to.	Who responded
Antthony Brink	Request for information relating to the process on the conduct of interviews	Access partially refused	No decision taken yet on who should be appointed but the decision to freeze the post due to change in business needs-budget. The other information was provided except for information which was refused in terms of section 65 on the basis that it was not relevant to the excercising of the right he may have in law and further that the request relates to confidential information of third parties.	27/09/2010	19/10/2010	CEO
Leslie Gwele	Request for information relating to the criteria of the bonus system and bonus that the employee would be entitled to.	Access granted	All the information requested was given to the requester.	9/04/2010	12/05/2010	CEO

Professional Update

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

12 June 2009

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

InfoUpdate 12 of 2009
Vacancies

Senior Litigator

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

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

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

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

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

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

Salary:
R603 002 (all-inclousive OSD package - min of scale)

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

Ms Thandeka Hadebe, KZN/MP Regional Office, Fax Number: (031) 702-1960. Email Address: ThandekaH@legal-aid.co.za
(Please indicate clearly in your e-mail subject line the following: Application for Advertised Post: Senior Litigator.

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

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

Ref: 2009/06/25/kzn

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Legal Aid South Africa

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Legal Aid South Africa is an autonomous statutory body with the primary objective of rendering or making available legal aid to poor persons. The National Footprint of Legal Aid South Africa covers more than 58 Justice Centres spread throughout the country.

Senior Litigator

Ref: 2009/06/25/kzn

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

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

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

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

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

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

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

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

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

For more vacancies visit www.legal-aid.co.za

nyanda mbanga communications 1460

REPORT TO BOARD

SENIOR LITIGATORS
REPORTING RELATIONSHIPS AND JOB CLARIFICATION

26TH November 2011

1. Background

The senior litigator position was introduced into our organizational structure during the 2009/10 financial year. The key objectives for creating this position were:

- to have an internal group of practitioners who could handle very complex matters
- toprovide a second career stream within the organization to focus on legal technical skills.
- to establish legal expertise to handle matters in specialist courts and higher courts such as the SCA and CC.
- to strengthen legal leadership within the organization and develop role models for other legal practitioners.

Nine senior litigator posts were created to cater for the 9 provinces. However, because there were no high court divisions in Mpumalanga and Limpopo, a second senior litigator post was allocated to Gauteng and KZN, with a view to increasing the number of positions to include posts for Mpumalanga and Limpopo at a later stage. The criteria set for the appointment of a senior litigator was set at a level to ensure that only very senior and experience practitioners were eligible.

A two stage interview process was implemented in order to identify candidates for appointment. Six senior litigators were filled 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.

2. Reporting relationships

In anticipation of the fact that most of the work allocated to senior litigators would emanate from the high court units where they were based, it was therefore decided that senior litigators should report to the high court unit managers. Whilst this reporting relationship has worked satisfactorily, there has been some concern that this reporting relationship was not appropriate because three of the senior litigations were now reporting to high court managers who previously reported to them when they were high court unit managers. Whilst under normal circumstances such a situation should not pose a problem, there has nevertheless been a concern that the low participation of some senior litigators in SCA cases could arise from the fact that they may be in a position to dictate to their high court unit managers on how cases are allocated in the unit.

It has therefore been agreed that from the beginning of the third quarter of this financial year, all senior litigators will directly report to their ROE. ROEs will therefore be more responsible

for the type of matters undertaken by their senior litigators. Senior litigators will nevertheless be permitted to operate from the Justice Centre where they are currently situated. However, should their relocation to the regional office improve the performance of their function, then this will also be permitted.

3. Type of matters to be handled by senior litigators

It was agreed with senior litigators that the following type of matters should ideally be handled by themselves:

- Matters which are regarded as very complex received at HCUs and JCs in the region.
- Matters identified by CCMC as impact litigation matters;
- Matters that are to be heard by a full bench of the HC, the SCA and the CC.
- Matters to be heard at specialist courts such as the commercial crimes court
- High profile matters which could negatively affect our reputation if not handled properly

A very small percentage of their time could also be spent to prepare opinions, assisting other practitioners with the preparations of their heads of arguments as well as training of staff.

An analysis has been done to determine our current coverage of criminal trial matters at both the SCA, as well as full bench appeals done at each HC division with appeal jurisdiction. During the first three terms this year, 49 criminal appeals were done of which 22 (45%) was done by Legal Aid SA. With regards full bench appeals, 206 full bench appeals were done of which 146 (71%) were done by Legal Aid SA. (Refer to Annexure A and B for details)

4. Quality reviews of senior litigators

Noting that our senior litigators constitute some of our most senior and experienced lawyers in our organization, it is felt that the current system of evaluating their performance, firstly by their high court unit managers and thereafter by our legal quality assurance unit may not be appropriate. It has therefore been agreed 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 these reviews.

The terms of reference for these review panels will include:

- an examination of the type of cases handled to determine if it complies with our requirements;
- an examination of the level of preparedness for their cases
- a review of the appropriateness of the legal strategy adopted in their cases
- a determination of whether the most appropriate outcome of the case was achieved.

The review panel will be established during the third quarter of this financial year. All senior litigators will be reviewed by this panel before the end of this financial year.

Submitted for information.

National Operations Department

LEGAL AID SOUTH AFRICA
BUDGET 2010/11

Office of the CFO
February 2010

LEGAL AID SOUTH AFRICA
2010/2011 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Western Cape /Northern Cape Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Total 2010/11	2009/10	Variance	%
	DIRECT COSTS																							
1	Basic Salary	30050					1 885 277			3 441 398		3 398 578	916 981		74 829 684	67 307 248	91 579 850	85 658 093	76 584 335	53 423 436	459 004 880	400 185 458	58 819 422	15%
2	Bonuses	30100					9 620			237 374		153 784	66 122		4 291 574	3 591 230	4 989 269	4 943 519	4 221 879	3 010 261	25 514 832	26 828 655	-1 313 823	-5%
3	Housing Allowance	30150					10 185					12 976	6 346		628 730	540 562	660 924	837 464	602 676	657 870	3 957 735	7 441 659	-3 483 924	-47%
4	Medical Aid Contribution	30200					24 336			48 672		60 840	21 624		1 533 427	872 150	1 382 288	1 119 943	1 721 785	698 177	7 483 242	7 389 938	93 304	1%
5	Motor Car Allowance	30450					232 682						2 438		66 967	507 345	1 068 812	497 771	251 073	540 825	3 167 913	2 066 518	1 101 395	53%
6	Pension Contribution	30550								341 818		179 273	98 124		4 825 351	4 375 371	6 386 919	5 474 460	5 810 612	4 409 939	31 901 868	33 484 259	-1 582 391	-5%
7	UIF Contribution	30650					5 878			10 416		11 676	3 101		367 435	347 895	485 858	473 478	426 457	308 003	2 440 197	2 128 070	312 127	15%
8	Increasing paralegal capacity	30710																			0	2 036 715	-2 036 715	-100%
9	Review of CA model	30720																			0	5 118 109	-5 118 109	-100%
10	OSD Additional Funding												30 000 000								30 000 000			
			0	0	0	0	2 168 178	0	0	4 079 678	0	3 817 127	31 114 736	0	86 543 169	77 541 801	106 553 920	99 004 729	89 598 819	63 048 510	563 470 666	486 679 381	46 791 285	10%
	ADMIN SUPPORT COST																							
11	Basic Salary	40050	922 087	2 523 053	1 070 623	2 098 042	3 908 248	19 628 887	34 235 746	4 986 235	6 784 830	1 511 316	2 355 516	4 108 011	12 728 672	13 820 630	14 512 096	13 526 410	12 794 948	10 911 252	162 336 601	143 481 595	18 855 002	13%
12	Bonuses	40100	24 557	16 766		187 337	265 395	390 953	238 798	277 674	317 653	107 387	137 622	229 415	914 671	1 049 991	1 042 603	1 105 113	1 050 289	907 398	8 244 022	6 993 816	1 250 206	18%
13	Housing Allowance	40150	12 000	6 000	40 648	36 007	147 607	94 994	67 982	73 458	156 124	18 000	30 000	120 000	514 320	541 440	577 680	569 652	583 437	469 200	4 058 550	4 153 183	-94 634	-2%
14	Medical Aid Contribution	40200	36 504	12 168	12 168	82 791	273 537	269 775	131 157	127 764	177 246	48 672	72 036	240 912	842 789	802 625	1 017 113	697 481	819 259	709 031	6 373 028	6 098 080	274 948	5%
15	Motor Car Allowance	40450	55 553		101 621	88 072	148 633	342 696	313 934	502 131	598 593	81 297	117 108		0	40 320	177 918	89 101	95 593	32 519	2 785 089	2 285 619	499 470	22%
16	Pension Contribution	40550	35 362	24 143		144 327	448 501	670 631	319 043	282 875	329 457	137 666	252 582	330 357	1 341 324	1 592 815	1 661 914	1 579 093	1 510 266	1 306 658	11 967 014	10 257 732	1 709 282	17%
17	UIF Contribution	40650	4 464	4 467	1 488	9 744	33 141	40 866	23 763	27 368	31 248	7 440	10 963	27 641	115 670	123 894	130 638	260 085	118 628	103 115	1 074 603	743 862	330 741	44%
			1 090 526	2 586 597	1 226 548	2 536 319	5 225 062	21 438 802	35 330 425	6 277 706	8 395 151	1 911 779	2 975 827	5 056 336	16 457 646	17 971 715	19 119 960	17 826 915	16 972 419	14 439 173	196 838 907	174 030 798	22 808 109	13%
	OTHER DIRECT EXPENDITURE																							
18	Judicare	35250													9 098 022	9 872 047	21 977 033	13 854 415	13 167 091	6 138 184	74 107 594	78 266 122		0%
19	Disbursements	35950													183 400	105 000	352 128	386 167	130 000	174 230	1 330 925	837 560	493 365	59%
20	Expert Witness	35150													343 746	290 280	611 400	280 960	406 000	231 120	2 163 506	2 163 506	0	0%
21	Co-operation Agreements	35050											2 795 518		302 341		2 539 693	872 524	570 600	73 080	7 153 756	4 208 004	2 945 752	70%
22	Impact Litigation	35200										5 290 000									5 290 000	3 156 000	2 134 000	68%
23	Travelling and Subsistence-Circuit	36060													77 848	240 908	87 104	25 248	81 250	91 254	603 612	603 612	0	0%
24	N/Footprint Expansion Program	36070											8 000 000								8 000 000	11 581 019	-3 581 019	-31%
25	Case Backlog	35900											25 000 000								25 000 000	20 000 000	5 000 000	25%
26	Increase in legal capacity												20 139 988								20 139 988		20 139 988	100%
27	Children's matters																				0	1 600 000	-1 600 000	-100%
			0	0	0	0	0	0	0	0	0	5 290 000	55 935 506	0	10 005 357	10 508 235	25 567 358	15 419 314	14 355 741	6 707 868	143 789 381	122 415 823	21 373 558	17%
	OPERATING BUDGET																							
28	Achiever Awards	41060							216 712												216 712	210 400	6 312	3%
29	Advertising	41100				2 060 004		88 720					20 604								2 169 328	2 106 144	63 184	3%
30	Annual Report	41150	257 500																		257 500	250 000	7 500	3%
31	Audit Fees	41250						2 348 365													2 348 365	1 711 632	636 733	37%
32	Bank Charges	41350						597 384													597 384	579 984	17 400	3%
33	Board Fees	41450	898 813																		898 813	872 634	26 179	3%
34	Change Management	41550							544 520												544 520	528 660	15 860	3%
35	Cleaning Materials & Services	41600					436 467								557 445	540 728	646 002	328 654	598 328	589 029	3 696 653	3 500 765	195 888	6%
36	Communication	41650				2 140 634												166 790		172 363	2 479 787	2 407 560	72 227	3%
37	Computers-Disaster Recovery	41700									939 317										939 317	579 996	359 321	62%
38	Computers-Maintenance	41750									95 901										95 901	93 108	2 793	3%
39	Computers-Software Licences	41800							961 162		5 997 336										6 958 498	6 048 296	910 202	15%
40	Congresses & Seminars	41850	21 006	24 076	22 044			40 017	64 093	21 072			20 020								212 328	206 144	6 184	3%
41	Contingencies	41900											355 095	0	628 653	331 421	503 418	357 583	566 904		2 743 074	2 663 179	79 895	3%
42	Corporate Governance Training	42100	56 893																		56 893	55 236	1 657	3%
43	Depreciation	42200	30 376	48 597		53 170	456 177	89 417	77 009	220 132	2 008 962	87 539	268 969	38 007	2 965 035	2 176 074	2 967 735	3 420 642	3 033 449	2 473 520	20 414 810	18 902 587	1 512 223	8%
44	Document Exchange	42550					24 574								125 016	122 303	99 669	152 854	152 814	123 913	801 143	778 743	22 400	3%
45	Education & Training	42600	6 895	11 492	4 597	12 646	69 530	91 939	394 527	49 419	142 498	2 397 102	45 972	27 580	287 404	598 651	487 075	477 914	430 407	312 785	5 848 432	5 883 779	-35 347	-1%
46	Employee Assist/Counselling(OHS/	42650							210 377												210 377	204 250	6 127	3%
47	Employment Relations	42700							208 313												208 313	200 304	8 009	3%
48	Employment Equity	44750							89 968												89 968	87 348	2 620	3%
49	Forensic Investigations	42800								41 458											41 458	40 250	1 208	3%
50	HIV/Aids Management	42900							206 000												206 000	200 000	6 000	3%
51	Implementation & Training - SAP	42950																			0	94 424	-94 424	-100%
52	Insurance Short Term	43100						4 949 231													4 949 231	4 677 909	271 322	6%
53	Internal Audit Support	43200																			0	103 642	-103 642	-100%
54	IT Support	43250									1 712 186										1 712 186	519 694	1 192 592	69%

ANNEXURE R55

LEGAL AID SOUTH AFRICA
2010/2011 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Western Cape /Northern Cape Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Total 2010/11	2009/10	Variance	%
55	Leadership Programme	43450							1 278 900												1 278 900	830 000	448 900	54%
56	Legal Fees	43400					425 975														425 975	413 568	12 407	3%
57	Library and Publications	43450	4 625	4 614	4 621	4 625	4 625	4 625	9 794	4 625	4 625	118 290	4 625		112 373	117 979	219 613	85 128	76 589	186 705	968 082	1 145 711	-177 629	-16%
58	Maintenance - Buildings	43500					696 684								51 898	51 177	74 564	57 951	49 164	44 072	1 025 510	995 641	29 869	3%
59	Maintenance - office equipment	43550					76 261								138 025	139 046	276 009	447 469	173 638	169 683	1 420 132	1 378 769	41 363	3%
60	Management Fees	43560						568 869													568 869	552 300	16 569	3%
61	Moving Costs	43650					5 492						51 203								56 695	55 044	1 651	3%
62	Municipal Services	43700					787 330								625 482	613 448	1 211 717	1 140 908	1 161 536	797 006	6 337 429	5 302 881	1 034 548	20%
63	Office Rental and Operating Costs	43850													4 936 600	4 231 279	4 836 124	5 993 978	4 117 847	4 258 518	28 374 346	25 367 712	3 006 634	12%
64	Postage & Courier Charges	44000				30 834	28 055	322 227			29 134		29 310	2 345	59 934	83 779	90 224	88 419	77 335	77 335	918 930	892 165	26 765	3%
65	Printing and Stationery	44100	110 588	27 186	1 520	7 593	221 177	157 077	22 546	41 027	25 716	171 782	264 543	25 400	643 100	569 764	679 042	710 404	651 783	559 603	4 689 852	4 747 429	142 423	3%
66	Professional Services	44150		1 045 013								77 745									1 122 758	1 090 056	32 702	3%
67	Public Relations	44300	7 166	75 608	7 172	7 166	7 166	6 826	7 166	7 166	7 166	32 947	7 166	7 166	21 011	21 516	24 420	33 450	24 377	22 284	326 943	317 420	9 523	3%
68	Recruitment	44350							870 577												870 577	845 220	25 357	3%
69	Refreshment - Board	44450	38 007																		38 007	36 900	1 107	3%
70	Refreshment - Staff	44500	5 294	28 530	11 088	9 052	16 403	20 999	15 311	16 987	11 855	9 829	23 437	10 665	107 657	116 119	128 741	143 265	102 004	84 366	861 602	836 507	25 095	3%
71	Rental - Office Equipment	44550					400 609						3 938		67 616	173 265	340 986	269 030	161 212	185 003	1 601 660	1 545 707	55 953	4%
72	Security Costs	44600					545 414								78 579	91 989	111 866	90 139	99 461	135 997	1 153 585	1 118 975	34 590	3%
73	Signage & Branding	44700				514 838	5 275								6 953	7 127	5 276	24 770	6 240	16 689	589 168	572 008	17 160	3%
74	Skills Development Levy	44800	659	2 359	1 270	3 720	5 374	1 866	5 584	6 920	6 491	5 664	4 162	1 626	78 649	71 073	104 588	106 708	86 368	66 923	562 003	545 634	16 369	3%
75	Software Maintenance	44850							215 979		271 623										487 602	473 400	14 202	3%
76	Staff - Bursaries	44900							515 004												515 004	500 004	15 000	3%
77	Stakeholders Forum	44950											32 322		93 107	81 347	87 307	102 889	83 849	97 461	578 280	561 437	16 843	3%
78	Storage Costs	45000											137 609		40 041	15 151	269 036	156 374	213 955	46 477	876 644	853 052	25 592	3%
79	Subscriptions and Members Fees	45050	5 519	16 987	3 269	6 688	14 889	14 655	25 371	31 036		12 860	1 997		185 379	218 622	225 558	247 310	304 065	180 383	1 494 687	1 451 152	43 535	3%
80	Telephone & Fax	45200					1 365 610								1 956 181	2 368 237	2 398 138	2 052 765	2 234 322	1 827 726	14 202 979	13 789 300	413 679	3%
81	Tools & Equipment	45220	5 860	6 860	6 860	3 455	58 733	8 991	6 860	6 860	6 860	6 860	6 860	6 860	151 634	258 980	75 456	520 924	75 456	68 597	1 283 963	1 246 566	37 397	3%
82	Travel International	45320																			0	100 000	-100 000	-100%
83	Travelling and Other - Committees	45350	325 142																		325 142	315 672	9 470	3%
84	Travelling and Subsistence - Staff	45400	44 054	95 340	88 114	56 617	44 054	56 617	56 617	585 724	44 054	70 491	132 171		853 395	1 037 600	574 752	1 377 442	523 623	926 067	6 666 733	5 884 931	681 802	12%
85	Vehicle - Fuel	45500					77 421			16 494					947 731	1 093 021	740 368	1 020 408	1 098 335	1 425 632	6 419 409	6 232 436	186 973	3%
86	Vehicle - Licences	45550					1 174			724					16 713	16 004	17 366	25 763	28 454	23 445	129 644	125 868	3 776	3%
87	Vehicle - Maintenance	45450					16 724			10 749					251 686	339 383	292 060	354 767	309 424	413 986	1 988 780	1 930 854	57 926	3%
88	Vehicle - Tracking	45660					4 558						1 269 600								1 274 158	1 204 308	69 850	6%
89	Website																				0	855	-855	-100%
90	Wide Area Network	45650									7 681 600										7 681 600	7 481 724	199 876	3%
91	Workmens Compensation	45700						639 300													639 300	620 680	18 620	3%
92	Workshops	45750	121 509	70 160	11 463	14 863	35 982	51 584	20 634	25 792	20 750	14 185	1 088 266	6 449	484 347	538 582	593 069	558 383	555 551	416 653	4 726 242	4 588 584	137 658	3%
	Operating Budget		**1 940 907**	**1 456 825**	**162 017**	**4 926 907**	**5 831 733**	**10 058 709**	**6 021 025**	**1 088 185**	**19 006 075**	**3 005 294**	**3 767 868**	**126 098**	**16 471 644**	**16 021 663**	**18 180 416**	**20 513 083**	**16 998 490**	**15 702 222**	**161 278 161**	**149 462 732**	**11 815 429**	**7.9%**
	Total Operating Budget		**3 031 433**	**4 043 422**	**1 388 565**	**7 462 226**	**13 224 973**	**31 497 512**	**41 351 450**	**11 445 568**	**27 401 226**	**14 024 200**	**93 793 938**	**5 182 434**	**129 477 817**	**122 043 414**	**169 421 654**	**152 764 041**	**137 925 468**	**99 897 774**	**1 065 377 115**	**932 588 734**	**102 788 381**	**11%**
	CAPITAL BUDGET																							
93	Computer Hardware	10100	27 597	38 305		61 374	284 281	201 011	95 763	242 052	406 894	103 991	151 079	84 443	1 384 657	1 340 326	1 421 987	1 315 124	1 176 689	1 311 587	9 647 160	2 206 270	7 440 890	337%
94	Furniture and Equipment	10300																			0	182 004	-182 004	-100%
95	Leasehold Improvements	10200					762 456								562 500	62 500	687 500	375 000	837 500	125 000	3 412 456	8 158 601	-4 746 145	-58%
96	Motor Vehicles	10050													162 922	682 640	1 000 746	1 194 620	1 194 620	1 023 960	5 259 508	11 277 331	-6 017 823	-53%
97	National Footprint	10700																			0	5 233 607	-5 233 607	100%
98	CAPEX Expansion																				0		0	100%
	Total Capital Budget		**27 597**	**38 305**	**0**	**61 374**	**1 045 737**	**201 011**	**95 763**	**242 052**	**406 894**	**103 991**	**151 079**	**84 443**	**2 110 079**	**2 085 466**	**3 110 233**	**2 884 744**	**3 208 809**	**2 460 547**	**18 319 124**	**27 057 813**	**-8 738 689**	**-32%**
	Total Budget		**3 059 030**	**4 081 727**	**1 388 565**	**7 523 600**	**14 271 710**	**31 698 523**	**41 447 213**	**11 687 620**	**27 808 120**	**14 128 191**	**93 945 017**	**5 266 877**	**131 587 896**	**124 128 880**	**172 531 887**	**155 648 785**	**141 134 277**	**102 358 321**	**1 083 696 239**	**959 646 547**	**124 049 692**	**13%**

ANNEXURE

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LEGAL AID SOUTH AFRICA
SALARIES BUDGET 2010/2011

Pers. No	Employee Group	New levels 10/11	Position	Total CTC
Filled	Permanent Employees	LP-10-5	Senior Litigator	704 008.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00

Legal Aid
South Africa

LEGAL AID SOUTH AFRICA
BUDGET 2011/12

Office of the CFO
February 2012

LEGAL AID SOUTH AFRICA
2011/2012 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Western Cape /Northern Cape Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Total 2011/12	Total 2010/11	Variance	%
	DIRECT COSTS																							
1	Basic Salary	30050					2 060 725					4 030 083	8 920 865		84 786 179	76 499 941	100 500 230	99 648 269	83 137 833	63 771 801	523 355 926	484 363 871	38 992 055	8%
2	Bonuses	30100					126 009					208 248	279 787		5 085 664	4 594 001	5 802 441	5 738 919	4 701 885	3 903 095	30 440 050	25 736 903	4 703 147	18%
3	Housing Allowance	30150					5 472					6 000	71 352		923 706	873 504	991 876	1 150 134	870 816	1 042 237	5 935 097	4 131 975	1 803 122	44%
4	Medical Aid Contribution	30200					12 168					60 840	103 239		1 712 132	1 383 585	1 731 976	1 435 723	1 549 674	1 437 732	9 427 072	7 799 602	1 627 470	21%
5	Motor Car Allowance	30450					209 136						29 257		60 000	361 340	934 839	400 485	224 951	652 860	2 872 867	3 167 913	-295 046	-9%
6	Pension Contribution	30550										228 562	367 713		7 207 615	6 534 781	8 186 376	7 843 207	6 660 634	5 454 746	42 483 633	32 104 167	10 379 466	32%
7	UIF Contribution	30650					7 440					10 416	17 856		428 545	404 736	525 534	519 311	450 866	351 472	2 716 176	2 586 308	129 868	5%
8	Increase in legal capacity	30 710											20 000 000								20 000 000	72 000 000	-52 000 000	-72%
			0	0	0	0	2 420 949	0	0	0	0	4 544 149	29 790 069	0	100 203 841	90 651 891	118 673 272	116 736 048	97 596 660	76 613 943	637 230 821	631 890 739	5 340 082	1%
	ADMIN SUPPORT COST																							
9	Basic Salary	40050	860 226	2 343 927	1 103 870	2 463 934	4 205 444	8 325 175	4 847 760	10 200 656	7 703 693	2 377 220	4 449 780	1 959 979	14 732 391	15 027 894	15 899 838	16 894 117	14 069 727	12 245 991	139 711 621	124 970 995	14 740 625	12%
10	Bonuses	40100	12 349	133 235	65 370	147 191	326 158	618 024	364 130	678 207	596 236	115 291	306 355	163 332	1 189 219	1 227 869	1 292 584	1 368 310	988 415	997 529	10 589 826	8 591 525	1 998 301	23%
11	Housing Allowance	40150	9 600	9 600	36 000	42 552	201 600	196 152	97 661	131 297	247 159	46 908	201 600	115 200	864 000	912 000	966 000	1 024 152	1 067 306	768 000	6 936 767	4 058 550	2 878 237	71%
12	Medical Aid Contribution	40200	11 592	24 336	12 168	84 600	249 633	332 037	133 272	174 897	238 239	60 840	264 393	145 593	937 440	920 331	1 121 112	908 736	915 121	753 840	7 288 180	6 493 860	794 320	12%
13	Motor Car Allowance	40450		49 200	90 000			189 290	298 081	438 408	580 233	203 636	102 000			74 437	163 813	82 200		32 269	2 303 568	2 793 968	-490 400	-18%
14	Pension Contribution	40550	17 783	25 955		140 211	469 668	760 344	353 506	622 845	454 252	234 733	494 568	235 197	1 712 475	1 755 762	1 791 577	1 900 625	1 643 503	1 421 603	14 034 608	12 558 130	1 476 478	12%
15	UIF Contribution	40650	2 976	4 464	1 488	10 416	34 224	44 640	22 320	41 664	37 200	8 928	34 224	17 856	142 848	147 312	157 728	166 656	141 360	123 504	1 139 808	1 076 196	63 612	6%
16	Incentives payments - Staff	43000							34 183 697												34 183 697	30 563 078	3 620 619	11.8%
17	Group Life	43050							14 468 448												14 468 448	12 890 710	1 577 736	12%
			914 526	2 590 717	1 308 896	2 888 904	5 486 726	10 465 663	54 768 875	12 287 975	9 857 013	3 047 556	5 852 921	2 637 157	19 578 373	20 065 626	21 392 652	22 344 796	18 825 432	16 342 736	230 656 544	203 997 013	26 659 531	13%
	OTHER DIRECT EXPENDITURE																							
18	Judicare	35250													9 435 607	10 046 190	22 169 310	14 202 449	16 665 777	6 246 462	78 785 795	74 107 579	4 678 216	6%
19	Disbursements	35950													322 975	177 229	491 294	387 832	186 714	272 226	1 838 270	1 737 349	100 921	6%
20	Expert Witness	35150													359 703	297 223	606 762	295 332	455 329	235 697	2 250 046	1 910 506	339 540	18%
21	Co-operation Agreements	35050											2 923 764		321 168	109 200	2 539 693	1 527 407		76 003	7 497 235	7 153 756	343 479	5%
22	Impact Litigation	35200										5 611 632									5 611 632	5 290 000	321 632	6%
23	Travelling and Subsistence-Circuit	36060											0		80 962	250 545	87 104	112 820	72 916	94 904	699 251	662 551	36 700	6%
24	Case Backlog	35900											30 000 000								30 000 000	25 000 000	5 000 000	20%
25	Child Act	35060											3 165 000								3 165 000	3 000 000	165 000	6%
26	Child Justice Act	35070											10 550 000								10 550 000	10 000 000	550 000	6%
27	FIFA World Cup	35 070											0								0	11 916 000	-11 916 000	-100%
			0	0	0	0	0	0	0	0	0	5 611 632	49 867 064	0	10 520 415	10 880 387	25 914 163	16 525 840	17 380 736	6 925 292	140 397 229	140 777 741	-380 512	0%
	OPERATING BUDGET																							
28	Achiever Awards	41060							229 910												229 910	216 712	13 198	6%
29	Advertising	41100				2 191 844		95 337					21 923								2 309 104	2 169 328	139 776	6%
30	Annual Report	41150	275 904																		275 904	261 266	14 638	6%
31	Audit Fees	41250						2 535 980													2 535 980	2 348 365	187 615	8%
32	Bank charges	41350						633 770													633 770	598 162	35 608	6%
33	Board fees	41450	952 646																		952 646	898 813	53 833	6%
34	Call Centre Support	41510											201 272								201 272	189 879	11 393	6%
35	Call Centre Maintenance Equipment	41520											213 571								213 571	201 957	11 614	6%
36	Change Management	41550							571 964												571 964	541 730	30 234	6%
37	Cleaning Materials	41600					578 243								771 625	549 689	851 699	401 001	711 326	630 261	4 493 844	3 922 921	570 923	15%
38	Communication	41650				2 553 188												0			2 553 188	2 416 768	136 420	6%
39	Computer - Disaster Recovery	41700									904 337										904 337	939 317	-34 980	-4%
40	Computer - Maintenance	41750									101 634										101 634	95 901	5 733	6%
41	Computer - Software Licences	41800						25 000	999 609	92 984	5 925 559										7 043 152	7 611 145	-567 993	-7%
42	Congress & Seminar	41850	22 064	27 035	23 155			42 033	67 324	22 134			21 514								225 259	212 328	12 931	6%
43	Contigencies	41900											420 000		250 000	262 500	262 500	250 000	262 500	262 500	1 970 000	1 851 630	118 370	6%
44	Corporate Governance Training	42100	60 358																		60 358	56 893	3 465	6%
45	Depreciation	42200	40 165	64 241		70 285	603 021	4 469 788	101 917	290 993	2 634 892	115 718	355 551	50 246	4 301 025	3 813 842	5 226 737	5 102 976	4 625 948	4 612 603	36 479 946	20 414 810	16 065 138	79%
46	Document Exchange	42550					31 278								153 699	133 293	90 674	146 720	150 922	133 635	840 221	798 035	42 186	5%
47	Education & Training	42600	7 157	11 927	4 771	13 125	72 165	95 424	409 480	53 573	147 899	2 492 104	323 796	28 626	428 569	609 958	498 580	547 147	502 097	395 684	6 642 081	6 306 951	335 130	5%
48	Employee Assist/counselling(OHS)	42650							227 544												227 544	214 034	13 510	6%
49	Employment Relations	42700							251 385												251 385	237 519	13 866	6%
50	Employment Equity	44750							95 447												95 447	89 968	5 479	6%
51	Forensic Investigations	42800								43 982											43 982	41 458	2 525	6%
52	HIV/Aids Management	42900							218 546												218 546	206 000	12 546	6%
53	Insurance Short Term	43100						7 866 294													7 866 294	5 741 218	2 125 076	37%
54	IT Support	43250									1 350 458										1 350 458	1 914 463	-564 005	-29%
55	Leadership Programme	43450							1 356 791												1 356 791	1 278 900	77 891	6%

ANNEXURE A

1078264

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LEGAL AID SOUTH AFRICA
2011/2012 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Western Cape /Northern Cape Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Total 2011/12	Total 2010/11	Variance	%
56	Legal Fees	43400					402 700														402 700	380 975	21 725	6%
57	Library & Publications	43450	4 759	4 749	4 755	4 759	4 759	4 759	10 076	4 759	4 759	2 627 461	4 759		66 000	76 500	69 500	79 000	66 500	59 000	3 096 854	957 385	2 139 469	223%
58	Maintenance - Buildings	43500					731 518								95 554	84 834	94 560	77 144	45 388	46 277	1 175 276	1 105 242	70 034	6%
59	Maintenance - Office Equipment	43550					97 353					7 278			101 464	165 350	285 795	580 889	149 355	207 095	1 595 579	1 553 567	42 012	3%
60	Management Fees - Travel	43560						587 338													587 338	553 881	33 457	6%
61	Moving costs	43650																0			0	57 055	-57 055	-100%
62	Municipal Services	43700					1 118 040								680 690	747 793	1 431 979	1 118 657	1 382 375	971 553	7 451 087	6 320 222	1 130 865	18%
63	Office Rental & Operating costs	43850													6 133 926	4 950 651	5 427 228	6 740 546	4 631 014	4 601 032	32 484 397	29 116 355	3 368 042	12%
64	Postage & Courier	44000				32 357	29 438	336 148			30 573		30 758	2 461	90 882	87 860	96 105	111 691	150 148	81 155	1 081 577	1 017 636	63 941	6%
65	Printing & Stationery	44100	119 567	29 395	1 643	8 210	239 137	166 046	24 376	44 359	27 804	187 353	324 948	27 462	678 123	607 371	798 403	864 449	704 971	625 321	5 478 938	5 215 061	263 877	5%
66	Professional Services	44150		996 943								74 169	203 517					18 000			1 292 629	1 218 313	74 316	6%
67	Public Relations	44300	3 360	94 359	3 360	3 360	3 360	3 360	3 360	3 360	3 360	3 360	3 360	3 360	36 960	47 040	30 240	43 680	36 960	33 600	359 789	340 406	19 393	6%
68	Recruitment	44350							922 812												922 812	870 577	52 235	6%
69	Redeployment of staff	44400																				26 123	-26 123	-100%
70	Refreshment - Board	44450	40 323																		40 323	38 007	2 316	6%
71	Refreshment - Staff	44500	5 010	28 226	10 493	8 765	15 524	21 101	14 491	17 305	11 327	5 862	80 698	10 093	140 180	111 528	120 087	190 062	101 850	87 254	979 856	924 107	55 751	6%
72	Rental - Office Equipment	44550					418 009						4 110		70 346	404 411	637 214	477 631	280 123	194 586	2 486 430	1 815 676	670 754	37%
73	Security Costs	44600					730 140								251 760	86 505	173 595	66 448	85 775	143 455	1 537 677	1 274 946	262 731	21%
74	Signage& Branding	44700				649 849	6 967									1 486		0	0	0	658 302	623 620	34 682	6%
75	Skills Development Levy	44800	740	2 016	949	2 119	3 617	7 160	4 169	8 773	6 625	2 044	3 827	1 686	71 941	68 263	64 393	110 357	188 462	62 195	609 335	575 155	34 180	6%
76	Software Maintenance	44850							228 938		287 920										516 858	343 602	173 256	50%
77	Staff Bursary	44900							546 806												546 806	515 004	31 802	6%
78	Stakeholders Forum	44950											32 932		91 215	83 175	75 916	121 171	85 432	99 302	589 144	556 645	32 499	6%
79	Storage Costs	45000					168 873								43 260	18 593	311 818	252 940	106 070	57 000	958 554	902 240	56 314	6%
80	Subscription and Members fees	45050	19 685	19 620	3 775	7 724	17 196	16 927	29 304	35 847	11 000	16 653	17 899		185 450	261 270	296 338	272 361	328 937	229 220	1 767 206	1 664 447	102 759	6%
81	Syspro Support	45060						30 000													30 000	30 000		0%
82	Telephone & Fax	45200					1 768 174						451 373		2 021 016	2 288 588	2 425 145	1 668 261	2 064 601	1 846 573	14 533 731	13 772 867	760 864	6%
83	Tools & Equipment	45220	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	55 000	70 000	55 000	65 000	55 000	50 000	410 000	1 566 440	-1 156 440	-74%
84	Travel and other - Committees	45350	344 651																		344 651	325 142	19 509	6%
85	Travel & Subsistence - Staff	45400	44 350	98 320	90 775	57 293	44 350	57 292	57 292	909 000	44 095	120 359	150 295		882 447	1 104 771	641 549	1 475 220	529 573	981 335	7 288 317	6 862 991	425 326	6%
86	Vehicle - Fuel	45500					80 518			17 189					1 207 872	1 148 058	716 738	1 089 118	1 019 425	1 505 183	6 784 192	6 250 057	534 045	9%
87	Vehicle - Licences	45550					1 350			827					22 932	20 681	20 277	24 872	35 185	30 296	156 420	146 878	9 542	6%
88	Vehicle - Maintenance	45450					19 004			12 271					293 084	363 828	288 711	464 104	337 006	357 455	2 133 462	2 022 186	111 276	6%
89	Vehicle - Tracking	45560					1 409 562														1 409 562	1 274 159	135 403	11%
90	Wide Area Network	45650									9 801 138										9 801 138	7 681 600	2 119 538	28%
91	Workmens Compensation	45700						677 918													677 918	639 300	38 618	6%
92	Workshops	45750	119 929	69 819	11 314	14 670	35 514	50 913	20 365	25 456	20 481	15 235	1 103 729	6 365	586 090	529 808	715 212	569 922	555 387	538 053	4 988 240	4 753 918	234 322	5%
	Operating Budget		2 055 669	1 451 651	159 991	5 622 549	8 634 810	17 729 586	6 396 905	1 587 811	21 318 861	5 672 595	3 974 831	135 299	19 711 110	18 697 846	21 704 994	22 929 366	19 190 311	18 841 622	195 825 608	165 068 257	30 757 351	19%
	Total Operating Budget		2 980 195	4 042 368	1 468 887	8 511 453	16 542 485	28 195 251	61 165 779	13 675 786	31 175 874	18 875 932	89 484 865	2 772 456	150 013 739	140 295 550	187 685 080	178 536 050	152 993 138	118 723 592	1 204 110 201	1 141 733 749	62 376 452	5%
	CAPITAL BUDGET																							
93	Computer Hardware	10100		10 996			259 755	95 880	84 346	254 135	157 531	53 222	46 094	32 989	777 479	805 092	1 015 001	921 278	637 394	381 949	5 533 141	22 093 966	-16 560 825	-75%
94	Corporate IT										1 821 554										1 821 554		1 846 517	100%
95	Computer Software	10400									171 000										171 000	508 043	-337 043	-66%
96	Furniture & Equipment	10300																				995 526	-995 526	-100%
97	Leasehold Improvements	10200					816 865								887 750	424 000	861 250	1 378 000	530 000	530 000	5 427 865	5 289 401	138 464	3%
98	Motor vehicles	10050													1 041 087	749 420	856 480	749 420	856 480	535 300	4 788 187	8 629 996	-3 841 809	-45%
	Total Capital Budget		0	10 996	0	0	1 076 620	95 880	84 346	254 135	2 150 085	53 222	46 094	32 989	2 706 316	1 978 512	2 732 731	3 048 698	2 023 874	1 447 249	17 741 747	37 516 932	-19 750 222	-53%
	Total Budget		2 980 195	4 053 364	1 468 887	8 511 453	17 619 105	28 291 131	61 250 125	14 129 921	33 325 959	18 929 154	89 530 979	2 805 445	152 720 055	142 274 062	190 417 811	181 584 748	155 017 012	120 170 841	1 221 851 948	1 179 250 681	42 626 230	4%

LEGAL AID SOUTH AFRICA
SALARIES BUDGET 2011/2012

Pers. No	Employee Group	New Level 2011/2012	Position	Total CTC
Filled	Permanent Employees	LP-10-10	Senior Litigator	850 465.64
Filled	Permanent Employees	LP-10-7	Senior Litigator	813 378.17
Filled	Permanent Employees	LP-10-6	Senior Litigator	801 377.91
Filled	Permanent Employees	LP-10-7	Senior Litigator	813 378.17
Filled	Permanent Employees	LP-10-2	Senior Litigator	755 129.51
Filled	Permanent Employees	LP-10-7	Senior Litigator	813 378.17
Vacant	Permanent Employees	LP-10-1	Senior Litigator	746 624.88
Vacant	Permanent Employees	LP-10-1	Senior Litigator	746 624.88
Vacant	Permanent Employees	LP-10-1	Senior Litigator	746 624.88

LEGAL AID SOUTH AFRICA
BUDGET 2012/13

Office of the CFO
05 March 2012

LEGAL AID SOUTH AFRICA
2012/2013 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Kwazulu Natal Region	Mpamalanga/ Limpopo Region	Western Cape/ Northern Cape Region	Total 2012/13	Total 2011/12	Variance	%
	DIRECT COSTS																							
1	Basic Salary	30050					2 073 781					4 754 708	6 387 936		100 251 700	88 170 583	115 754 615	95 628 034	73 633 428	111 713 181	598 367 967	561 744 710	36 623 257	7%
2	Bonuses	30100					136 839					327 933	494 151		6 356 954	5 580 626	7 241 830	5 864 797	4 830 025	7 148 097	37 981 252	30 792 364	7 188 888	23%
3	Housing Allowance	30150										6 000	230 400		1 131 250	1 119 871	1 161 082	1 119 593	1 354 948	1 482 614	7 605 758	7 314 759	290 999	4%
4	Medical Aid Contribution	30200					24 336					60 840	292 842		2 201 145	1 765 481	2 184 690	1 901 827	1 857 746	2 068 392	12 357 279	12 343 007	14 272	0%
5	Motor Car Allowance	30450					173 136									348 388	1 025 084	134 843	676 613	412 740	2 770 805	2 923 763	-152 958	-5%
6	Pension Contribution	30550					197 049					472 223	711 577		9 154 014	8 036 101	10 428 235	8 445 308	6 955 236	10 293 259	54 693 002	46 646 276	8 046 726	17%
7	UIF Contribution	30650					7 487					11 979	43 423		490 818	454 726	567 352	495 176	402 762	574 570	3 048 293	2 968 695	79 598	3%
			0	0	0	0	2 612 528	0	0	0	0	5 633 683	8 160 329	0	119 585 892	105 475 757	138 362 887	113 589 579	89 710 758	133 692 854	716 924 357	664 733 574	52 090 783	8%
	ADMIN SUPPORT COST																							
8	Basic Salary	40050	781 790	2 464 726	1 157 479	2 422 735	4 356 987	9 108 431	5 703 107	11 074 660	7 940 169	1 584 330	3 071 926	1 986 257	11 805 812	12 251 706	12 712 801	11 438 108	9 322 189	13 498 223	122 681 437	109 997 699	12 683 738	12%
9	Bonuses	40100	51 545	140 227	68 192	169 032	349 336	688 778	419 033	782 747	643 817	110 040	217 437	165 521	943 456	1 004 732	1 028 224	919 816	752 863	1 086 024	9 531 819	8 155 389	1 376 430	17%
10	Housing Allowance	40150	13 752	9 600	36 000	32 952	201 600	205 752	97 661	78 461	266 726	28 800	67 200	105 600	587 998	625 331	677 831	646 331	485 332	715 701	4 882 626	4 422 127	460 501	10%
11	Medical Aid Contribution	40200	21 789	12 168	12 168	70 461	243 360	310 320	146 016	202 977	224 541	48 672	97 344	133 848	648 889	691 108	775 353	694 774	477 057	663 642	5 474 487	5 074 530	399 957	8%
12	Motor Car Allowance	40450	29 257	48 209	90 000			189 290	298 081	394 008	587 703	72 000	102 000			186 922	159 262		31 373	79 916	2 269 012	2 439 406	-170 394	-7%
13	Pension Contribution	40550	74 225	28 434		175 871	490 083	991 838	474 834	840 209	866 171	158 458	313 110	238 351	1 358 576	1 446 815	1 408 849	1 324 535	1 084 123	1 492 080	12 768 563	10 401 938	2 364 627	23%
14	UIF Contribution	40650	2 995	4 492	1 497	10 482	32 942	44 921	23 958	41 926	37 434	5 989	13 476	16 471	98 992	103 359	112 094	109 448	80 057	119 372	850 915	767 288	83 627	11%
15	Incentives payments - Staff	43000						37 617 539													37 617 539	35 369 034	2 248 505	6%
16	Group Life	43050						15 947 837													15 947 837	13 909 110	2 038 727	15%
			975 352	2 708 847	1 385 336	2 881 533	5 655 308	65 104 703	7 162 690	13 414 989	10 566 560	2 008 290	3 882 495	2 646 048	15 443 723	16 309 973	16 874 414	15 124 012	12 233 004	17 654 958	212 022 237	190 536 519	21 485 718	11%
	OTHER DIRECT EXPENDITURE																							
17	Judicare	35250													9 435 607	10 049 190	22 189 310	16 665 777	6 246 462	14 202 449	78 785 795	93 418 388	-14 632 591	-16%
18	Disbursements	35950													275 871	180 479	716 494	186 714	272 226	387 832	2 019 616	2 501 937	-482 321	-19%
19	Expert Witness	35150													418 937	297 223	606 762	455 329	235 697	295 332	2 309 280	1 279 379	1 029 901	81%
20	Co-operation Agreements	35050										530 000	2 982 239		321 168	109 200	2 539 693		76 003	1 527 407	8 085 710	7 997 235	88 475	1%
21	Impact Litigation	35200										5 081 632									5 081 632	6 142 093	-1 060 461	-17%
22	Travelling and Subsistence-Circuit	36060													80 499	250 545		72 916	94 904	66 820	565 684	1 218 611	-652 927	-54%
23	Case Backlog	35900											32 000 000								32 000 000	0	32 000 000	100%
			0	0	0	0	0	0	0	0	0	5 611 632	34 982 239	0	10 532 082	10 883 637	26 052 259	17 380 736	6 926 292	16 479 840	128 847 717	112 557 641	16 290 076	14%
	OPERATING BUDGET																							
24	Achiever Awards	41060							229 910												229 910	35 504	194 406	548%
25	Advertising	41100				2 104 170		192 145					29 923								2 326 238	4 775 219	-2 448 981	-51%
26	Annual Report	41150	275 904																		275 904	275 904		0%
27	Audit Fees	41250						2 688 139													2 688 139	2 535 980	152 159	6%
28	Bank charges	41350						729 883													729 883	1 123 558	-393 675	-35%
29	Board fees	41450	1 009 805																		1 009 805	904 606	105 199	12%
30	Call Centre Support	41510											201 272								201 272	201 272		0%
31	Call Centre Maintenance Equipment	41520											213 571								213 571	213 571		0%
32	Change Management	41550							473 631												473 631	479 894	-6 263	-1%
33	Cleaning Materials	41600					709 386								883 585	629 465	905 515	761 431	781 596	529 145	5 180 124	4 922 960	257 164	5%
34	Communication	41650				2 553 188															2 553 188	2 688 090	-134 902	-5%
35	Computer - Disaster Recovery	41700									994 771										994 771	904 337	90 434	10%
36	Computer - Maintenance	41750									101 634										101 634	101 634		0%
37	Computer - Software Licences	41800						61 300	1 059 586	120 000	6 698 735										7 939 620	6 534 679	1 404 941	21%
38	Congress & Seminar	41850	22 064	27 035	23 155			42 033	67 324	63 160			21 514								266 285	225 653	40 632	18%
39	Contigencies	41900											0		125 000	131 250	131 250	131 250	131 250	125 000	775 000	1 650 481	-875 481	100%
40	Corporate Governance Training	42100	60 358																		60 358	60 358		0%
41	Depreciation	42200	40 165	68 095		74 502	639 202	4 737 975	108 032	308 453	2 792 986	115 716	355 551		4 559 082	4 057 535	5 540 341	4 923 011	4 889 360	5 251 086	38 461 092	36 479 948	1 981 144	5%
42	Document Exchange	42550					16 300								127 969	135 160	115 122	121 139	121 608	147 819	785 116	834 087	-48 971	-6%
43	Education & Training	42600	8 820	11 688	4 676	12 863	70 722	93 516	401 290	108 780	144 941	2 421 764	136 220	35 280	520 404	823 956	513 196	512 726	414 417	714 185	6 949 443	6 200 311	749 132	12%
44	Employee Assist/counselling(OHS)	42650							227 544												227 544	205 087	22 457	11%
45	Employment Relations	42700							251 385												251 385	131 519	119 866	91%
46	Employment Equity	44750							95 447												95 447	95 447		0%
47	Forensic Investigations	42800								50 000											50 000	38 637	11 363	29%
48	HIV/Aids Management	42900							221 496												221 496	382 138	-160 642	-42%
49	Insurance Short Term	43100						7 866 294													7 866 294	7 424 261	442 033	6%
51	IT Support	43250									1 485 504										1 485 504	3 585 444	-2 099 940	-59%
52	Leadership Programme	43450							1 356 791												1 356 791	1 627 638	-270 847	-17%
53	Legal Fees	43400					399 298														399 298	1 161 344	-762 046	-66%
54	Library & Publications	43450	4 759	4 749	4 759	4 759	4 759	4 759	10 076	4 759	4 759	2 611 159	4 759		72 200	95 036	78 842	63 175	56 050	85 025	3 114 381	2 961 842	152 539	5%
55	Maintenance - Buildings	43500					646 000								126 814	92 608	97 517	49 002	46 277	100 584	1 160 802	1 209 043	-48 241	-4%
56	Maintenance - Office Equipment	43550					97 353					5 000			125 649	107 016	197 542	189 969	224 321	324 618	1 271 468	1 399 922	-127 434	-9%
57	Management Fees - Travel	43560						587 338													587 338	587 338		0%
58	Moving costs	43650					15 000														15 000	167 393	-152 393	-91%
59	Municipal Services	43700					1 305 936								812 910	942 308	1 597 951	1 422 975	1 029 846	1 276 984	8 388 909	7 449 136	939 773	13%
60	Office Rental & Operating costs	43850													7 575 678	5 007 216	6 106 958	5 301 677	5 526 383	7 124 619	36 642 533	32 495 565	4 146 968	13%
61	Postage & Courier	44000				43 035	65 549	239 400			43 890		40 908		77 947	106 817	64 864	154 587	70 490	79 791	987 278	1 374 268	-386 990	-28%
62	Printing & Stationery	44100	119 567	29 395	1 643	8 210	239 137	166 046	24 376	56 000	27 804	187 353	324 948	24 000	625 736	696 571	626 763	645 261	574 939	882 975	5 460 744	6 498 988	-1 038 244	-16%
63	Professional Services	44150	0	996 943								50 000	203 517							18 000	1 268 460	1 267 038	1 422	0%

ANNEXURE A

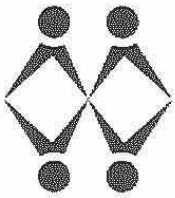
1084268

LEGAL AID SOUTH AFRICA
2012/2013 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Western Cape/ Northern Cape Region	Total 2012/13	Total 2011/12	Variance	%
64	Public Relations	44300	3 360	94 359	3 360	3 360	3 360	3 360	3 360	3 360	3 360	24 000	3 360		42 080	45 960	36 960	36 960	33 600	42 960	387 119	357 017	30 102	8%
65	Recruitment	44350							672 641												672 641	1 010 487	-137 846	-14%
66	Redeployment of staff	44400																				24 914	-24 914	-100%
67	Refreshment - Board	44450	40 323																		40 323	40 323		0%
68	Refreshment - Staff	44500	768	28 228	10 493	8 765	15 524	23 076	14 491	10 752	11 327	9 000	80 698	10 093	144 554	141 505	118 247	87 832	82 156	179 495	977 065	917 628	59 377	6%
69	Rental - Office Equipment	44550					628 000						4 110		144 597	279 460	586 562	281 544	486 422	551 239	2 961 934	2 462 098	499 836	20%
70	Security Costs	44600					994 172								103 593	99 585	180 370	89 119	219 629	68 480	1 754 948	1 591 065	163 883	10%
71	Signage& Branding	44700				649 849	7 037														656 886	1 379 108	-722 222	-52%
72	Skills Development Levy	44800	782	2 465	1 157	2 423	6 431	9 216	5 703	11 075	7 940	6 339	9 831	1 986	112 058	100 422	128 467	107 066	88 967	133 406	735 735	831 350	-95 615	-12%
73	Software Maintenance	44850							308 544		287 920										596 464	587 896	8 568	1%
74	Staff Bursary	44900							546 806												546 806	275 959	270 847	98%
75	Stakeholders Forum	44950											32 932		82 279	75 453	88 164	83 543	99 302	118 654	580 327	584 428	-4 101	-1%
76	Storage Costs	45000					168 873								51 843	15 345	284 568	177 393	81 970	197 105	977 098	995 791	-18 693	-2%
77	Subscription and Members fees	45050	44 139	19 620	3 775	7 724	17 196	16 927	29 304	21 800	11 000	18 800	17 899		199 261	301 190	295 188	277 926	199 030	263 007	1 741 787	1 850 065	-108 278	-6%
78	Syspro Support	45060						30 000													30 000	30 000		0%
79	Telephone & Fax	45200					1 768 174								1 871 711	2 189 268	2 581 092	2 026 665	1 651 177	1 828 152	14 116 239	13 629 726	486 513	4%
80	Tools & Equipment	45220	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	55 000	69 992	55 000	55 000	50 000	65 000	409 992	2 858 040	-2 448 048	-86%
81	Travel and other - Committees	45350	344 651																		344 651	424 534	-79 883	-19%
82	Travel & Subsistence - Staff	45400	10 000	98 320	90 775	57 293	44 350	57 292	57 292	1 188 996	44 095	120 000	150 295		803 291	1 121 276	655 248	529 572	981 335	1 497 657	7 507 087	7 791 835	-284 748	-4%
83	Vehicle - Fuel	45500					85 349								1 080 282	1 263 455	768 947	1 081 480	1 505 183	1 298 277	7 080 953	7 356 571	-275 618	-4%
84	Vehicle - Licences	45550					3 500								23 170	20 776	24 009	35 181	30 296	26 112	163 043	198 654	-35 611	-18%
85	Vehicle - Maintenance	45450					20 904								299 208	400 165	304 681	348 034	357 455	400 672	2 129 118	2 493 248	-364 130	-15%
86	Vehicle - Tracking	45560					1 307 779														1 307 779	1 693 925	-386 146	-23%
87	Wide Area Network	45650									11 002 536										11 002 536	9 803 019	1 199 517	12%
88	Workmens Compensation	45700						677 918													677 918	677 918		0%
89	Workshops	45750	119 929	69 819	11 315	14 670	35 514	50 913	20 364	32 200	20 481	15 600	1 103 729	13 800	482 553	531 584	703 791	565 366	549 302	599 559	4 940 489	5 190 159	-249 670	-5%
	Operating Budget		2 110 394	1 455 717	160 104	5 549 810	9 321 806	16 282 530	6 390 393	1 984 334	23 688 681	5 587 731	2 940 037	90 159	21 126 452	19 480 374	22 985 154	20 055 906	20 452 362	23 929 606	205 604 550	206 264 852	-660 302	0%
	Total Operating Budget		3 085 746	4 164 564	1 525 440	8 431 343	17 599 742	83 387 233	13 553 083	15 399 323	34 255 241	18 841 336	49 965 101	2 736 207	166 690 139	152 149 741	204 274 714	166 151 233	129 331 416	191 757 258	1 263 298 861	1 174 092 585	89 206 275	8%
	CAPITAL BUDGET																							
90	Computer Hardware	10100	18 316	0		47 665	18 316	18 316	10 958	18 316	64 223		266 753		274 659	268 037	515 981	175 804	226 984	344 093	2 288 422	7 721 189	-5 432 767	-70%
91	Corporate IT										3 058 961										3 058 961	1 821 554	1 237 407	100%
92	Computer Software	10400																				831 887	-831 887	-100%
93	Building Improvement	10170					816 865														816 865	1 951 473	-1 134 608	-58%
94	Furniture & Equipment	10300																				1 850 291	-1 850 291	-100%
95	Leasehold Improvements	10200													1 338 670	1 994 402	1 248 602	1 194 037	1 292 148	1 404 508	8 472 367	3 814 772	4 657 595	122%
96	Motor Vehicles	10050					215 674								1 401 878	970 531	1 294 041	1 725 388	1 401 878	1 833 225	8 842 616	4 439 684	4 402 932	99%
	Total Capital Budget		18 316	0	0	47 665	1 050 855	18 316	10 958	18 316	3 143 184	0	266 753	0	3 015 207	3 232 970	3 058 624	3 095 229	2 921 010	3 581 826	23 479 231	22 430 860	1 048 381	5%
	Total Budget		3 104 062	4 164 564	1 525 440	8 479 008	18 650 597	83 405 549	13 564 042	15 417 639	37 398 425	18 841 336	50 231 853	2 736 207	169 705 346	155 382 711	207 333 339	169 246 462	132 252 426	195 339 084	1 286 778 091	1 196 523 436	90 254 655	8%

LEGAL AID SOUTH AFRICA
SALARIES BUDGET 2012/2013

Pers. No	Employee Group	New level 2012/2013	Position	Total CTC
Filled	Permanent	LP-10-18	Senior Litigator	1 037 404.43
Filled	Permanent	LP-10-12	Senior Litigator	948 871.53
Filled	Permanent	LP-10-8	Senior Litigator	894 092.07
Filled	Permanent	LP-10-15	Senior Litigator	992 148.36
Filled	Permanent	LP-10-3	Senior Litigator	830 056.60
Filled	Permanent	LP-10-8	Senior Litigator	894 092.07
Vacant	Permanent	LP-10-1	Senior Litigator	808 726.61
Vacant	Permanent	LP-10-1	Senior Litigator	808 726.61
Vacant	Permanent	LP-10-1	Senior Litigator	808 726.61



Legal Aid
South Africa

LEGAL AID SOUTH AFRICA
BUDGET 2013/14

Office of the CFO
March 2013

LEGAL AID SOUTH AFRICA
2013/2014 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Western Cape/ Northern Cape Region	Total 2013/14	Total 2012/13	Variance	%
	SALARY COSTS																							
1	Basic Salary	30050	727 111	2 866 971	1 287 386	2 793 003	7 416 770	10 320 295	6 269 190	12 455 206	10 820 758	7 928 975	10 888 404	1 990 763	120 351 018	111 953 087	140 065 172	120 537 253	91 584 472	141 976 374	802 253 211	730 603 759	71 649 451	10%
2	Bonuses	30100	53 686	21 186	0	163 060	394 349	564 980	308 814	632 377	475 260	348 620	665 483	165 897	7 011 639	6 662 750	8 273 569	6 894 052	5 799 645	9 428 060	46 803 431	48 153 967	-1 350 536	-3%
3	Housing Allowance	30150	70 800	10 800	36 000	47 352	194 400	230 952	109 661	142 961	315 228	49 200	478 800	108 000	1 840 387	1 990 718	1 907 652	1 902 626	2 077 570	2 438 408	13 950 616	12 682 529	1 268 087	10%
4	Medical Aid Contribution	30200	22 599	12 168	12 168	85 176	255 168	338 607	158 184	216 927	237 285	119 943	401 301	121 680	2 933 736	2 345 879	2 837 214	2 500 174	2 426 107	2 498 590	17 522 908	18 092 795	-569 888	-3%
5	Motor Car Allowance	30450	60 000	49 200	90 000	168 000	173 136	303 290	298 081	303 689	349 200	72 000	102 000			649 292	1 188 535	127 049	724 887	574 767	5 233 125	5 090 022	143 104	3%
6	Pension Contribution	30550	77 308	30 511	0	169 139	611 556	925 057	400 378	629 221	535 257	506 707	1 072 175	238 892	11 034 410	10 224 528	12 274 605	10 316 718	8 723 610	12 421 485	70 391 558	68 392 600	1 998 958	3%
7	UIF Contribution	30650	2 995	4 492	1 497	10 482	38 635	46 416	23 958	41 348	40 429	19 362	58 315	14 974	577 317	563 522	679 788	595 437	487 909	698 076	3 904 954	3 952 546	-47 591	-1%
8	Incentives payments - Staff	43000							38 402 392												38 402 392	37 617 539	784 853	2%
9	Group Life	43050						15 587 707													15 587 707	15 947 637	-360 130	-2%
10	Improvement in conditions of service								14 432 868												14 432 868	0	14 432 868	100%
11	Increase in legal capacity	30710											5 742 000								5 742 000	0	5 742 000	100%
			1 014 498	2 995 330	1 427 052	3 436 212	9 084 017	28 317 368	60 414 525	14 630 830	12 773 417	9 044 808	19 408 478	2 640 205	143 748 507	134 329 776	167 228 537	142 873 319	111 824 200	169 035 759	1 034 224 767	940 533 593	93 691 174	10.0%
	OTHER DIRECT EXPENDITURE																							
12	Judicare	35250													8 869 471	9 443 419	20 857 951	15 665 830	5 871 674	13 350 302	74 058 647	78 786 795	-4 727 148	-6%
13	Disbursements	35950													266 843	179 759	716 494	188 714	272 226	387 832	2 009 868	2 019 616	-9 748	0%
14	Expert Witness	35150													418 937	297 223	606 782	455 329	235 697	295 332	2 309 280	2 309 280		0%
15	Co-operation Agreements	35050										561 800	3 161 173		321 168	109 200	2 539 693		76 003	1 527 407	8 296 444	8 085 710	210 734	3%
16	Impact Litigation	35200										5 081 632									5 081 632	6 995 351	-1 913 719	-27%
17	Travelling and Subsistence-Circuit	36060													76 477	250 545		72 916	94 904	66 820	561 662	565 684	-4 022	-1%
18	Case Backlog	35900											34 000 000								34 000 000	32 000 000	2 000 000	6%
19	Child Act	35060											2 502 000								2 502 000	2 105 000	397 000	19%
20	Child Justice Act	35070											8 340 000								8 340 000	7 017 000	1 323 000	19%
21	Child Justice centre - Infrastracture																					1 619 000	-1 619 000	-100%
			0	0	0	0	0	0	0	0	0	5 643 432	48 003 173	0	9 952 895	10 280 146	24 720 900	16 380 789	6 550 504	15 627 593	137 159 533	141 502 436	-4 342 903	-3%
	OPERATING BUDGET																							
22	Achiever Awards	41060							229 910												229 910	229 910		0%
23	Advertising	41100				2 104 170		192 145					29 923								2 326 238	2 326 238		0%
24	Annual Report	41150	275 904																		275 904	275 904		0%
25	Audit Fees	41250						3 420 171													3 420 171	2 688 139	732 032	27%
26	Bank charges	41350						729 883													729 883	729 883		0%
27	Board fees	41450	1 070 393																		1 070 393	1 009 805	60 588	6%
28	Call Centre Support	41510											41 272								41 272	201 272	-160 000	-79%
29	Call Centre Maintenance Equipment	41520											213 571								213 571	213 571		0%
30	Change Management	41550							473 631												473 631	473 631		0%
31	Cleaning Materials	41600					751 950								936 600	667 233	944 569	807 117	807 292	560 894	5 475 653	5 180 124	295 530	6%
32	Communication	41650				2 553 188															2 553 188	3 553 188	-1 000 000	-28%
33	Computer - Disaster Recovery	41700									1 050 823										1 050 823	994 771	56 052	6%
34	Computer - Maintenance	41750									101 634										101 634	101 634		0%
35	Computer - Software Licences	41800						64 978	1 123 161	127 200	7 100 659										8 415 997	7 939 620	476 377	6%
36	Congress & Seminar	41650	22 064	27 035	23 155			42 033	67 324	63 160			21 514								266 285	266 285		0%
37	Contigencies	41900	0												125 000	131 250	131 250	131 250	131 250	125 000	775 000	775 000		100%
38	Corporate Governance Training	42100	60 358																		60 358	60 358		0%
39	Depreciation	42200	42 575	72 181		78 972	677 554	4 990 147	114 514	326 960	2 960 565	122 659	376 884	32 107	4 559 082	4 285 081	5 850 600	5 265 440	5 163 164	5 545 147	40 463 632	38 461 092	2 002 540	5%
40	Document Exchange	42550					17 278								134 511	144 573	122 552	129 581	110 481	157 918	816 994	785 116	31 878	4%
41	Education & Training	42600	6 843	11 720	4 688	12 897	70 910	93 764	402 356	109 069	154 046	2 476 545	88 234	35 374	535 112	848 675	535 209	528 108	426 849	735 610	7 078 009	6 949 443	128 566	2%
42	Employee Assist/counselling(OHS)	42650							241 197												241 197	227 544	13 653	6%
43	Employment Relations	42700							251 385												251 385	251 385		0%
44	Employment Equity	44750							95 447												95 447	95 447		100%
45	Forensic Investigations	42800								50 000											50 000	50 000		0%
46	HIV/Aids Management	42900																			221 496	221 496		0%
47	Insurance Short Term	43100						7 483 388													7 483 388	7 866 294	-382 908	-5%
48	IT Support	43250									1 047 723										1 047 723	1 485 504	-437 781	-29%
49	Leadership Programme	43450							1 356 791												1 356 791	1 356 791		0%
50	Legal Fees	43400					399 298														399 298	399 298		0%
51	Library & Publications	43450	4 759	4 749	4 755	4 759	4 759	4 794	10 076	4 759	5 045	2 767 829	4 759		72 200	85 036	78 142	63 175	56 050	85 025	3 270 671	3 114 381	156 290	5%
52	Maintenance - Buildings	43500					648 000								126 814	92 698	97 517	49 002	46 277	100 584	1 160 802	1 160 802		0%
53	Maintenance - Office Equipment	43550					103 194					5 000			121 841	134 329	224 976	194 078	215 894	316 954	1 316 265	1 271 488	44 778	4%
54	Management Fees - Travel	43560						702 578													702 578	587 338	115 240	20%
55	Moving costs	43650					15 000														15 000	15 000		0%
56	Municipal Services	43700					1 384 292								861 684	998 846	1 700 293	1 514 772	1 091 637	1 353 603	8 905 127	8 388 909	516 218	6%
57	Office Rental & Operating costs	43850													7 847 254	5 726 854	7 253 215	6 005 424	6 321 590	7 895 116	41 049 363	36 642 533	4 406 830	12%
58	Postage & Courier	44000				45 617	69 482	253 764			46 523		20 410		83 988	97 128	68 240	159 736	76 958	99 945	1 021 794	987 278	34 516	3%
59	Printing & Stationery	44100	124 350	30 571	1 709	8 538	248 702	172 686	25 351	58 240	30 651	166 400	338 318	24 960	652 836	729 229	861 869	675 535	601 895	924 372	5 674 153	5 460 744	213 409	4%
60	Professional Services	44150		996 943								50 000	203 517							18 000	1 268 460	1 268 460		0%
61	Public Relations	44300	3 427	96 246	3 427	2 612	3 427	3 427	3 427	3 427	3 633	19 200	3 427		43 016	47 090	37 500	37 870	34 426	44 016	389 598	387 119	2 479	1%
62	Recruitment	44350							872 641												872 641	872 641		0%
63	Refreshment - Board	44450	40 323																		40 323	40 323		0%
64	Refreshment - Staff	44500	783	28 793	10 703	8 940	15 834	23 536	14 781	10 967	12 247	9 180	40 800	10 295	151 355	149 159	122 936	92 563	86 691	189 205	978 701	977 005	1 696	0%
65	Rental - Office Equipment	44550					664 037						6 000		220 033	304 679	661 555	291 135	516 278	500 627	3 164 342	2 961 934	202 409	7%

ANNEXURE A

1089272

65 R55

LEGAL AID SOUTH AFRICA
2013/2014 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Western Cape/ Northern Cape Region	Total 2013/14	Total 2012/13	Variance	%
66	Security Costs	44600					1 053 823								97 448	100 519	196 774	101 364	229 621	75 917	1 855 487	1 754 948	100 539	6%
67	Signage& Branding	44700				623 855	6 755														630 610	656 886	-26 276	-4%
68	Skills Development Levy	44800	877	2 613	1 227	2 568	6 817	9 769	6 045	11 739	8 417	6 719	10 421	2 105	120 300	106 448	137 019	113 491	94 306	141 411	782 290	735 735	46 555	6%
69	Software Maintenance	44850							308 544		287 920										596 464	596 464		0%
70	Staff Bursary	44900							546 806												546 806	546 806		0%
71	Stakeholders Forum	44950											33 713		86 438	79 341	91 050	87 848	104 420	124 768	607 576	580 327	27 251	5%
72	Storage Costs	45000					168 873								83 334	18 936	291 027	161 002	79 552	235 932	1 018 654	977 098	41 557	4%
73	Subscription and Members fees	45050	45 022	20 012	3 851	7 878	17 540	17 266	29 890	22 236	11 893	16 320	12 240		207 312	308 544	305 301	284 715	203 890	269 429	1 783 339	1 741 787	41 551	2%
74	Syspro Support	45060						30 000													30 000	30 000		0%
75	Telephone & Fax	45200					1 803 537														14 544 778	14 116 239	428 539	3%
76	Tools & Equipment	45220	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	1 926 173	2 280 049	2 664 542	2 092 190	1 911 028	1 887 259	409 992	409 992		0%
77	Travel and other - Committees	45350	344 651												55 000	69 992	55 000	55 000	50 000	65 000	344 651	344 651		0%
78	Travel & Subsistence - Staff	45400	10 200	100 286	92 591	56 439	45 237	58 057	58 438	1 212 776	47 676	101 796	153 301		804 064	1 124 428	657 090	531 061	984 094	1 501 888	7 541 400	7 507 087	34 313	0%
79	Vehicle - Fuel	45500					90 043								1 378 976	1 307 524	793 698	1 119 181	1 557 684	1 343 561	7 590 668	7 080 953	509 715	7%
80	Vehicle - Licences	45550					3 500								23 410	20 776	24 009	35 181	30 296	26 112	163 283	163 043	240	0%
81	Vehicle - Maintenance	45450					20 904								313 368	420 173	319 915	383 336	375 527	420 705	2 233 728	2 129 118	104 611	5%
82	Vehicle - Tracking	45560					1 386 246														1 386 246	1 307 775	78 467	6%
83	Wide Area Network	45650									11 662 688										11 662 688	11 002 536	660 152	6%
84	Workmens Compensation	45700						677 918													677 918	677 918		0%
85	Workshops	45750	125 925	73 310	11 881	15 404	37 280	54 377	21 382	33 810	22 795	3 413	1 158 915	14 490	503 983	558 163	737 168	593 634	532 551	629 537	5 128 028	4 940 489	187 540	4%
	Operating Budget		**2 185 455**	**1 469 459**	**182 985**	**5 532 838**	**9 719 263**	**19 029 683**	**6 479 593**	**2 039 343**	**24 559 936**	**5 750 050**	**2 760 219**	**124 331**	**22 051 130**	**20 826 683**	**24 963 056**	**21 482 628**	**21 839 319**	**25 373 514**	**216 349 696**	**206 604 550**	**9 745 146**	**5%**
	Total Operating Budget		**3 199 953**	**4 464 789**	**1 590 037**	**8 969 050**	**18 803 299**	**47 346 989**	**66 894 118**	**16 670 173**	**37 333 353**	**20 438 300**	**70 171 871**	**2 764 636**	**175 752 533**	**165 436 584**	**216 910 493**	**180 736 926**	**140 214 023**	**210 036 966**	**1 387 733 996**	**1 288 640 580**	**99 093 417**	**8%**
	CAPITAL BUDGET																							
86	Computer Hardware	10100	14 971	14 971		19 415	57 589	147 845	44 914		118 749	40 469	44 914	95 583	1 389 713	1 699 611	2 274 186	512 093	1 963 810	1 602 310	10 041 143	3 952 122	6 089 021	154%
87	Corporate IT										4 013 008										4 013 008	3 058 961	954 047	31%
88	Computer Software (AI Project)	10400									5 349 908										5 349 908		5 349 908	100%
89	Building Improvement	10170					678 847														678 847	857 545	-178 698	-21%
90	Leasehold Improvements	10200													364 468	528 028	376 344	1 465 400	1 246 479	430 793	4 411 513	8 472 367	-4 060 854	-48%
91	Motor vehicles	10050													1 330 921	888 083	888 083	1 533 962	968 818	807 349	6 417 216	8 842 616	-2 425 399	-27%
	Total Capital Budget		**14 971**	**14 971**	**0**	**19 415**	**736 437**	**147 845**	**44 914**	**0**	**9 481 665**	**40 469**	**44 914**	**95 583**	**3 085 102**	**3 115 723**	**3 538 614**	**3 511 455**	**4 179 108**	**2 840 452**	**30 911 636**	**25 183 611**	**5 728 025**	**23%**
	Total Budget		**3 214 924**	**4 479 760**	**1 590 037**	**8 988 465**	**19 539 736**	**47 494 834**	**66 939 032**	**16 670 173**	**46 815 018**	**20 478 769**	**70 216 784**	**2 860 119**	**178 837 635**	**168 552 307**	**220 449 107**	**184 248 383**	**144 393 131**	**212 877 418**	**1 418 645 632**	**1 313 824 190**	**104 821 442**	**8%**

LEGAL AID SOUTH AFRICA

2013 2014 SALARIES BUDGET

Pers no.	Employee Group	New level 2013/2014	Position	Total CTC
Filled	Permanent Employees	LP-10-19	Senior Litigator	1 132 911.37
Filled	Permanent Employees	LP-10-13	Senior Litigator	1 036 217.16
Filled	Permanent Employees	LP-10-9	Senior Litigator	976 385.55
Filled	Permanent Employees	LP-10-16	Senior Litigator	1 083 487.45
Filled	Permanent Employees	LP-10-4	Senior Litigator	906 448.30
Filled	Permanent Employees	LP-10-9	Senior Litigator	976 385.55
Vacant	Permanent Employees	LP-10-1	Senior Litigator	870 121.72
Vacant	Permanent Employees	LP-10-1	Senior Litigator	870 121.72
Vacant	Permanent Employees	LP-10-1	Senior Litigator	870 121.72

LEGAL AID SOUTH AFRICA
BUDGET 2014/15

Office of the CFO
30 October 2013

LEGAL AID SOUTH AFRICA
2014/2015 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Western Cape/ Northern Cape Region	Total 2014/2015	Total 2013/14	Variance	%	
	DIRECT COSTS																								
1	Basic Salary	30050					2 462 791					6 099 861	7 021 326		117 193 526	110 736 222	141 104 268	117 619 976	87 891 332	141 207 143	731 358 446	678 409 077	52 949 369	8%	1
2	Bonuses	30100					53 116					245 774	503 858		6 290 021	5 741 286	7 389 858	6 036 640	6 887 398	7 269 614	40 437 564	37 828 227	2 609 337	7%	2
3	Housing Allowance	30150										6 000	331 200		1 129 423	1 254 699	1 081 188	1 057 797	1 514 306	1 368 217	7 742 830	8 500 920	-758 090	-9%	3
4	Medical Aid Contribution	30200					24 138					73 008	314 766		2 235 858	1 691 743	2 093 882	1 924 406	1 968 232	1 931 076	12 255 109	12 087 682	167 427	1%	4
5	Motor Car Allowance	30450					173 136								80 615	499 233	1 057 008	126 247	696 437	448 502	3 081 179	3 077 147	4 032	0%	5
6	Pension Contribution	30550					123 110					352 547	725 556		10 541 241	9 529 034	11 757 685	10 039 653	8 135 769	11 489 946	62 694 541	57 357 113	5 337 428	9%	6
7	UIF Contribution	30650					8 782					14 277	49 915		578 499	559 045	687 165	592 826	491 347	692 060	3 673 918	3 117 052	556 866	18%	7
8	Cell Phone Allowance	30760					28 800					76 800	38 400		498 192	542 424	526 128	498 192	467 928	633 216	3 310 080		3 310 080	100%	8
9	Increase in legal capacity	30710											7 553 471								7 553 471		7 553 471	100%	9
				0	0	0	2 893 873	0	0	0	0	6 868 268	16 536 492	0	138 547 375	130 555 687	165 697 183	137 895 738	108 050 748	165 059 774	872 107 137	800 377 216	71 729 919	9%	
	ADMIN SUPPORT COST																								
10	Basic Salary	40050	911 497	3 042 822	1 365 496	3 244 734	5 229 740	11 207 558	7 010 453	13 158 991	12 398 513	1 967 664	4 712 836	2 171 436	13 854 582	14 242 582	14 676 161	13 009 107	10 256 090	15 490 441	147 979 693	138 265 005	9 705 688	7%	10
11	Bonuses	40100	57 747	22 947	0	118 157	403 644	555 320	258 044	588 002	391 621	138 220	264 800	180 953	982 081	1 102 006	1 126 202	1 010 542	781 536	1 176 118	9 157 940	8 970 050	187 890	2%	11
12	Housing Allowance	40150	10 800	10 800	36 000	47 352	194 400	230 952	120 461	109 661	354 428	43 200	97 200	108 000	651 414	695 226	752 873	700 991	518 825	781 074	5 463 658	5 610 084	-146 426	-3%	12
13	Medical Aid Contribution	40200	23 634	12 168	12 168	83 772	231 192	314 964	169 650	168 948	229 590	50 138	133 846	121 680	605 832	724 159	763 279	685 334	453 920	626 058	5 420 335	5 496 707	-76 372	-1%	13
14	Motor Car Allowance	40450	0	49 200	90 000	168 000	0	303 290	282 481	150 089	349 200	72 000	102 000	0	0	34 841	157 390	0	42 534	78 977	1 880 001	2 156 137	-276 136	-13%	14
15	Pension Contribution	40550	83 156	33 043	0	199 858	581 247	933 173	446 753	715 779	541 091	199 037	503 341	260 573	1 586 480	1 657 251	1 621 731	1 497 643	1 125 412	1 631 758	13 616 327	12 962 066	654 261	5%	15
16	UIF Contribution	40650	3 569	5 354	1 785	12 492	36 143	55 306	30 042	48 529	48 185	8 648	21 282	17 676	108 783	112 787	122 075	105 572	81 802	126 960	946 991	839 771	107 220	13%	16
17	Cell phone Allowance	40760	28 400	28 400	16 800	36 000	35 000	103 200	64 800	141 600	129 600	16 800	36 000	9 600	136 048	154 495	126 824	126 824	117 600	145 271	1 450 262		1 450 262	100%	17
18	Incentives payments - Staff	43050						41 827 981													41 827 981	37 093 238	4 734 743	13%	18
19	Group Life	43050						16 989 993													16 989 993	15 859 970	1 130 023	7%	19
20	Long service Awards	40750							97 500												97 500	165 000	-67 500	-41%	20
21	Annual leave Provision	21750							6 349 068												6 349 068	5 906 110	442 958	7%	21
22	Other Improvement in conditions of ser	40850							9 692 768												9 692 768	8 361 757	1 331 011	16%	22
				1 116 803	3 202 734	1 542 239	3 999 365	6 712 366	72 521 737	24 522 020	15 081 600	14 442 228	2 505 708	5 871 307	2 869 920	17 925 220	18 723 347	19 346 534	17 136 013	13 377 720	20 056 656	260 863 517	241 685 895	19 177 622	8%	
	OTHER DIRECT EXPENDITURE																								
23	Judicare	35250													7 889 885	9 290 982	20 420 478	15 253 837	5 732 159	14 382 197	72 969 539	76 431 092	-3 461 553	-5%	23
24	Disbursements	35950													456 036	199 696	804 226	289 008	304 689	260 574	2 314 230	2 009 868	304 362	15%	24
25	Expert Witness	35150													441 560	313 273	639 527	264 216	247 718	311 280	2 217 573	2 309 280	-91 707	-4%	25
26	Co-operation Agreements	35050													1 236 000	946 750	2 422 838	742 921	880 877	1 778 936	8 008 322	8 296 444	-288 122	-3%	26
27	Impact Litigation	35200										5 897 825					120 000				6 017 825	14 997 065	-8 979 240	-60%	27
28	Travelling and Subsistence-Circuit	36060													160 469	491 061		75 000	99 744	67 611	893 685	561 662	332 023	59%	28
29	Case Backlog	35900											36 039 000								36 039 000	34 000 000	2 039 000	6%	29
30	Child Act & Child Justice Act	35060											10 444 000								10 444 000	9 760 000	684 000	7%	30
				0	0	0	0	0	0	0	0	5 897 825	46 483 000	0	10 183 949	11 241 762	24 407 069	16 624 993	7 265 187	16 800 598	138 904 374	148 365 411	-9 461 037	-6%	
	OPERATING BUDGET																								
31	Achiever Awards	41060							239 902												239 902	229 910	9 992	4%	31
32	Advertising	41100				2 195 617		200 496					31 223								2 427 337	3 298 841	-871 304	-26%	32
33	Annual Report	41150	287 895																		287 895	275 904	11 991	4%	33
34	Audit Fees	41250						3 568 812													3 568 812	3 420 171	148 641	4%	34
35	Bank charges	41350						761 604													761 604	729 883	31 721	4%	35
36	Board fees	41450	1 116 912																		1 116 912	1 070 393	46 519	4%	36
37	Call Centre Support	41510											43 066								43 066	41 272	1 794	4%	37
38	Call Centre Maintenance Equipment	41520											222 853								222 853	213 571	9 282	4%	38
39	Change Management	41550							494 215												494 215	473 631	20 584	4%	39
40	Cleaning Materials	41600					751 950								898 373	743 357	971 316	907 427	919 421	631 241	5 823 086	5 475 653	347 433	6%	40
41	Communication	41650				2 664 150															2 664 150	2 553 186	110 952	4%	41
42	Computer - Disaster Recovery	41700									1 104 415										1 104 415	1 050 823	53 592	5%	42
43	Computer - Maintenance	41750									105 749										105 749	101 634	4 115	4%	43
44	Computer - Software Licences	41800						116 487	1 135 811	134 069	7 462 792										8 849 159	8 415 997	433 162	5%	44
45	Congress & Seminar	41850	23 023	28 210	24 161			43 860	70 250	65 905			22 449								277 858	266 265	11 573	4%	45
46	Contigencies	41900													147 917	131 250	130 495	131 250	130 495	118 250	789 656	775 000	14 656	2%	46
47	Corporate Governance Training	42100	62 981																		62 981	60 358	2 623	4%	47
48	Depreciation	42200	44 874	75 079		82 404	677 554	5 257 507	120 698	344 616	3 120 435	128 915	397 236	33 841	4 787 037	4 414 124	6 166 531	5 208 802	5 441 975	5 844 584	42 147 211	40 463 632	1 683 579	4%	48
49	Document Exchange	42550					17 278								134 980	153 924	131 546	190 931	116 114	136 667	881 440	816 894	64 446	8%	49
50	Education & Training	42600	9 228	12 229	4 892	13 457	70 722	97 839	419 843	113 609	160 283	2 602 849	92 068	36 911	419 756	647 472	503 278	588 960	436 324	534 210	6 764 126	8 967 942	-2 203 816	-25%	50
51	Employee Assist/counselling(OHS)	42650							254 221												254 221	241 197	13 024	5%	51
52	Employment Relations	42700							262 310												262 310	251 385	10 925	4%	52
53	Employment Equity	44750							99 595												99 595	95 447	4 148	4%	53
54	Forensic Investigations	42800								52 173											52 173	50 000	2 173	4%	54
55	HIV/Aids Management	42900							231 122												231 122	221 496	9 626	4%	55
56	Insurance Short Term	43100						7 887 489													7 887 489	7 483 386	404 103	5%	56
57	IT Support	43250									1 101 157										1 101 157	1 047 723	53 434	5%	57
58	Leadership Programme	43450							1 415 757												1 415 757	1 356 791	58 966	4%	58
59	Legal Fees	43400					399 298														399 298	399 298		0%	59
60	Library & Publications	43450	5 016	5 005	5 012	4 966	4 759	5 053	10 620	5 016	5 302	3 108 339	5 016		33 500	43 815	41 999	33 376	27 864	40 072	3 384 730	3 321 464	63 266	2%	60
61	Maintenance - Buildings	43500					648 000								33 000	66 860	88 376	73 769	48 637	46 000	1 004 641	1 160 802	-156 161	-13%	61
62	Maintenance - Office Equipment	43550					103 194					5 000			94 600	201 616	463 739	227 403	214 652	366 650	1 677 054	1 316 265	360 789	27%	62
63	Management Fees - Travel	43560						740 518													740 518	702 578	37 940	5%	63
64	Moving costs	43650					15 000														15 000	15 000		0%	64

ANNEXURE A

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LEGAL AID SOUTH AFRICA
2014/2015 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Western Cape/ Northern Cape Region	Total 2014/2015	Total 2013/14	Variance	%	
65	Municipal Services	43700					1 384 292								896 544	1 203 086	1 651 646	1 532 301	1 141 310	1 532 544	9 341 722	8 905 127	436 595	5%	65
66	Office Rental & Operating costs	43850													7 680 429	6 191 050	7 330 363	6 452 577	6 774 420	8 690 079	43 118 919	41 247 363	1 871 556	5%	66
67	Postage & Courier	44000				47 599	69 482	267 467			48 896		21 512		122 729	90 101	51 922	125 043	64 059	171 443	1 080 253	1 021 794	58 459	6%	67
68	Printing & Stationery	44100	131 065	32 222	1 801	8 909	239 137	182 013	26 720	61 385	32 214	174 866	354 480	28 308	647 100	714 381	804 335	714 534	637 321	780 823	5 569 632	5 722 153	-152 521	-3%	68
69	Professional Services	44150	0	1 040 270								50 000	212 362							17 820	1 320 452	1 341 201	-20 749	-2%	69
70	Public Relations	44300	2 000	100 429	3 576	2 000	2 000	2 000	2 000	2 000	2 000	20 179	2 000		22 000	39 742	35 569	24 996	36 182	26 500	325 173	389 598	-64 425	-17%	70
71	Recruitment	44350							910 566												910 566	872 641	37 925	4%	71
72	Refreshment - Board	44450	42 075																		42 075	40 323	1 752	4%	72
73	Refreshment - Staff	44500	817	30 044	11 168	9 329	15 524	24 560	15 423	11 444	12 743	9 648	42 573	10 742	165 233	145 416	133 060	141 618	96 309	168 592	1 044 243	990 581	53 662	5%	73
74	Rental - Office Equipment	44550					665 680						6 324		292 584	444 424	830 376	432 106	542 608	412 779	3 626 882	3 164 342	462 540	15%	74
75	Security Costs	44600					1 053 820								82 415	114 627	103 254	112 178	241 332	78 538	1 786 167	1 855 487	-69 320	-4%	75
76	Signage& Branding	44700				650 968	6 755														657 723	630 610	27 113	4%	76
77	Skills Development Levy	44800	1 010	2 754	1 384	3 138	6 817	11 211	6 689	12 497	12 243	7 062	11 844	2 112	128 494	123 507	133 957	116 255	103 201	158 698	842 871	796 861	46 010	6%	77
78	Software Maintenance	44850							321 953		299 578										621 531	596 464	25 067	4%	78
79	Staff Bursary	44900							570 570												570 570	546 806	23 764	4%	79
80	Stakeholders Forum	44950											35 179		75 996	80 768	99 031	87 000	107 550	118 080	603 604	607 578	-3 974	-1%	80
81	Storage Costs	45000					168 873								86 894	37 171	338 841	207 371	83 609	155 815	1 076 574	1 018 654	58 020	6%	81
82	Subscription and Members fees	45050	46 978	20 862	4 018	8 221	17 196	18 016	31 189	23 202	12 375	20 000	12 772		507 315	413 698	564 877	411 285	219 018	586 158	2 917 200	1 832 839	1 084 361	59%	82
83	Syspro Support	45060						31 620													31 620	30 000	1 620	5%	83
84	Telephone & Fax	45200					962 374								1 984 330	1 947 395	1 764 539	1 657 845	1 447 719	1 292 426	11 056 628	14 803 894	-3 747 266	-25%	84
85	Tools & Equipment	45220	5 000	5 000	5 000	4 950	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	55 000	65 003	64 350	55 007	50 000	60 000	409 310	469 298	-59 987	-13%	85
86	Travel and other - Committees	45350	359 630																		359 630	344 651	14 979	4%	86
87	Travel & Subsistence - Staff	45400	10 643	105 400	96 614	60 979	44 350	60 581	60 978	1 265 483	49 606	106 998	159 963		946 270	1 089 625	676 813	603 554	978 431	1 552 440	7 868 728	7 541 400	327 328	4%	87
88	Vehicle - Fuel	45500					90 043								1 462 806	1 542 307	784 447	958 480	1 473 413	1 646 241	7 957 737	7 590 668	367 069	5%	88
89	Vehicle - Licences	45550					3 500								36 500	21 799	27 240	48 606	25 154	26 537	189 336	163 283	26 053	16%	89
90	Vehicle - Maintenance	45450					20 904								591 000	404 465	276 843	389 556	319 520	320 000	2 322 229	2 233 728	88 501	4%	90
91	Vehicle - Tracking	45560					1 386 246														1 386 246	1 386 245		0%	91
92	Wide Area Network	45650									13 865 515										13 865 515	13 192 688	672 827	5%	92
93	Workmens Compensation	45700						707 380													707 380	677 918	29 462	4%	93
94	Workshops	45750	125 369	70 821	11 022	8 036	17 757	27 797	10 930	17 283	11 620	15 000	638 727	7 407	284 763	303 922	355 214	365 961	252 280	324 410	2 848 319	5 169 278	-2 320 959	-45%	94
	Operating Budget			2 274 516	1 529 344	168 648	5 784 723	8 847 508	20 017 309	6 716 364	2 113 882	27 411 922	6 253 876	2 316 646	122 321	22 617 865	21 374 844	24 521 954	21 798 192	21 928 918	25 837 598	221 616 430	221 547 188	69 243	0%	
	Total Operating Budget			3 391 319	4 732 078	1 710 887	9 674 088	18 453 747	92 539 045	31 238 383	17 195 482	41 854 159	21 525 676	71 209 446	2 992 241	189 274 410	181 895 640	233 972 741	193 454 925	150 622 573	227 754 626	1 493 491 458	1 411 975 712	81 515 746	6%	
	CAPITAL BUDGET																								
95	Computer Hardware	10100	35 094	12 039	19 178		188 513	388 197	24 272	366 242	268 402	117 081	195 246	113 061	1 119 011	1 955 186	672 820	1 425 939	1 741 846	1 526 289	10 168 417	22 878 841	-12 708 424	-56%	95
96	Corporate IT	10100									1 571 804										1 571 804	4 013 008	-2 441 204	-61%	96
97	Computer Software (e LAA Systems)	10400									1 500 000										1 500 000	10 973 908	-9 473 908	-86%	97
98	Land & Building	10150																				6 000 000	-6 000 000	-100%	98
99	Building Improvement	10170					816 865														816 865	678 847	138 018	20%	99
100	Furniture & Equipment	10300																				266 180	-266 180	-100%	100
101	Leasehold Improvements	10200					7 182 935														7 182 935	4 713 958	2 468 977	52%	101
102	Motor vehicles	10050					558 076								3 326 555	1 114 613	506 479	2 152 536	1 519 437	1 646 057	10 823 753	6 548 970	4 274 783	65%	102
	Total Capital Budget			35 094	12 039	19 178	0	8 746 389	388 197	24 272	366 242	3 340 206	117 081	195 246	113 061	4 445 566	3 069 799	1 179 299	3 578 475	3 261 283	3 172 346	32 063 774	56 071 712	-24 007 939	-43%	
	Total Budget			3 426 414	4 744 118	1 730 065	9 674 088	27 200 136	92 927 242	31 262 655	17 561 723	45 194 356	21 642 757	71 404 692	3 105 301	193 719 976	184 965 439	235 152 040	197 033 400	153 883 856	230 926 972	1 525 555 232	1 468 047 424	57 507 808	4%	

ANNEXURE A

10911277

LEGAL AID SOUTH AFRICA

2014 2015 SALARIES BUDGET

Pers. No	Employee Group	New level (2014/2015)	Position	Total CTC
Filled	Permanent Employees	LP-10-20	Senior Litigator	1 223 669.12
Filled	Permanent Employees	LP-10-14	Senior Litigator	1 119 243.17
Filled	Permanent Employees	LP-10-10	Senior Litigator	1 054 629.67
Filled	Permanent Employees	LP-10-17	Senior Litigator	1 170 290.72
Filled	Permanent Employees	LP-10-5	Senior Litigator	979 094.84
Filled	Permanent Employees	LP-10-10	Senior Litigator	1 054 629.67
Vacant	Permanent Employees	LP-10-1	Senior Litigator	926 000.96
Vacant	Permanent Employees	LP-10-1	Senior Litigator	926 000.96
Vacant	Permanent Employees	LP-10-1	Senior Litigator	926 000.96

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Legalbrief Today

Employment Opportunity

Position: Senior Litigator

Salary: Negotiable

Location: Kimberley, South Africa

Description:
The Legal Aid Board is an autonomous statutory body with the primary objective of rendering or making available legal aid to poor persons. The National Footprint of the Legal Aid Board covers more than 58 Justice Centres spread throughout the country. Applications are invited from persons interested to fill the position of Senior Litigator.

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

The above-mentioned position exists at the Kimberley Justice Centre. The successful candidate will report to the relevant JCE and will be appointed on a permanent basis.

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

Requirements:
* Admitted Attorney/Advocate
* B Proc or LLR degree, with right of appearance in the High Court
* An LLM degree will be an advantage
* Minimum of ten (10) years' post-admission litigation experience, inclusive of at least five years' High Court experience as well as litigation experience as an Attorney and Advocate.

To Apply:
* Should you not hear from us within one month from the closing date, please accept that your application was unsuccessful.
* A detailed curriculum vitae reflecting practical application of the position, outputs and required skills as advertised must be submitted, quoting the relevant reference number, to:

Contact Name: Lee Swanepoel, Human Resource Department
Fax: 021 - 886 8657
Email: LyonelleS@legal-aid.co.za

Reference No: WCNC 05/05

Closing Date: 10 June 2009

Legal Aid South Africa

Kimberley Justice Centre

43 Sidney Street
Kimberley
8301

P. O. Box 846
Kimberley
8301

Docex 4
Kimberley

Tel: 053 832 2348
Fax: 053 832 2356

www.legal-aid.co.za

Our reference: NP Maduba
Your reference: ROE

17/11/2009

Brian Nair

National Operations Executive

National Office

MOTIVATION TO MOVE THE SENIOR LITIGATOR POSITION AT THE KIMBERLEY JUSTICE CENTRE TO ANOTHER REGION

Background

Kimberley Justice Centre has a High Court Unit and has a Senior Litigator position allocated in it as well. Since the allocation of the Senior Litigator position to the Kimberley Justice Centre, the position was never filled up. The primary objective to base the Senior Litigator position at the Kimberley Justice Centre was to service all the Justice Centres that are located in the Northern Cape i.e Colesberg, Kimberley and Upington Justice Centres. In all the time since the allocation of this position, there has never been a demand for the services of the Senior Litigator from all the Justice Centres in the area of the Northern Cape, except with two cases which have very recently arisen and which are currently being investigated to establish if there are merits in them.

The Senior Litigator position has never been filled. The position had been advertised 3 times already, both internally and externally and the adverts could not attract candidates who meet the minimum criteria to fill up the position.

It has become necessary to relook at the possibility of transferring the position to a region where it is mostly needed or where there are prospects of the high demand for the position as well as where, there are prospects of attracting candidates who will meet the minimum criteria.

Current situation

All the 3 Northern Cape Justice Centres fall under the Western Cape/Northern Cape Region. Currently the Region has an appointed Senior Litigator (Advocate Mornay Calitz) based at the Cape Town Justice Centre. Currently,

the two (2) possible cases where the services of a Senior Litigator are required have been referred to the Senior Litigator at Cape Town Justice Centre(in the absence of a Senior Litigator in Kimberley).

Dealing with the demand

As mentioned above all the three Northern Cape Justice Centres rely on the Senior Litigator based in Cape Town for assistance in any matters that have the prospect of the need for services of a Senior Litigator.

For any of the cases that may arise from the Northern Cape Justice Centres, the jurisdiction to hear their cases will be the Northern Cape Division and be held at the Kimberley High Court. Kimberley High Court is 156km away from Bloemfontein. Further, to deal with the demand that may arise in the Northern Cape Justice Centres, assistance can be sought as well from the Bloemfontein Justice Centre as this justice centre has an appointed Senior Litigator as well.

To deal with the issues of the Right of Appearance in the Northern Cape Division of both Senior Litigators, from the Free State and the Western Cape, it would be ideal if they were both Advocates as they can appear anywhere is country's courts. However, if one of them is an Attorney (as is the case of Pieter Nel), he will have to enroll himself in the Northern Cape Division to enable him to appear there.

The reallocation of this post has been canvassed with all the Northern Cape Justice Centres concerned and they have no objections to the reallocation of this post to another region.

Financial implication

The will be no financial implications that will result from the movement of the position as there will only be a transfer of the budget to be done.

Recommendation

It is recommended that the Senior Litigator post allocated to Kimberley Justice Centre be reallocated as per the National Operations Executive's discretion to the any other region that might be require same.

WC/NC Region

17 November 2009

Legal Aid South Africa

Minutes of the
Legal Services Technical Committee
Held on 25th February 2010, 6th Floor, Legal Aid House

MEMBERS PRESENT:

Chairperson:
Brian Nair (NOE)

Members:
Jerry Makokoane (COO), Vela Mdaka (VM), Thembile Mtati (TM), Martha Mbhele (Martha), Wilna Lambley (WL), Patrick Hundermark (LDE), Michael Miller (MM), Upkaar Mungar (UM), Dick Khubana (DK)

Board Members:
No Board member required

Invited Attendees:
Bee-Mari Schoeman [Legal Service Delivery] (BS), Rupert Roos [Legal Service Delivery – Data Unit] (RR), Ajanta Dheda (AD) and Peter Brits (PB) [Legal Support]

SECRETARIAT:

Nadeen Long

1.	Welcome and Apologies
1.1.	**Welcome:** The meeting was declared open and all present were welcomed.
1.2.	**Apologies:** Apologies were received from Cordelia Robertson (CR) who was booked off and Vincent Mayisela (VNM) who couldn't get a flight out to make the meeting. Patrick Hundermark was excused to attend to a meeting until 13h00.

2.	Minutes	Responsible Person	Due Date
2.1.	**Minutes of the previous meeting dated 28 January 2010:** The minutes were confirmed and accepted.		
2.2.	**Corrections: Minutes of the previous meeting held on the 28 January 2010:** There were no amendments.		
2.3.	**Matters Arising:** Please refer to the LSTC decision sheet. All members were requested to update progress, on the u-drive before the meeting.		

SECTION A – Co-Operation Agreements

3.	Co-Operation Agreements:		
3.1.1	**Administration of Estates: Children - Pilot Project Statistics:** The report was noted.		
3.1.2	**Update on Administration of Estates: Children – Pilot Project:** The high numbers of matters coming in was noted. Mr Mayisela was requested to consider the current staffing provisions and its ability to	VNM	Immediate

	meet the high demand for this service.		
3.1.3.	**Co-Operation Agreement Partner Regional Monitoring:** The reports from the cooperation agreement partners were received and noted.		
3.1.4.	**Co-Operation Agreement Partner Regional Audits:** The narrative reports from the cooperation agreement partners were received and noted. ROEs have confirmed that all audits have taken place.		
3.1.5.	**Co-Operation Agreement Budget Schedule:** The budget schedule was noted.		
3.1.6.	**Co-operation Agreement discussions with Department of Rural Development and Land Reform:** The meeting notes between Legal Aid SA and Dept of Land Affairs were noted. We have proposed a cooperation partner agreement with them to fund us to deal with land matters on their behalf. A letter to this effect has been sent to them. It will now be left to the DLA to decide how they would like to proceed on this matter.		
3.2.	**Agency Agreements:**		
3.2.1.	**Agency Agreement – Stats and Financial Recon:** Mr Roos will send out stats via email. ROEs were requested to provide a monthly report on the progress of these agreements and to give feedback for the first three months. It was noted that the ROEs/JCEs are to meet with local Justice cluster stakeholders to discuss if there are any challenges with regards the implementation of this agreement.	RR ROE	Soonest Next meeting
3.3	**Proposal for Renewal of Co-Operation Agreement:**		
3.3.1	**New Co-Operation Agreement – Gap Analysis from Regions:** It was noted that the ROEs must do a gap analysis on the needs in their regions so that new proposals for cooperation agreements can be considered.	ROEs	Soonest

SECTION B – FOR DISCUSSION AND DECISION

4.	**Legal Services delivery – Increasing quality**		
4.1.	**Quality Intervention /Monitoring Programmes**		
4.1.1.	**Civil Legal Aid – Increasing Access and Improving Quality (Civil Units):** It was noted that as soon as the Board decides on this matter, the decision will be made available to all. Once Board approval for the implementation of the civil strategy is obtained, ROEs were requested to prioritise this implementation by working closely with their JCs to ensure recruitment of all new posts as well as facilitate the cluster relationship. JCEs were also required to inform their staff of this revised strategy decision.	ROEs	Soonest
4.1.2.	**Client Relationship Management:** Deferred to next meeting.	Martha	Soonest
4.1.3.	**Risk Based Management – Criteria Review:** It was noted that this was reviewed for PAs. RR to update the scoring sheet and notify all of the availability of this webpage for scoring once refined. It was noted that this revised scoring must be done before the end of this quarter. ROEs to communicate at the JCE Forums that this must be attended to.	RR ROEs	Early March JCE Forums

4.1.4.	**CA – Board Exams – February 2010:** The report was noted. ROEs were requested to ensure that all JCs have registered CAs who wrote this exam on our web page. The data unit was requested to do an analysis of the results once available and submit to LSTC.	DU	Soonest
4.1.5.	**Regional Legal Audits – FY 2009/2010 and FY 2010/2011:** ROEs were requested to start planning for the 2010/2011 FY. They are to sit with their legal teams and plan their audit/support coverage plan for the next financial year. A significant number of file audits must be done per JC. This must also align with what Internal Audit is doing. BS to develop a template to track the planning process, with the following columns: 1. Number of practitioners 2. Criminal/Civil Split 3. Number of files RR to launch the Quality Intervention Webpage by 05 March 2010. Comments must be filled in. RR must update with a regional comment going forward.	ROEs BS RR RR	Soonest Soonest 05 Mar Soonest
4.1.6.	**Regional Legal Audit Scores Q4 FY 09/10:** Concern was raised with regards the fact that the Q4 scores have not yet been updated. It was noted that this is a good monitoring tool. BS was requested to update this sheet for the new FY with each audit separately and to put *n/a* instead of "*No*" where a particular aspect is not applicable.	BS	01 April
4.1.7.	**Backlog Courts Coverage:** It was noted that BS has a tracking sheet and that there should be one practitioner per court unless otherwise motivated. It was also noted that all contracts are to be with BS to verify and give to the NOE to sign.	BS ROEs	Soonest 26 Feb
4.1.8.	**New JCEs Induction Programme:** DK was requested to draft a SOP on JCE Inductions focusing on inducting new JCEs on the operational requirements of their position. (JCE Legal Induction Programme). It was also noted that there should be a separate SOP for Principal Attorneys, HCU Managers and SPAs.	DK	Soonest
4.1.9.	**LQAU Findings – Regional Support Programmes:** The update was noted.		

5.	**Legal Services delivery – Increasing access**		
5.1.	**Criminal Courts Coverage**		
5.1.1.	**Court Room Ratio April 2010:** It was noted that we need to move towards a court coverage report which indicates the percentage of days that a court is covered by Legal Aid SA. Target: • RC: 100% • DC: 80% per day		
5.1.2.	**HCU New Matters:** The report was noted.		
5.2	**Children's Matters:**		
5.2.1.	**Children Awaiting Trial January 2010:** The report was noted.		
5.2.2.	**CAT – Pending Details – Children longer than 3 months January 2010:** The report was noted. RR was requested to sort by region from the	RR	Next

	highest to the lowest.		meeting
5.2.3.	**CAT Detailed Report January 2010:** The report was noted.		
5.3	**Additional Delivery Mechanisms**		
5.3.1.	**Walk-in Clients Webpage Report:** RR was requested to revise this report.	RR	Next meeting
5.3.2.	**General Advice Stats – Monthly Service Differentiation report:** The report was noted.		
5.4.	**Special Projects:**		
5.4.1.	**Backlog Court Stats:** It was noted that the stats for Backlog Courts does not look complete. It seems that the JCs are not capturing everything. ROEs to ensure that this is rectified. BS to send out and finalise the Backlog Court Survey to be presented at the next national Backlog Court TT Meeting.	ROEs BS	Soonest 02 Mar

6.	**General**		
6.1.	**Update on AI Enhancements:** It was noted that AI development programme must prioritise the ~~quality enhancement and thereafter the external website.~~		
6.2.	**Motivation to move Senior Litigator post from Kimberley JC:** The motivation to move the Senior Litigator post from Kimberley JC to another region was noted and agreed. ROEs were requested to motivate if they have a need for a senior litigator at any of their provinces which have not been allocated such a post. These motivations must be included in the March LSTC meeting.	ROE	Next meeting
6.3.	**~~Minutes of the meeting between LSSA and Legal Aid SA:~~** The minutes were noted.		
6.4.	**Reduction in reject rates by PPU – January 2010:** The report was noted.		
6.5.	**Indigenous Language Project – Impact Assessment:** The report was noted.		

SECTION C – LEGAL DEVELOPMENT ISSUES

7.	**Legal Training**		
7.1.	No items for discussion.		

8.	**Legal Research**		
8.1.	**Client Profile Analysis:** The report was noted. It was further noted that MM was to update the report to reflect the use for this research and also to mention that Brazil was looked at. The updated report will be tabled at LSTC again.	MM	April 2010
8.2.	**Reasons for Refusal of Legal Aid:** The report was noted. MM was requested to concentrate on both sentenced and un-sentenced accused.		
8.3.	**Proposed Questions:** The report was noted. And a second questionnaire is to be developed and circulated for comment.	MM	Soonest

9.	**Legal Support**		
9.1.	**Training webpage:** A training SOP is currently being developed. A web page is also planned for development before the end of this quarter.		
9.2.	**Legal SOPs:**		

	The first SOP review meeting was held and the next meeting will be held soon. All the SOPs will be finalised and published before the end of this FY. RR was requested to work with AD and PB to put the documents into http: format and to add the index to AI. Knowledge Management for AI: UM was requested to update AI with a Legal Support Index and have compartments per category.	RR/AD/PB UM	Soonest Soonest
9.3.	**Implementation of Children's Act:** It was noted that we need to ensure that we are ready for the implementation. (Implementation: 01 May 2010.) LDD to develop a training programme to ensure that JCs are provided guidance on what they need to do. National Ops will ensure that we track this roll out at JCs.	LDE	Immediate
9.4.	**Implementation of Child Justice Act:** It was noted that this is to be implemented with effect from 01 April 2010. MM was requested to do a newsletter for practitioners on the Implementation of the Child Justice Act. LDD to develop a training programme to ensure that JCs are provided guidance on what they need to do. National Ops will ensure that we track this roll out at JCs.	MM LDE	Soonest Soonest
9.5.	**Library services Regional Offices and National Office:** The report was noted. It was also noted that this is for implementation in the 2011/2012 FY.		
9.6.	**ISCCJ report:** The report was noted.		
9.7.	**Foundation for Human Rights Paralegal project:** It was noted that this links well with our advice office linkage programme. DK was requested to attend the next meeting.	UM/DK	Next meeting
9.8.	**Standard booklist – revised:** It was noted that all JCs should have these books. RR was requested to assist with getting the JCs to specify which books they have and which books they still need.	UM/RR	Soonest

10.	**Legal Development – For Comment and Noting**		
10.1.	**Legal Training:**		
10.1.1.	**Legal Training Hours and Attendees – January 2010:** The report was noted.		
10.1.2.	**Legal Training Programme:** The report was noted.		
10.2.	**Legal Research:**		
10.2.1.	**Research Agenda 2009/10:** The report was noted.		
10.2.2.	**Practices causing Postponements:** The report was noted.		
10.2.3.	**Legal Practice Bill:** The report was noted.		

SECTION D – FOR COMMENT AND NOTING

11.	**Legal services delivery – Increasing access**		
11.1.	**Criminal Courts Coverage**		
11.1.1.	**Tracking of Prisoner Letters Summary:** The report was noted. Follow up outstanding matters.		

11.1.2.	**High Court Review Stats:** The report was noted.		
11.1.3.	**Sexual Offences Courts Reports as at 23 February 2010:** The report was noted.		
11.2.	**Children's Matters**		
11.2.1.	**Children's Matters – Criminal: Al stats on legal aid in criminal matters granted to children – January 2010:** The report was noted.		
11.2.2.	**Children's Matters – Civil: Al stats on legal aid in civil matters granted in respect of children – January 2010:** The report was noted.		
11.3.	**Appropriate Staffing Levels Maintained**		
11.3.1.	**% Recruitment Status 31 January 2010:** The analysis was noted.		
11.3.2.	**Recruitment Stats as at end of January 2010:** The report was noted.		
11.3.3.	**Conversion of PA to SPA – SO FY09/10:** This is to be updated and tracked until all conversions have been completed.	BS	Soonest
11.4.	**Justice Centre Productivity**		
11.4.1	**JC Pending Matter Stats – Internal January 2010:** The report was noted. This is to be tracked.		
11.5	**Delivery Infrastructure**		
11.5.1	**Satellite Offices Roll Out – Progress:** The report was noted.		

SECTION E – FOR INFORMATION

12.	**Minutes: Constitutional Case Management Committee Meeting – 04 February 2010:** The report was noted.		
13.	**Legal Aid SA Fleet Management – National Report:** The report was noted.		
13.1.	**Regional Distance Exception Report:** The report was noted.		
13.2.	**Regional Driving Pattern Analysis Report:** The report was noted.		
13.3.	**Regional Fleet Exception Report:** The report was noted.		

CLOSURE: 16h00

Chairperson: Mr Brian Nair **Signature:** _____ **Date:** _____

Secretary: Ms Nadeen Long **Signature:** _____ **Date:** _____

Legal Aid South Africa

15 March 2010

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REPORT TO LSTC

SUBJECT: ALLOCATION OF SENIOR LITIGATOR POSITION

1. BACKGROUND

At its meeting of the 25th February 2010, LSTC resolved that interested Regions should compile a written motivation providing reasons why the Senior Litigator position should be allocated to a particular Justice Centre. This position has become available after Kimberly Justice Centre declared it redundant. Two Regions raised an interest for the position being Limpopo/ Mpumalanga and the Eastern Cape. The motivation that follows is that of the Eastern Cape.

2. MOTIVATION

2.1. History of the Eastern Cape

The Eastern Cape was pre 1994 subdivided into three, namely, the Transkei, Ciskei and the Eastern Cape which fell within the Republic. Transkei and Ciskei were so called independent States. There were different laws governing the three "countries" until in 1994 when they were amalgamated into one. They are all currently referred to as the Eastern Cape.

2.2. High Courts' Jurisdiction

There are four High Court seats in the Eastern Cape, namely, Port Elizabeth, Grahamstown, Bhisho and Mthatha. It is only Port Elizabeth that is a local Division and can thus not hear appeals. All the other three still operate independent of each other.

All High Court cases of the former Transkei area including those of Butterworth JC are being heard at Mthatha or Circuit Court coming from Mthatha.

We currently have one Senior Litigator who is stationed at Port Elizabeth. It is a huge challenge for this one person to provide support to the whole Region. Hereunder are distances from the nearest Justice Centres where the other three High Courts are based. The distances are calculated on a one way trip and all from Port Elizabeth where our Senior Litigator is based:

Name of Justice Centre	Name of High Court	Distance from PE
Mthatha	Mthatha HC	652
King Williamstown	Bhisho HC	264
Grahamstown	EC Provincial Division	130

2.3. Benefits at allocating position at Mthatha

Mthatha JC will support the whole Transkei area including Butterworth, Sterkspruit and parts of Queenstown.

It should be mentioned that Transkei still has the Transkei Penal code (equivalent but different to Criminal Procedure Act) together with Transkei Attorneys Act of 1934. These Acts operate parallel to other Acts in the Republic and need to be challenged.

Transkei is very rural in nature and there is still a lot of abuse for citizens under the pretext of African Law. The case of King Dalindyebo wanting to secede the Thembu land from the Republic is a point of reference.

3. Recommendation

It is recommended that the vacant position of Senior Litigator be allocated to Mthatha Justice Centre and that it supports the Justice Centres and areas mentioned on paragraph 2.3 above.

Prepared by:

Eastern Cape

R55
70

IN THE MAGISTRATES COURT FOR THE DISCTRICT OF ESHOWE

HELD AT ESHOWE

Case No. 1005/15

In the matter between:-

ANTHONY ROBIN BRINK Applicant

and

KRIAN NAIR N.O.

DEPUTY INFORMATION OFFICER,

LEGAL AID SOUTH AFRICA Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

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42. Due to the length of the said letter which, I submit, was not necessary and meant only to insult and demean me, I then instructed our attorney of record to request an extension in terms of section 26 of the Promotion of Access to Information Act 2 of 2000 as amended, which was granted by the Applicant. See annexures F and G of the Applicant's founding affidavit.

43. I then prepared the answer which I gave to the Applicant on 13 February 2015 and annexed to his application as annexure H.

44. The substance of the answer that I gave to the Applicant was that I declined to grant him access to the information he sought therein fundamentally on two basis namely:

44.1. I am aware that the Applicant instituted an unfair discrimination action out of the Labour Court, Durban seeking all sorts of relief including that the Court order that Legal Aid SA employ him to a position of a Senior Litigator to which he had applied but which post was aborted for operational reasons.

44.2. At the time the Applicant sent his above request for access to information, the above matter was pending before the Court. Although closing argument had been made, judgment was outstanding.

44.3. As it is apparent from the request he made to Legal Aid SA, it all related to information that was dealt with in the evidence before Court. Applicant

147. I submit one or more of my preliminary objections holds true and this application falls to be dismissed on any of those objections.

148. I submit that the conduct by the Applicant as set out more specifically in my preliminary objections deserves punitive cost orders.

149. I cannot be dragged into litigation that has no merit, that is scandalous, vexatious and in flagrant disregard of the law and processes of Court.

WHEREFORE it may please the court to dismiss the application with punitive costs.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at Johannesburg on this the 2nd October 2015. The regulations contained in the Government Notice No. 1258 dated 21st July 1972 (as amended) and Government Notice No. 1648 dated 19th August 1977 (as amended) having been complied with.

COMMISSIONER OF OATHS
PRACTISING ATTORNEY
MOGAMSOLE ATTORNEYS
131 BOSMAN AVENUE
MONDEOR

THE PROMOTION OF ACCESS TO INFORMATION ACT (PAIA)

ANNUAL REPORT 2011/12

The protection aspect requires the Commission to assist members of the public to assert their right to access information through the request mechanisms outlined in PAIA, and to act on behalf of a requester where necessary, using powers conferred upon the Commission by PAIA and the Human Rights Act 54 of 1994[1]. Assistance provided by the Commission includes lodging request for information on behalf of requesters. This comes in the form of consultations, advisory meetings with requesters and where necessary, assisting requesters to obtain access to the information requested. An example of this is the ongoing advisory role that the Commission is playing in a prolonged matter between a Complainant and Legal Aid South Africa (LASA). The requester had previously sought assistance from the Commission to obtain information he had requested from LASA relating to a job application. A number of related records were released in part and others refused. The requester was however not satisfied with LASA's general response to his request and brought the inaccuracy of LASA's section 32 report to the Commission's attention particularly with regard to some of his requests that had not been reported on. The requester has since proceeded to Court to litigate this matter against LASA. The Commission continues to monitor the developments in this matter.

Assistance extends to DIOs and private sector actors as well. DIOs are often assisted in applying and interpreting PAIA, providing legal opinions and responding to general enquiries on PAIA.

Private sector assistance is primarily based on the compliance requirement in section 51 of PAIA. This reporting period saw an influx in private sector enquiries due to the moratorium that was set to expire in December 2011.

Monitoring and assessment of requests for assistance enables the Commission to identify trends in the use of PAIA and the extent to which PAIA is used.

[1] Section 9 of the Human Rights Commission's Act 54 of 1994

	2003/2004	4
	2004/2005	6
	2005/2006	8
	2006/2007	11
	2007/2008	48
	2008/2009	33
	2009/2010	25
	2010/2011	20
	2011/2012	69

Challenges

The challenges across all tiers of government remain unchanged. Resource constraints (human and capital), lack of awareness and buy-in are common challenges in the public sector.

Compliance monitoring carried out during the course of this reporting period consistently reveal a disregard for PAIA. This is evident in the fact that public institutions do not take initiatives to carry out their duties in terms of PAIA. While resource constraints remain a challenge, research conducted by the Commission in previous years identified the Limpopo Department of Health and Social Development as a department that initiated compliance and PAIA implemenation in the absence of resources. By incorporating PAIA into the strategic objectives of the department and creating systems within the department to implement PAIA, the department was rated as an institution that demonstrated best practice.

The example cited above is evidence of the ability to implementPAIA despite resource constraints. Proper and efficient implementation of PAIA can be achieved if there is a will to make the change.

However, on the other side of the coin are institutions that still find section 32 reporting difficult despite training. The Commission has discovered that public institutions do not accurately report on section 32. A case in point here is the report from Legal Aid South Africa (LASA) where a complainant brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA's 2010/11 section 32 report despite the fact that the requests were made in that financial year. The complainant was advised by the Commission that LASA's 2011/12 report would be monitored to assess the accuracy of their statistical reporting. The Commission engaged with LASA and remains concerned about the accuracy of section 32 reporting by LASA, a problem which is also likely to exist with other public institutions. In the light of the case above, the Commission recommends that a review of section 32 reporting is undertaken. Such review should consider an expansion of section 32 reporting obligations to include substantive reporting, disaggregation of request type, an extension of the Commission's powers to penalize non-compliance and inaccurate reporting as well as a duty on heads of public bodies to include section 32 reports in their reports to Parliament, over and above the reports submitted by the Commission. Also, public bodies should bear the costs incurred by the Commission in

instances it chooses to audit the veracity of reports submitted to it by the public body in question. In sum the commission recommends:

- the provisions of section 32 be expanded to substantive reporting;
- the Commission be provided with resources, alternatively, that if public bodies were to be audited, they should provide the resources for the audit of reports and files to be conducted;
- that the Commission be given the powers to penalize inaccurate reporting and non-compliance with the provisions of section 32 in terms of enabling provisions on enforcement in PAIA;

It is clear that despite training, a great deal of confusion remains about section 32 reporting. For example, in the context of the case above,

- officials are not clear whether requests for different but related documents submitted on one form constitutes a single request;
- officials are not certain on how to capture requests submitted at the end of March and they respond in the new year;
- officials are not certain about when discovery rules of court will apply in a matter being litigated and when PAIA can be used.

Since the first complaint on LASA, the SAHRC has trained LASA officials on PAIA. The Commission intends auditing LASA fully in the course of the 2012/13 financial year.

Trends

Trends on usage of PAIA are established through the analysis of the data provided in the section 32 report. Below is a detailed anaylis of requester trends for the period 2011/2012.

A total of 24 857 requests were lodged with national government departments. The bulk of these requests were submitted to the South African Police Services, the Department of Justice and Constitutional Development and the Department of Home Affairs.

The Department of Home Affairs received a total of 139 requests. An interesting point to note is that the department was reported as non compliant in the previous reporting period. Having complied with its reporting obligations in 2011/2012, the number of requests reflected in its report is high and warrants a cause for concern with the manner in which the department is processing and tracking requests.

Requests received in the provincial departments have increased when compared to previous statistics. For this reporting period, requests in provinces totaled 11 972. The province with the highest number of requests is KZN, its department of health alone processed 9809 requests. This level of activity indicates an increase in awarenes and development of systems in public bodies to capture statistics correctly.

Local governments have also in this reporting period shown increased activity, with the Western Cape municalities processing a total of 375 requests.

OTHER BODIES	Number of request for access received s32(a)	Number of request for access granted in full s32(b)	Number of requests granted despite there being a ground of refusal but granted in the public interest	Number of requests for access:(a) refusal in full (b) refused partially (c) number of times each provision of the act was relied on to refuse access in full or partially S32(d)			Number of cases in which the period stipulated in s25(1) were extended in terms of s26 (1) S32(e)	Number of internal appeals (a) lodged with the relevant authority	(b) number of cases in which as a result of an internal appeal access was given s32(f)	Number of internal appeals which were lodged on the ground that a request for access was regarded has having been refused in terms of s27 section 32 (g)	Number of applications to a court which were lodged on the ground that internal appeal was regarded as having been dismissed in terms of section 77 (7) s32 (h)	Other information
OTHER BODIES				A	B	C						
Accounting Standards Board	0	0	0	0	0	0	0	0	0	0	0	
South African Reserve Bank	1	0	0	1	0	1	0	0	0	0	0	
Agri SETA	0	0	0	0	0	0	0	0	0	0	0	
Airports Company SA	03	0	0	02	0	02	0	0	0	0	0	They use in house counsel to implement PAIA

Amafa/Heritage KZN	0	0	0	0	0	0	0	0	0	0	0	
Auditor General SA	01	0	0	0	0	0	0	0	0	0	0	The one request received was transferred
Eskom	52	21	0	09	10	0	15	4	03	0	0	5 requests pending
Free State Gambling Board	01	0	0	0	0	0	0	0	0	0	0	
Gauteng Gambling Board	0	0	0	0	0	0	0	0	0	0	0	
Independent Quality Assurance Agency	0	0	0	0	0	0	0	0	0	0	0	
Industrial Development Corporation	1	1	0	0	0	0	0	0	0	0	0	
Ithala Development Finance Corporation Ltd	01	01	-	-	-	-	-	-	-	-	-	Late report
KZN Growth Fund Trust	0	0	0	0	0	0	0	0	0	0	0	
Land Bank	01	01	0	0	0	0	0	0	0	0	0	Late Report
Legal Aid South Africa	01	01	0	0	0	0	0	0	0	0	0	
Magistrates Commission	05	03	0	0	02	0	01	0	0	0	0	
MerSETA	04	03	0	01	0	01	0	0	0	0	0	
Mining Qualifications Authority	0	0	0	0	0	0	0	0	0	0	0	

25 Baker Road
Prestbury
Pietermaritzburg 3201
30 November 2010

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

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

And to:

The Board of Directors: Legal Aid South Africa

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

Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

And to:

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

Dear Judge Mlambo

Pietermaritzburg Senior Litigator post:

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

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

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

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

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

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

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

16. In my letters to Vedalankar and Makokoane mentioned above, I'd assumed political prejudice against me – something I'm accustomed to. (Bundle, page 11, paragraphs 5.1–14 and pages 93–99 (a letter to Adv Paul Hoffman SC, director of the Institute for Accountability in Southern Africa, including information intended for the unwritten 'Postscript' mentioned in paragraph 58 of my letter to Makokoane)). I've recently appreciated, however, though I doubt it, that the prejudice may simply be racial, albeit no less illegal, inasmuch as my selection and recommendation for the appointment in question might have been inconvenient for the targets set out in LASA's 'Employment Equity Plan for 2010-2015'.
17. Arising from the 'behaviour' in question, I filed an extensive request for records under the Promotion of Access to Information Act ('PAIA') with Vedalankar as LASA's information officer ex officio on 30 August. (Bundle, pages 49–69)
18. On 29 September, the day before the end of the month provided by the Act for compliance with my request, and not having received any response to it, not even an acknowledgement of receipt, I approached the South African Human Rights Commission ('SAHRC') with a plea for assistance.
19. Kindly taking the matter up for me, the director of the SAHRC's PAIA Unit Chantal Kisoon ably negotiated an undertaking from LDE Patrick Hundermark to deal with my records request. Although Vedalankar was out of time for compliance (there was a mix-up over the computation of the period prescribed), I didn't mind, I was just glad that my request would be given attention at last.
20. On 18 October I received a letter from Vedalankar rejecting my request. (Bundle, pages101–108)

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

> The test to be applied to a request for information in terms of the PAIA, as laid down by the court in the case of *National Teachers Union v Superintendent General: Department of Education & Culture, Kwazulu-Natal and Another (D38/08) [2008] ZALC 18, is as follows:*
>
> a) *In dealing with a request in terms of the Act, the question is not whether the requester is entitled to information but about whether the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure.*

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

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

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

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

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

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

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

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

Anthony Brink

From: Chris Rawlins [cfmrawlins@telkomsa.net]
Sent: 10 November 2012 08:40 AM
To: Anthony Brink
Subject: Fw: Maree

Categories: Red Category

----- Original Message -----
From: arbrink@iafrica.com
To: cfmrawlins@telkomsa.net
Sent: Sunday, December 12, 2010 12:21 PM
Subject: Maree

Receipt of your letter is acknowledged.
JJ MAREE

----- Original Message -----
From: JAN
To: 'Jan Maree'
Sent: Friday, December 10, 2010 2:58 PM
Subject: FW: Legal Aid South Africa

From: arbrink@iafrica.com [mailto:arbrink@iafrica.com]
Sent: 09 December 2010 03:58 PM
To: jan@schoemanmaree.co.za
Subject: Legal Aid South Africa

Dear Mr Maree

I have written to Judge Mlambo and the Board of Directors of Legal Aid South Africa in an extraordinarily serious matter.

I'm emailing away from home and am having trouble with attaching files to email, so I'd be obliged if you would download the letter and its annexure from the following secure private website:

www.tig.org.za/LASA
username: lasa
password: LASA2010

Yours sincerely

Adv Anthony Brink

Legal Aid South Africa

Your voice. For justice.

National Office
29 De Beer Street
Braamfontein
2017
Tel: 011-877-2000
Fax: 011-877-2222
www.legal-aid.co.za

11 April 2012

C/o Chantel Kisson

The South African Human Rights Commission

Email paia@sahrc.org.za

SUBMISSION OF THE REPORT ON REQUEST FOR ACCESS TO RECORDS OF LEGAL AID SOUTH AFRICA IN TERMS OF SECTION 18(1) OF THE PROMOTION OF ACESS TO INFORMATION ACT 2 OF 2000

Dear Chantel

Please find the report in respect of all requests submitted during the financial year 2011/12.

I hope you find this in order

Regards

Mr Thembile Mtati

Corporate Services Executive

Legal Aid South Africa

Tel: 011 877 2003

South African Human Rights Commission Report 2011/12 Final

List of matters in which information was requested in terms of Promotion Access to Information Act 2 of 2000

Name of requester	Type of request	Outcome of the request	Comments	Date when request made.	Date when the request responded to.	Regional Office	Justice Centre	Who responded
Leston Sampson	Request for information in terms of section 18(1) relating to the refusal to grant legal aid assistance, which included amongst others, the merit report, correspondence between Regional Operations Executive and the Justice Centre Executive relating appeal process for legal aid application as well as record of telephone calls.	The information requested were granted to the requester.	No further enquiry was made by the requester.	22/06/2011	28/06/2011	Western Cape and Northern Cape	Athlone	Mark Gaffley-Justice Centre Executive

11/4/2012

867
1313

R55
74

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Justice and Correctional Services

03 December 2012

Chairperson: Mr L Landers (ANC)

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Meeting Summary

The Portfolio Committee on Justice and Constitutional Development received a briefing from the South African Human Rights Commission (SAHRC) on the Promotion of Access to Information Act 2011/2012 Annual Report. The Commission noted that considerable resources were directed towards training for the testing of compliance with the Promotion of Access to Information Act (PAIA). There was a consistent lack of compliance from public bodies. There was also a lack of appreciation of the importance to comply with the right to access to information, particularly at local government level, where service delivery was most important. Five core constitutional and statutory mandates of the SAHRC were identified. These were the promotion of the right of access to information, the need to assist public and private institutions to comply with the PAIA, the need to conduct training, which was done by training over 1 000 Deputy Information Officers in the last year, including training on the Protection of Personal Information Bill, the need to hold management briefings, including senior management from public institutions, and the conducting of compliance audits. These audits would help the SAHRC to gain insight into what was still needed, so that it could develop effective interventions and internal systems aimed at supporting public institutions.

The SAHRC set out its findings with a comparison also of the last five years. Only 25% of public officials knew who their Deputy Information Officers were, or knew of the correct procedures, and 87% of frontline officials were not aware of the Promotion of Access to Information Act procedures. In the 2009/10 reporting period, the Commission had spent a lot of money developing a frontline manual which was distributed to all state institutions. 60% of audited public institutions did not have a designated Information Officer. Only 15% of audited public institutions had a Promotion of Access to Information Act project. Many public institutions did not grant requests for information, for example the Office of the Presidency, National Treasury (NT) and the Department of State Security. It was not known why the requests were denied. The Commission had recommended the amendment of Section 32 of PAIA, so as to include substantive reporting, as well as the expansion of the Commission's powers... These amendments have been proposed to the Department of Justice and Constitutional Development, but there had been no response.

The Committee expressed disappointment that the SAHRC had not included the Protection of Personal Information in its reporting. The Committee was also disappointed that the Commission said it was still awaiting clarity on its role when the Protection of Personal Information was enacted, even though there were clear transitional arrangements. The Committee asked for the views of the SAHRC on the constitutionality of the Protection of State Information Bill, as well as whether the provisions of the Promotion of Access to Information Act that related to the training of magistrates should be removed. More detail on the compliance monitoring audits was sought. Members raised questions on the reporting on Legal Aid South Africa, questioned the role of the Organisation for Institutions Supporting Democracy in assisting the Commission, and asked if the National Archives and Record Keeping Act was working properly. The Committee recommended that the report of the SAHRC should be adopted by the House, with a recommendation from the Committee that national departments should report directly to the National Assembly, and that provincial departments should report to the National Council of Provinces were concerned. The Committee was concerned about the lack of implementation and ratification of international obligations that fell upon South Africa. The Committee would communicate with the Minister of Justice and Constitutional Development on the international obligations that fell under its purview. The Committee recommended that, in future, the SAHRC should also audit Parliament as well as provincial legislatures. It was noted that the Committee would pursue, with the Standing Committee on Appropriations, its recommendation for further appropriations for the Commission.

Meeting report

South African Human Rights Commission 2011/12 Annual Report on Promotion of Access to Information Act

Mr Fola Adeleke, Manager: Promotion of Access to Information, South African Human Rights Commission, noted that the South African Human Rights Commission (SAHRC or the Commission) directed a lot of its resources towards training on the Promotion of Access to Information Act (PAIA). There was a consistent lack of compliance with PAIA, on the part of public bodies. There was also a lack of appreciation of the right to access to information, particularly at local government level, where service delivery was so important. The Commission had set up a specialist unit to monitor the compliance by public institutions. SAHRC had also identified five core mandates that it had as part of its constitutional and statutory obligations have been identified. The mandates were the promotion of the right to access information, the need for SAHRC to assist public and private institutions to comply with PAIA, and the need to conduct training. In this regard, Mr Adeleke noted that over 1 000 deputy information officers were trained. The Protection of Personal Information Bill (PPI) was also incorporated in the training. SAHRC had held management briefings that included senior management from public institutions. Finally, it had to conduct compliance audits. The objective of the audits was to provide insight for the Commission so that it could then develop effective interventions and internal systems aimed at supporting public institutions.

Mr Adeleke noted the SAHRC's findings over the last five years. Only 25% of public officials knew who their Deputy Information Officers were or on procedures, and 87% of frontline officials were not aware of PAIA procedures. In the 2009/10 reporting period the Commission spent a lot of money developing a frontline manual which was distributed to all state institutions. 60% of audited public institutions did not have a designated Information Officer. Only 15% of audited public institutions had a PAIA project.

The Commission's work included the provision of capacity building tools, recruitment opportunities and the showcasing of best practices. The provincial Information Officers Forums had been successful where the Commission had held them - for example in the Free State (FS) and Western Cape (WC) there has been 100% compliance. In other provinces, compliance ratings had improved. 39 200 Section 32 (of the Constitution) requests that were received by government institutions. This figure may not be accurate, as the reporting from public institutions was poor. About 32 000 PAIA requests were granted. The South African Police Service (SAPS) received the most PAIA requests, over 20 000, and their compliance was good. A lot of public institutions did not grant requests for information, for example the Office of the Presidency, National Treasury (NT) and the Department of State Security, but it was not known why the requests were denied. The SAHRC had recommended the amendment of Section 32, so as to include substantive reporting as well as the expansion of the Commission's powers. The SAHRC developed a model law for access to information for the rest of Africa, in partnership with the Centre for Human Rights (CHR).

SAHRC outlined that it faced several challenges, which included budgetary constraints. This impacted on its ability to enforce compliance, as well as to conduct community training sessions. Sustaining the political will of senior leadership for the compliance with PAIA was a problem. The amendments to PAIA had been proposed to the Department of Justice and Constitutional Development (DoJ&CD), but there had been no response.

Discussion

Mr J Jeffery (ANC) said that his main frustration with the PAIA report was that the SAHRC did not include reports on the Protection of Personal Information (PPI) Bill, as opposed to the Protection of State Information Bill (PSI). The amendments that the Commission wanted to effect, to PAIA, had been done in the PPI, and he pointed out in this regard that when the Committee had discussed amending PAIA during its deliberations on the PPI, the SAHRC had not given input, and in the end the Committee relied on information submitted by the Open Democracy Advice Centre (ODAC). It was worrying that the SAHRC was seemingly not aware of the provisions that related to its functions, in the new PPI Bill. The Committee had been engaging with the DOJ&CD on the issue of magistrates and their training on PAIA, yet this was another aspect not covered in the SAHRC's report. He said this was an important issue that the Commission should be following up.

Mr Jeffery asked for more detail on the compliance monitoring audits. The Commission complained about Legal Aid South Africa (LASA) on page 29 of the report, yet when this point was raised with LASA, it had responded that it was not happy with the SAHRC report, and disputed the findings.

Mr Jeffery thought that a reporting format that listed departments that did not comply should be adopted.

Mr Jeffery asked how the Commission had arrived at the 25% figure for officials that were not aware of PAIA.

Ms D Schäfer (DA) asked if the Commission would support the removal of the requirement for magistrates to be trained for PAIA. She asked if the SAHRC had engaged with the Public Protector (PP) regarding any PAIA complaints that this office had received. She noted the comment on the amendments but asked what the SAHRC itself had done to get the Department of Justice to respond. Finally, she called for the SAHRC's view on the current version of the PSI Bill that was passed by the National Council of Provinces (NCOP).

Mr S Swart (ACDP) asked if Parliament had to report according to Section 32. He agreed that it would make sense for the requirement for the training of magistrates to be removed, for the purposes of PAIA implementation. He was concerned that this Annual Report highlighted high levels of non-compliance by public bodies and felt that the Committee and the SAHRC needed to take further steps. He wondered if the unit for Organisation for Institutes

Supporting Democracy (OISD) been supporting the Commission. He also asked if, given its financial constraints, the SAHRC could work with other organisations for litigation purposes. He too wanted to know about the final version of the PSI Bill, particularly the "trumping" clause 1(4) and the lack of a public interest defence specifically.

Ms D Smuts (DA) said that the Commission, in 2010, had correctly pointed out that the Minister of State Security sat "like a big spider with many tentacles" at the heart of the system. The Commission had also correctly pointed out that there was already a law that provided for recording keeping and there was thus no need to include the archives and record keeping in the PSI Bill. She wondered if the Commission could assess whether the National Archives and Record Keeping Act was working, and if the SAHRC was not aware of this at the moment, then it should find out. This could yet be another reason why getting access to information was difficult in South Africa. She noted that the SAHRC was quite correct in the view that Section 46 of PAIA was too stringent and should be amended. However, she wanted to clarify whether the Commission had had a response from the DOJ&CD on the request for the amendment of Section 46 of PAIA?

Advocate Lawrence Mushwana, Chairperson, SAHRC, said that the Commission would need more time to look into and send through a response on section 46 of the PAIA amendment, as well as the implementation of the National Archives and Record Keeping Act.

He noted that the Head of OISD has been ill since February 2012, and the Acting Head had since left. The SAHRC did not receive a lot of help from this unit, and it was dysfunctional. There was an attempt from Chapter 9 Institutions to meet with the Speaker to voice concerns over OISD, as there had been little assistance received from it.

Ms Pregs Govender, Deputy Chairperson, SAHRC, said that the Commission had, at a previous meeting, raised queries as to what this Committee had done with reports where the question of non-compliance with PAIA was raised, and the Chairperson had responded that the Committee would attend to the matter seriously. The SAHRC had developed a plan of action on that point.

Mr Jeffery said that he had been raising this issue, and he proposed that the House should be asked to adopt the SAHRC report, with a recommendation from the Committee that departments must report in future to Parliament. This was not a plan of action; the Commission could then refer a report to the NCOP, for the same proposal to apply to provincial departments.

Adv Mushwana added that he was not sure that the Commission had done everything that its Act allowed it to do. The Commission did have some powers and perhaps it was not using them fully. It would try to do more.

Ms Govender added that the SAHRC had come to the decision that it must use its powers fully, such as power to issue subpoenas, and it had begun to do that in more cases.

Ms Govender said, in relation to the questions around the PPI Bill, that the SAHRC wanted more clarity on the transitional provisions of the PPI, especially for budgetary planning purposes.

The Chairperson said that the Committee had stated, in its Budgetary Review and Recommendations Report (BRRR), that it should have a strategic planning session on the issues raised by Mr Jeffery in the following year. One of the issues raised by the Commission in writing to the Committee had raised the question of international conventions. International Conventions were an Executive prerogative, and Parliament's role was to endorse these. There were constraints on Parliament to take these forward.

Mr Jeffery said that a complaint from the public was that it took exceptionally long for a Bill to be introduced to Parliament, following signature of an international instrument – for example, the length of time between signature of the United Nations Convention on Combating and Prevention of Torture (UNCAT) and the introduction of the Bill. The Committee should write to the Director General of the DOJ&CS for reports on all conventions that fell upon that Department to implement.

Mr Swart agreed that this was a concern, and Parliament did have an oversight role. The Covenant on Civil and Political Rights (CCPR) was dated in 2000 and was still outstanding, and this indeed indicated a serious problem. South Africa had received a negative score from other international bodies on this, as well as on other obligations, and this could not continue.

The Chairperson said that he would like to afford OISD an opportunity to respond to some of the questions raised about its role.

Adv Nonkosi Cetshwayo, Head, OISD, said that the responsibility of the unit was to support and advise the Committee in relation to the Chapter 9 institutions that reported to it. OISD had read the annual reports from the SAHRC, and had analysed them for purposes of advising the Speaker to which Committee they should be referred. OISD had been looking to bringing together all stakeholders that were considered important in the work of OISD. She, in her capacity as Head of OISD, had also held meetings with the Directors General and the Presidency, to deal with the international responsibilities where Chapter 9 Institutions in South Africa played a role.

Mr Jeffery suggested that the Chairperson should write to the Minister or Director General in relation to each treaty

for which the DOJ&CD was responsible, setting out the problem of the outstanding reports and seeking more clarity on where the process was for implementation of the treaties.

Adv Mushwana said that at the last conference in Geneva, a lot was said on South Africa, and referred the Committee to the Universal Periodic Review Report.

Mr Adeleke responded to other questions. He noted that the 25% figure was obtained via the compliance audits. The Commission had considered the period between April 2011 and March 2012 for the purpose of this latest report. During this period there was no engagement with the Parliament on PPI, which was the reason why this was omitted from the Report.

Mr Jeffery said that it was better to leave the matter at that, and for the SAHRC to acknowledge that this should have been done. The figure of 25% was still doubtful.

Mr Adeleke agreed.

Continuing with the answers to questions, he noted that the PPI only amended Section 51, and the presentation had specified that there should be clarity on Section 51, not that there should be an amendment. The Commission was concerned that there were over one million manuals that had not yet been processed. The contracts of the staff who were hired to attend to would lapse at the end of the year, and the SAHRC was concerned about the transitional arrangements in the PPI, what would happen to the manuals and the SAHRC's responsibilities.

The Chairperson said that the Commission should not abandon its mandate.

Mr Adeleke said that the Commission's request for funding to extend the contracts of the data capturers had been refused, and essentially there would not be anybody in the SAHRC who would be able to continue with that work.

Mr Jeffery said that the amendment to Section 51 would mean that the SAHRC could require that the manuals be made available, but not necessarily submitted. The SAHRC could take the lead from the judges of the Supreme Court of Appeal (SCA), who had concluded that it was unduly onerous to require of them that they read an entire record of a trial, in order to consider a petition for leave to appeal. They had simply decided that they would not read the record, and were waiting for the law to be amended. The SAHRC could perhaps follow the same principle, especially since the PPI amendments had already gone through the National Assembly (NA). The SAHRC should not review the Section 51 manuals.

Mr Adeleke continued to state that the consolidated audit reports had been highlighted and recommendations were made. The Commission did have more detailed information on specific institutions, but had not included everything to avoid the documentation being too bulky.

Mr Jeffery said that information on the Department of Justice only was required.

Mr Adeleke answered the question of the LASA disputing the SAHRC's report. He said that LASA could not dispute the finding, because the Commission had shown the PAIA report that they had omitted. The PAIA request was sent to LASA, and it was requested to report on it. However, LASA maintained that this request should have been done during the last reporting period, whereas SAHRC held the view that this fell within the current reporting period.

Mr Jeffery said that the detail was useful and the Committee should get more information and put it to LASA.

Ms L Adams (COPE) said that the North-West (NW) had not been complying for the last three years. The SAHRC had admitted today that it was not, in the past, using its powers as it should, and she asked why the Committee could be expected to take the SAHRC seriously when it did not ensure that it would get compliance. North West was only one example. It seemed that once again it would fail to comply.

Mr Adeleke said that the recommendation for the amendment of Section 90, to enforce Section 32 reporting, was made because the SAHRC would no longer be responsible for PAIA. The envisaged Information Regulator (IR) in the PPI would have far more powerful and broader powers.

Ms Adams asked if Mr Adeleke was suggesting that everything should be left as it was until better systems came into force.

Mr Adeleke said that the SAHRC was unable to enforce Section 32 reporting.

Ms Adams asked if this was not for the courts to decide.

Mr Adeleke said that the most the SAHRC could do was to constantly write and seek the cooperation of departments.

Ms Adams said that surely Section 90(2) and (3) were in place to ensure compliance. She believed that it should be left to the Court to decide whether they were strong enough, rather than for the Committee and SAHRC to engage in

academic debate on the point. She believed that the SAHRC should follow the steps. Somebody had to take responsibility if the North West failed to comply for three years.

Mr Adeleke said that the SAHRC could not simply bring a government department before the Court.

Adv Mushwana said that the Commission had admitted that it had not done enough in the past, and had acknowledged that it did have the powers and it was a question of using them in future.

Adv Adams said that this was the whole point, but she wanted to hear when the SAHRC would be using those powers.

Adv Mushwana said that it was up to the SAHRC to do what Ms Adams suggested.

Mr Adeleke noted that, in relation to the training of magistrates, the SAHRC was of the view that PAIA was very technical and it was necessary to ensure that judicial officers had the skills to apply it.

Mr Jeffery said that the Committee had been chasing this up with the DOJ&CD.

The Chairperson agreed and stated that a letter would be written to the Director General of the DOJ&CD.

Mr Adeleke said that when the Information Regulator was established, it would not be a Chapter 9 Institution, and there was some question whether or not it would have access to classified information. Letters written to the DOJ&CD on this point had been met with a mild response. The current PSI Bill as passed by the NCOP was welcomed in the sense that PAIA had been reinstated to full recognition, and that Chapter 9 Institutions would not be restricted in their access to classified information.

Ms Govender cautioned that the SAHRC Commissioners still had to sit as a collective and engage on the views that it might express on the PSI Bill.

Ms Govender answered the questions on whether PAIA should apply to Parliament by saying that the Commission had interpreted a public body, in terms of PAIA, as applying to the Executive arm of government and perhaps not Parliament. However Parliament had an Information Officer and thus should submit reports as well, although it had not done so in this period.

The Chairperson said that in that case Parliament had to be summoned and answer.

Mr Jeffery said that his reading of the section was that Parliament indeed fell under the definition of a public body, and asked then why it was not included in the Report as not having complied.

Mr Adeleke responded that this was because the reporting format included national and provincial bodies as well as municipalities and other public bodies. It was an omission on the part of the Commission.

Mr Jeffery asked why provincial legislatures had not been included.

Mr Adeleke said that the Commission had largely focused on the Executive since a lot of requests went to public bodies, and not legislatures.

The Chairperson suggested that legislatures could be included, for the purposes of highlighting importance of PAIA.

Adv Mushwana confirmed that the Commission did share resources with other institutions such as drafting of legal documents.

Mr Swart agreed that this was correct, as long as there was no conflict of interest.

Adv Mushwana agreed with this point.

Mr Adeleke commented on the questions around records. Some departments had submitted that they did have file plans, but that some were outdated and not submitted to archives for approval. Some institutions did not have file plans at all.

Ms Smuts added that the PSI Bill perpetuated the problem, because it had intermingled requirements around classification and plain record keeping. There was also a conflicting situation of the National Archives Act, the Archivist, the Minimum Information Security Standards and the PSI Bill all standing alongside each other, and she cautioned that it was necessary to keep an eye on the handling of these records in the future.

Ms Govender said that the SAHRC should keep this in mind.

Mr Adeleke said that the Commission could have record keeping as one of its functions next year.

Mr Jeffery said that it would be useful to know the compliance of all Chapter 9 Institutions. The Section 14 categories were difficult to understand, from the Commission's reporting card. He also wanted to know the difference between 'easily accessible', 'accessible' and 'fairly accessible'.

Ms Govender said that this could easily be rectified and clarified.

Mr Jeffery noted that the Committee had, in the BRRR, specifically recommended further allocations for the SAHRC, but understood that National Treasury may either have refused the request or not responded. He suggested that the Committee should pursue the point with the Standing Committee on Appropriations

the Chairperson asked if National Treasury should not have responded to the Committee.

Mr Jeffery said it was not clear if National Treasury had replied, and this had to be pursued further through the budget process of Parliament.

The Chairperson agreed.

Adv Mushwana thanked the Committee for its efforts. He wanted to let the Committee know that the SAHRC had retained its international "A" rating as a human rights organisation.

The Committee congratulated the Commission.

The meeting was adjourned.

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COMPLAINT TO THE AUDITOR-GENERAL REGARDING MAJOR ONGOING BREACHES OF THE PUBLIC FINANCE MANAGEMENT ACT INVOLVING MANY MILLIONS OF RANDS AND OTHER MATERIAL IRREGULARITIES INCLUDING CRIMES COMMITTED IN A CORRUPTION COVER-UP BY PAST AND CURRENT HIGH OFFICERS OF LEGAL AID SOUTH AFRICA

I, Anthony Robin Brink, affirm:

1. I am an adult male, 60, an advocate of the High Court of South Africa, admitted to practice on 12 April 1983, and a former magistrate of the District- and Regional Courts, specialising in civil law. I reside at 36 Pearson Street, Eshowe, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 083 779 4174.

EXECUTIVE SUMMARY

2. This complaint identifies major ongoing contraventions of the Public Finance Management Act 1 of 1999 ('PFMA'), some criminal, committed in a cover-up of top-level recruitment corruption at Legal Aid South Africa ('LASA') entailing unauthorised expenditure of around thirty million rands since 2010, hitherto undetected and unreported by LASA's external auditor PWC.

3. The complaint further identifies multiple instances of 'material irregularity' as defined by section 1 of the Public Audit Act 25 of 2004 ('PAA'), some criminal, committed by LASA's top officers prior to and in the course of the cover-up, in which the express wishes of both Parliament and the Justice Minister were defied, to the massive detriment of critical service delivery to the country's indigent.

4. Part Two and other parts of this complaint to follow will detail further material irregularities in the form of procedural and ethical corruption of staff

recruitment at LASA, and further ethical and criminal misconduct in covering it up.

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The supporting documents referenced herein are accessible online in PDF at illegal-aid.co.za/AG. For easy copying, reprinting, transmission by email, and reading on a portable device, copies of this complaint are available in PDF, MS Word, and HTML at the same site.

INTRODUCTION

5. The 'biggest law firm on the African continent', as its internet website bills it, LASA enjoys a sterling reputation as a model of good practice and probity in corporate governance, management and financial administration in South Africa, and it is officially lauded as the standard for emulation by other public entities. Then Deputy Minister of Justice and Constitutional Development Andries Nel enthused in 2011: 'The world would be a better place if it were run by Legal Aid'[1] and Minister of Justice and Correctional Services Ronald Lamola

[1] *Business Day*, 12 January 2011.

recently crooned in tune: 'This is one of the best-run entities of government. We have had clean audits for the past 18 years. There is a well-established culture [of proper corporate governance at LASA]. ... So it is an institution of best practice, not only in SA but in the whole world'.[2]

6. The Auditor-General's 'clean audits for the past 18 years' have generated the universal impression that LASA is 'squeaky clean'[3] and have served to 'beatify' it and give it a 'saintly status'.[4] In fact, as this complaint will demonstrate, LASA is profoundly corrupt. Under the stewardship of former Board chairperson Dunstan Mlambo JP and former CEO Vidhu Vedalankar (both of whom retired in 2019)[5] and with the active complicity of Chief Legal Executive Patrick Hundermark (now also a Board member), National Operations Executive Brian Nair (now also a Board member), and Human Resources Executive Amanda Clark, proper corporate governance and the rule of law at LASA seriously broke down, with criminal lawlessness becoming the norm.

7. Chief Operations Executive Jerry Makokoane (now also a Board member) and Chief Financial Officer Rebecca Hlabatau turned a blind eye to the corruption called to their attention, as did Board member Pieter du Rand,[6] then and still representing the Department of Justice and Correctional Services ('the Department') on the Board, thus betraying his fiduciary duty to LASA and his watching brief from the Department. Board Secretary Langa Lethiba failed to

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[2] News24, 1 August 2019.

[3] The phrase Chief Justice Mogoeng Mogoeng used ironically in paragraph 104 of *Public Protector v South African Reserve Bank* [2019] ZACC 29 (22 July 2019) in relation to the Reserve Bank as it operated during apartheid.

[4] Against which general danger Mogoeng CJ warned in a talk quoted by *The Mercury* on 18 July 2019: 'We have got to make it our business not to beatify others at the expense of others, not to make others untouchable, and not to allow anybody, including me, to be awarded an undeserved saintly status.'

[5] Although Mlambo JP and Vedalankar have been succeeded by new chairperson Makume J and new CEO Kola, *brevitas causa* they'll continue to be cited in this complaint as chairperson and CEO respectively.

[6] Thus all breaching section 15.1.5 of LASA's Code of Conduct and Ethics (Bundle 2, page 780): 'All employees must ... report any harmful activity they observe in the workplace'. The correspondence they disregarded will be put up with and treated in another part of this complaint to follow.

inform the Board of the illegalities brought to his attention, thereby preventing it from acting to remedy them.[7]

8. The wholesale corruption at LASA addressed in this complaint[8] had its beginning in non-executive[9] Board chairperson Mlambo JP's illegal intrusion into and interference with senior professional staff recruitment[10] – in so doing, lawlessly disregarding and flouting LASA's internal regulations precisely governing job candidate selection[11] and approval,[12] which give him zero role or say in such operations and decision-making[13] – and then in participating in an elaborate criminal cover-up of a particular case of ethical recruitment corruption[14] in which he was centrally involved, escalated to the Minister of Justice and Constitutional Development (now the Minister of Justice and Correctional Services, 'the Minister'), to the National Assembly, and to the courts,[15] in a classic instance of the multiplying dynamic of a disintegrating

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[7] See note 7 above.

[8] Given the egregious corruption and ethical turpitude at LASA reported in this complaint, uncovered by a limited investigation only of recruitment corruption and its cover-up, a comprehensive general forensic audit of LASA is likely to uncover much more.

[9] LASA's annual report 2010/11 explains: 'Legal Aid South Africa is governed by a Board of non-executive members commonly referred to as the Board of Directors. ... COMPOSITION OF THE BOARD AS AT 31ST MARCH 2010: JUDGE DUNSTAN MLAMBO ... Chairperson of the Board of Directors for Legal Aid South Africa since October 2002.' Bundle 2, page 756. LASA's annual report 2011/12 sets out the 'Role and Function of the Board of Directors': 'The Board ... is responsible for providing strategic direction and leadership, ensuring good corporate governance and ethics, determining policy, agreeing on performance criteria and delegating the detailed planning and implementation of policy to the Management Executive Committee.' Bundle 2, page 1053, section 2.2.3. As chairperson Mlambo JP explained in LASA's annual report 2010/11, the Board of non-executive directors plays an 'oversight role'. Bundle 2, page 1056.

[10] President Cyril Ramaphosa deplored this common evil at public entities in his State of the Nation Address on 16 February 2018: 'We have found ... that board members get involved in operational measures. ... We will remove board members from any role in [them].'

[11] Per LASA's Policies and Procedures on Recruitment, Induction, Probation and Relocation. Bundle 1, pages 228–34.

[12] Per LASA's Approval Framework. Bundle 1, pages 225–7.

[13] Besides approving the appointment of LASA's CEO, COO and NOE, in committee with the rest of the Board. Bundle, page 226, section 8.2.1.

[14] In favour of a professional colleague of his – to be canvassed in another part of this complaint to follow.

[15] The Judicial Conduct Committee ('JCC') of the Judicial Service Commission (JSC') is currently seized with eight gross misconduct complaints made under section 14 of the Judicial Service Commission Act 9 of 1994 against Board chairperson Mlambo JP concerning *inter alia* (a) his active collusion in and connivance at CEO and information officer Vedalankar's (nominal, actually Hundermark's) persistent illegal and unconstitutional suppression of records duly requested under section 18 of the Promotion of Access to Information Act 2 of 2000 ('PAIA') since 2010, and (b) his dishonest and deceptive false 'confidential' written report to the Minister and then to the Justice Portfolio Committee to successfully pervert their separately and

cover-up, starting with lies and eventually spiralling out into the commission of crimes. All this will be closely detailed with reference to supporting documents in this and other parts of this complaint to follow.[16]

9. Over the past decade, LASA's top officers have determinedly obstructed the investigation and exposure of their procedural, ethical and criminal corruption by scorning LASA's information transparency obligations imposed by section 32 of the Constitution, and by repeatedly falsely reporting[17] to evade being held to account for it;[18] and then, as this passive obstruction strategy was failing, by endeavouring to end the investigation with a multi-pronged attack to neutralise this investigator by moving to destroy him professionally, strangle him financially, and have him deprived of his essential basic civil rights guaranteed

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independently instituted enquiries (i) into the top-level recruitment corruption at LASA in question, in which report he advanced demonstrably objectively false reasons for the abortion of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments (one false reason later retracted after being refuted and exposed, the other substituted with novel contradictory reasons); and (ii) into the said illegal and unconstitutional suppression of records exposing this corruption – later forced out of LASA through multiple pre-trial document discovery processes and multiple applications to court under section 78 of PAIA, the first five of them conceded by LASA at court. The complaints, Mlambo JP's response to them, and the complainant's invited comments on it can be accessed online at illegal-aid.co.za/JSC. Further complaints to the JCC against Mlambo JP will be lodged upon LASA's release, under court order, of other duly requested documents that Hundermark has illegally and unconstitutionally refused, initially in the name of his former immediate subordinate, Legal Executive Thembile Mtati, and others, but more recently, since Mtati's resignation, by Hundermark directly and personally.

[16] The submission of this complaint, commenced years ago, has long been delayed by Hundermark's determined concealment of incriminating records needed to complete it, followed by meritless, dilatory opposition to numerous necessary applications to court brought to compel their production, and by corruptly-motivated litigation he unsuccessfully brought to derail an application to compel full and proper compliance with his surrender treaty recording his total capitulation to the said first five applications – to be detailed in a another part of this complaint to follow, regarding irregular, fruitless and wasteful expenditure. Several further High Court applications to compel Hundermark's surrender of subsequently requested records are pending in the High Court. To avoid further delay, this complaint will be presented in separate parts, as and when the illegally and unconstitutionally withheld documents are disgorged by court order.

[17] Annually to the South African Human Rights Commission ('SAHRC') under section 32 of PAIA, for the misinformation of the SAHRC's annual section 84 reports to the National Assembly on public body compliance with PAIA, and in a special confidential report submitted to the Justice Portfolio Committee in June 2011. In this fraudulent manner, LASA has misinformed the National Assembly about its compliance or otherwise with PAIA requests, and has defeated its constitutional oversight function, thereby evading being held to account for hiding information illegally and unconstitutionally. All this is comprehensively dealt with in a 'Special Report' on LASA's chronic PAIA delinquency filed with the SAHRC in late 2016, and is further described in court papers in litigation subsequently launched under PAIA to compel LASA's delivery of duly requested records. The 'Special Report' and the said court papers are accessible online at illegal-aid.co.za/PAIA.

[18] As then Board member Ela Gandhi put it appositely in *The Mercury* on 23 November 2011, 'It's only when people have something they are not proud of that they try to hide things.'

and entrenched by sections 32 and 34 of the Constitution, i.e. to access information held by the state and to approach the courts to compel its production when in a corruption cover-up it's illegally and unconstitutionally suppressed.[19]

10. Detailed and vouched in this complaint, the continuing pervasive, systemic corruption in LASA's top echelons has metastasized through virtually the entire governing- and national management structures, with audacious, confident, high-toned, practised lawyerly mendacity having become normal in engagement with their executive and oversight authorities, evincing a complete collapse of ethical standards among them. Indeed, detailed separately in a complaint currently pending before the Judicial Service Commission, LASA's most senior officers' brazen corruption and contempt for the law has reached such gross proportions that it has even polluted the judiciary.[20]

PROVISIONS OF THE PFMA, THE PAA, AND THE CONSTITUTION GENERALLY RELEVANT TO THE COMPLAINT

11. Section 3(1)(b) of the PFMA provides that the Act 'applies to ... public entities listed in Schedule ... 3',[21] including '49. Legal Aid Board' (now LASA); and section 2(1) of the Legal Aid South Africa Act 39 of 2014 accordingly describes LASA as 'a national public entity as provided for in the Public Finance Management Act'.

12. Section 2 of the PFMA states that 'The object of this Act is to secure transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to which this Act applies.'

13. Under section 1 of the PFMA, **'"executive authority"** ... (c) in relation to a national public entity, means the Cabinet member who is accountable to Parliament for that public entity or in whose portfolio it falls' – *in casu*, the Minister.

14. Section 4 of the PAA, 'Constitutional functions', provides in subsection (3):

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[19] All this will be detailed in another part of this complaint to follow.
[20] Supported by the hard written evidence of this discovered in a court file, the complaint to the JSC about it, the judge's response, and the complainant's invited comments on it, identifying the likely perpetrator on the probabilities, can all be accessed online at illegal-aid.co.za/JSC.
[21] Here, as elsewhere in this complaint, ellipsis in quotation is the complainant's.

> The Auditor-General may audit and report on the accounts, financial statements and financial management of–
>
> (a) any public entity listed in the Public Finance Management Act[.]

15. Under section 1 of the PAA, 'Definitions',

> **"material irregularity"** means any non-compliance with, or contravention of, legislation, fraud, ... or a breach of fiduciary duty identified during an audit performed under this Act that resulted in or is likely to result in ... the misuse ... of a public resource or substantial harm to a public sector institution or the general public[.]

16. Section 5(1A) of the PAA provides:

> The Auditor-General may, as prescribed, refer any suspected material irregularity identified during an audit performed under this Act to a relevant public body for investigation, and the relevant public body must keep the Auditor-General informed of the progress and final outcome of the investigation.

17. Section 5(1B) provides:

> The Auditor-General has the power to–
>
> (a) take any appropriate remedial action[.]

18. Section 5(3) of the PAA provides:

> The Auditor-General may, in the public interest, report on any matter within the functions of the Auditor-General and submit such a report to the relevant legislature and to any other organs of state with a direct interest in the matter.

19. Section 5A of the PAA requires:

> The Auditor-General must, within a reasonable time after the issuing of an audit report in terms of section 20, follow up on whether the accounting officer or accounting authority has implemented the recommendations

contained in the audit report relating to any material irregularity, within the time-frame stipulated in the audit report.

20. Section 11 of the PAA prescribes that 'Part 3: Accountability' 'applies to all audits of auditees which the Auditor-General – ... (b) opts to perform in terms of section 4(3).

21. Section 15 of the PAA provides:

> When performing an audit under section 11, the Auditor-General or an authorised auditor has at all reasonable times full and unrestricted access to–
>
> (a) any document, book or written or electronic record or information of the auditee which or which reflects or may elucidate the business, financial results, financial position or performance of the auditee;
>
> (b) ... or
>
> (c) any staff member or representative of the auditee.

22. Section 20 of the PAA provides:

> (1) The Auditor-General must in respect of each audit referred to in section 11 prepare a report on the audit.
>
> (2) An audit report must reflect ... an opinion, conclusion or findings on–
>
> (a) ...
>
> (b) compliance with any applicable legislation relating to financial matters, financial management and other related matters; and
>
> (c) reported performance of the auditee against its predetermined objectives.
>
> (3) In addition, the Auditor-General may report on whether the auditee's resources were procured economically and utilised efficiently and effectively.

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23. Section 216 of the Constitution, 'Treasury control', provides in subsection (2):

> The national treasury must enforce compliance with the measures established in terms of subsection (1), and may stop the transfer of funds to an organ of state if that organ of state commits a serious or persistent material breach of those measures.

The 'measures established in terms of subsection (1)' mentioned in subsection (2) are *inter alia* 'uniform treasury norms and standards.'

24. LASA's 'serious [and] persistent material breach' over the past decade of 'uniform treasury norms and standards', some criminal, will be particularised with reference to specific contraventions of the PFMA cited and quoted below. A multitude of unlawful material irregularities within the purview of section 1 of the PAA, some criminal, will likewise be detailed in this first part of the complaint and in other parts to follow.

LASA'S CREATION OF ITS SENIOR LITIGATOR POSTS, AND ITS REASON FOR DOING SO

25. In November 2006, LASA CEO Vedalankar, NOE Nair and their Management Executive Committee colleagues submitted a 'Report to Board' in which they proposed 'Increasing Senior Litigation capacity' 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.[22]

26. Nine such Senior Litigator posts were proposed,[23] for which the motivation recorded there was 'Funding available'.[24]

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[22] Bundle 2, pages 990–1, paragraph 2.7.
[23] Bundle 2, page 992, item 7.

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27. On 24 November 2006, the Board approved the proposal,[25] and the posts were duly created and subsequently advertised.[26]

28. In view of their high population densities and corresponding greater need for them, KwaZulu-Natal and Gauteng were allocated two Senior Litigator posts each.[27] Particularly relevant to the KwaZulu-Natal posts, NOE Nair has pointed out that it's in the 'rural areas' that the 'demand [for] civil legal aid ... was bigger';[28] and chairperson Mlambo JP has 'agreed that there was still much to be done in reaching the rural poor'.[29]

29. At grade LP10[30] (formerly 'level 13'),[31] Senior Litigators are the most 'Senior Professional staff'[32] in LASA's legal professional staff establishment;[33] and LASA classifies a Senior Litigator post as a 'critical position'[34] accordingly.

30. Section 53 of the PFMA provides:

> (1) The accounting authority for a public entity listed in Schedule 3 which is not a government business enterprise must submit to the executive authority responsible for that public entity, at least six months before the start of the financial year of the department designated in terms of subsection (2) ..., a budget of estimated revenue and expenditure for that financial year, for approval by the executive authority.

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[24] *Ibid*: page 992, item 7. 'Funding available' noted in the right margin; page 989, second paragraph; and pages 704–6.
[25] Bundle 2, page 702. In paragraph 4.1 of its answer to a pre-trial conference agenda listing facts for formal admission in case LC D529/11, LASA confirmed in October 2011 that 'the Senior Litigator positions were created by Management and approved by the Board'. (More accurately, they were 'proposed' by management. Bundle 2, page 990, paragraph 2.7.)
[26] Bundle 1, page 537.
[27] Bundle 2, page 690.
[28] Bundle 1, page 433, penultimate paragraph.
[29] Bundle 1, page 441, thirteenth paragraph.
[30] Bundle 2, page 1021, paragraph 16.
[31] Bundle 2, page 690.
[32] Bundle 2, page 1036, section 8.2.2 (b).
[33] Bundle 2, page 733: 'through positions such as senior litigator' for 'employees to advance into'.
[34] Bundle 1, page 253. Paragraph 2.2.b of this 'Report to Board' distinguished between 'critical positions' and LASA's many public defender posts serving the lower criminal 'District Courts and Regional Courts.' Paragraph 48.9 of LASA's original response (plea) to the original statement of claim in case LC D529/11 referred in to 'the critical position of High Court [senior] litigator'. In paragraph 43.1 of its answer to the facts listed for admission in the pre-trial conference agenda, LASA 'Agreed' the proposition that 'The Pietermaritzburg Senior Litigator post is "a critical position"'.

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(2) The budget must be submitted to the executive authority through the accounting officer for a department designated by the executive authority, who may make recommendations to the executive authority with regard to the approval or amendment of the budget.

31. In due compliance with section 53(1) of the PFMA, LASA specifically budgets for salaries for all nine of its Senior Litigator posts,[35] and provision in LASA's budgets for the employment of nine Senior Litigators has from inception to date been (i) annually approved by the Minister on the advice of the Department's accounting officer, (ii) voted by the National Assembly, and (iii) received by LASA from the Treasury via the Department's Third Party Funds Directorate.[36]

32. In short, LASA's nine Senior Litigator posts have always been and remain funded; which is to say in plain terms that LASA has always had and still has the money to employ nine Senior Litigators at seats of the High Court around the country.

THE JUSTICE PORTFOLIO COMMITTEE'S REPEATEDLY EXPRESSED CONCERN ABOUT INADEQUATE LEGAL EXPERTISE AVAILABLE TO THE PUBLIC AT LASA; LASA'S REPEATED CONCESSION OF THE PROBLEM; AND THE JUSTICE PORTFOLIO'S SPECIFIC CONCERN THAT LASA EMPLOY SENIOR LITIGATORS TO REMEDY IT

33. Six months after the Board resolved to create its new Senior Litigator posts, but before they were advertised, LASA's parliamentary oversight authority at

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[35] Bundle 3, pages 1073–92: These documents are LASA's consolidated budget applications and its specific budget applications for Senior Litigator salaries over the period February 2010 to October 2013. Duly requested under PAIA, other such budget applications for other years have been illegally and unconstitutionally suppressed by Hundermark to obstruct this corruption investigation, and litigation is pending in the Pietermaritzburg High Court to compel their production (case 5239/18P). Meanwhile the Auditor-General has 'full and unrestricted access to' these further financial records under section 15 of the PAA.

[36] Bundle 3, page 1093. These employment statistics show LASA's employment of six Senior Litigators as at March 2012. (The falsity of the 'frozen' entry for the Durban, Pietermaritzburg and Kimberley Senior Litigator posts is discussed below.) Hundermark is also hiding payment vouchers reflecting the Department's transfer to LASA of its baseline budgets, and High Court litigation is pending to compel their production (case 5239/18P). As said, under section 15 of the PAA the Auditor-General can readily access these records to confirm that all nine of LASA's Senior Litigator posts have always been and still are funded by the Treasury via the Department's Third Party Funds directorate .

the time, the National Assembly's Select Committee on Safety and Security[37] pertinently enquired at its meeting with Board chairperson Mlambo JP and CEO Vedalankar on 30 May 2007 'if the LAB [the Legal Aid Board, now LASA] 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'. Mlambo JP responded by admitting, 'The LAB was aware of constant criticism that they employed inexperienced lawyers to do the work.'[38]

34. Again the Justice Portfolio Committee raised its concern about the quality of legal expertise available at LASA when on 5 August 2009 it 'asked if the Board [i.e. LASA] was working on improving public perceptions about itself.'[39] Mlambo JP responded by again conceding that LASA bore 'a legacy' of 'bad public perceptions'.[40] (Mentioned in paragraph 27 above, LASA resolved to create nine new Senior Litigator posts three months later.)

35. Again at its meeting with LASA on 11 October 2010,[41] 'The Committee wanted to know about the experience levels of Legal Aid South Africa practitioners as well as their ability to compete with lawyers from ... private practice'.[42]

36. Again on 3 November 2010, the 'Chairperson [of the Portfolio Committee] remarked that public perceptions of Legal Aid SA were important.' Then Legal Development Executive, now CLE Hundermark repeated Mlambo JP's concession that there were still 'remnants' of 'the perception' of poor legal service delivery by LASA.[43]

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[37] This Select Committee was the precursor of the Portfolio Committee on Justice and Constitutional Development, now named the Portfolio Committee on Justice and Correctional Services.
[38] Bundle 2, page 816.
[39] Bundle 2, page 1048, penultimate paragraph.
[40] Bundle 2, page 1049, first paragraph.
[41] Reported on 12 October 2010.
[42] Bundle 2, pages 960 and 962.
[43] Bundle 2, page 1003.

37. Again in its pleadings in the Durban Labour Court in 2013, LASA conceded that its 'public image ... has, for the most part, been negative due to a perception of incompetence and lack of vital court skills.'[44]

38. Again in its Strategic Plan 2012–17, LASA identified among its 'strategic risks' the 'Quality of legal services offered by Legal Aid SA' and the 'Attraction and retention of expertise and specialist skills'.[45]

39. Again in its current Strategic Plan 2015–20, LASA confessed this real problem – as well as other serious problems germane to this complaint – now in the most direct and frank terms to date:

> The organisation has assessed the strategic risks that have to be mitigated during the strategic plan period and these are as follows: ... Lack of capacity to deliver on the demand for legal services. ... Poor quality of the legal services provided by the Justice Centres ... Unethical, corrupt or fraudulent practices or acts. ... Lack of engagement with the organisational values and culture by employees.[46]

40. 'Lack of capacity to deliver on the demand for legal services' and 'Poor quality of the legal services provided by the Justice Centres' as a result of 'Unethical, corrupt or fraudulent practices or acts' by LASA's top officers named in paragraph 6 above, and their 'Lack of engagement with the organisational values' of LASA – ethical, legal, and constitutional – prescribed by LASA's Code of Conduct and Ethics[47] – a lack displayed also by the officers named in paragraph 7 – is precisely the subject of this complaint.

THE JUSTICE PORTFOLIO COMMITTEE'S REPEATEDLY EXPRESSED CONCERN THAT VACANT POSTS IN THE JUSTICE CLUSTER BE FILLED, ESPECIALLY CRITICAL POSTS

41. On 4 May 2010, the Justice Portfolio Committee raised the fact that it:

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[44] Paragraph 9 of LASA's original response to the original statement of claim in LC D529/11.
[45] Bundle 3, page 1108.
[46] Bundle 3, page 1110.
[47] Bundle 2, pages 770–80.

> 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.[48]

THE JUSTICE MINISTER'S SPECIFIC CONCERN STATED TO LASA'S CHAIRPERSON THAT LASA SHOULD FILL ITS VACANT POSTS AND NOT FREEZE ANY, AND THAT IT SHOULD MAINTAIN ITS DELIVERY OF LEGAL SERVICES AS PLANNED

42. On 16 July 2010, COO Makokoane[49] submitted a 'Report to Board'[50] recording that:

> the Executive Authority [i.e. the Minister] has ... in a meeting with the Legal Aid SA Board Chairperson expressed his wish to have Legal Aid SA service delivery maintained and that DoJ should make funds available to cover the OSD shortfall through the mid-year budget adjustments in September/October 2010.[51]

43. COO Makokoane was referring to the fact that funding for salary increases for legal staff under Phase 1 of the Occupational Special Dispensation (OSD) scheme hadn't been included in LASA's baseline budget for 2010/11, as LASA learned in March 2010;[52] but as undertaken by the Minister to chairperson

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[48] Bundle 2, page 820.
[49] LASA volunteered that it was 'a report by the COO to the Board' in paragraph 17 of its original response to the original statement of claim in case LC D529/11.
[50] Bundle 1, pages 253, paragraph 2.2.(a); and page 254, paragraph 4.II.
[51] Bundle 1, page 252, paragraph 1.2.
[52] Bundle 1, page 236, paragraph 6.

Mlambo JP, provision for this additional funding was indeed made[53] in the national mid-term budget in October 2010[54] and it was paid to LASA on 15 December 2010.[55]

44. Addressing the Justice Portfolio Committee on 11 October 2010 and informing it that the OSD funding issue had just been resolved with the Minister's assistance by including provision for it in the national mid-term budget, CEO Vedalankar reported the Minister's wishes, originally stated to Mlambo JP, that he 'didn't want' LASA to 'freeze ... posts' and that he'd 'said that we needed to continue with the business'[56] of providing legal services to the country's indigent in accordance with LASA's Strategic Plan2009–12 by filling LASA's budgeted and funded vacant legal posts.

THE EMPLOYMENT OF SENIOR LITIGATORS AS A KEY COMPONENT OF LASA'S STRATEGIC PLAN 2009–12

45. As LASA explains in various documents, the Board 'is responsible for providing strategic direction ... and delegating the detailed planning and implementation of policy to the Management Executive Committee.'[57] This 'strategic direction' and 'policy' is set out in the Board's Strategic Plan for LASA's future operations; and LASA's annual Business Plan ('also referred to as ...the Annual Performance Plan'),[58] based on the Strategic Plan,[59] sets out the 'detailed planning and implementation of policy [by] the Management Executive Committee.'[60]

46. The National Treasury states in its 'Framework for Strategic Plans and Annual Performance Plans':

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[53] Bundle 2, page 849, last paragraph.
[54] Bundle 2, page 847.
[55] Bundle 2, page 713.
[56] Bundle 1, page 184.
[57] Bundle 2, page 1053.
[58] Bundle 1, page 435, last paragraph.
[59] Bundle 2, page 452, second point.
[60] Bundle 2, page 1053.

> Strategic Plans identify strategically important outcomes-orientated goals and objectives against which public institutions' medium-term results can be measured and evaluated by Parliament ... and the public.[61]

47. LASA states consistently: The 'Strategic Plan sets a clear Vision and Mission as well as Outcomes and Strategies that the organisation aims to achieve.' It's 'key to Legal Aid South Africa's operations' and 'complies with National Treasury Regulations', requiring it to 'outline how it will use its resources optimally to achieve its vision and outcomes.'[62]

48. Section 3.2.1.a of the Charter of LASA's Board Executive Committee stipulates that 'approval of the strategy, business plans and annual budgets and any subsequent changes in strategic direction or material deviations in business plans' at LASA are 'reserved for Board decision'.[63]

49. Chaired by NOE Nair,[64] LASA's Legal Services Technical Committee has (per the Legal Aid Guide) the 'collective responsibility' for 'managing the legal services delivery programme' and 'the execution of all Board strategy, policies, programmes and plans relating to the legal services delivery programme of the Legal Aid South Africa'.[65]

50. In CEO Vedalankar's parliamentary presentation titled 'Briefing of Justice Portfolio Committee 5 August 2009',[66] a couple of months before she and her fellow management executives proposed that LASA's Board approve the creation of the new Senior Litigator posts, she mentioned among LASA's 'Legal Delivery Challenges' its 'Limited capacity to render civil legal aid services'[67] – hence the organisation's resolution in its 'Way Forward' to 'Increase Legal Aid SA's capacity to render civil legal aid services.'[68]

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[61] Bundle 3, page 1113.
[62] Bundle 3, page 1107.
[63] Bundle 3, page 1101.
[64] Bundle 2, page 767, section 2.3.
[65] Bundle 2, page 767–8.
[66] Bundle 1, page 427.
[67] Bundle 1, page 426, penultimate paragraph.
[68] Bundle 1, page 429.

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51. LASA elaborated more specifically its lack of capacity to undertake complex, high-level litigation in its draft 'Strategic Plan 2009–2012', issued about a year earlier on 5 September 2008,[69] namely its 'Lack of specialised legal skills' and 'Lack of capacity to provide impact litigation'[70] – which is why the Strategic Plan 2009–12 stated that 'the Legal Aid Board should capacitate for specialised skills'.[71]

52. Accordingly, the objects of LASA's Strategic Plan 2009–2012 in this regard were:

- 'To develop a full appreciation of the civil justice needs of the poor and provide more civil representation';[72]
- 'To undertake targeted impact litigation';[73]
- 'To improve access to justice through impact litigation';[74]
- To 'recruit specialist skills';[75]
- To effect 'increased capacity of LAB ie more legal specialists'; [76] and,
- To 'capacitate civil units ie more staff and more supervision'.[77]

53. In September 2009,[78] LASA's Strategic Plan 2009–2012 was presented to the Minister, being LASA's 'executive authority' under section 1 of the PFMA; and on 13 April 2010[79] to the Justice Portfolio Committee, LASA's oversight authority under section 55(2)(b)(ii) of the Constitution.

54. The Strategic Plan 2009–12 doesn't mention Senior Litigator posts by name, but LASA has expressly acknowledged that the engagement of Senior Litigators was integral to the plan to develop and increase LASA's capacity to deliver expert litigation services to indigent litigants by creating a pool of specialist

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[69] Bundle 1, page 444.
[70] Bundle 1, page 445, sections III and IV.
[71] Bundle 1, page 445, section XIV.
[72] Bundle 1, page 446, 'Client & Community'.
[73] *Ibid.*
[74] Bundle 1, page 447, Programme P5.
[75] Bundle 1, page 450, Programme P23.
[76] Bundle 1, page 450, Programme P24.
[77] *Ibid.*
[78] Bundle 1, page 452.
[79] Bundle 1, page 431; and bundle 2, page 821.

professionals to attend to complex matters in specialist and High Courts, including the Supreme Court of Appeal and the Constitutional Court.[80]

55. LASA's current Strategic Plan 2015–20 puts a point on it:

> To give content to the Constitution through impact litigation – which is able to address Constitutional rights and socio-economic rights and develop jurisprudence on social justice matters.[81]

56. LASA's several advertisements for Senior Litigators in the period 2007–2010 precisely envisaged their conduct of such 'specialised, complex or impact'[82] litigation, and stated LASA's aim to 'Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff', that is, to 'provide support for practitioners in more complex matters',[83] as LASA's annual report for 2009/10 puts it, and, as announced in a press release in March 2012, for 'protecting the rights of women and children' in accordance with LASA's, 'vision as an organisation ... for the implementation of a child-centred justice strategy that ensures the best interests of the child in all legal matters. ... In very complex matters, our Senior Litigators provide support and advice to practitioners that need it.'[84]

57. In their Foreword to LASA's current Strategic Plan 2015–20, Mlambo JP and Vedalankar likewise emphasised 'Priority to civil legal aid assistance in Constitutional rights related matters'[85] – exactly the province of 'professional staff that are senior enough to take on ... cases of a highly complex nature', namely 'senior litigators ... able to undertake more complex work'[86] as Vedalankar and her executive management colleagues envisaged in their motivation for the creation of the nine Senior Litigation posts, approved by Mlambo JP and the rest of the Board.

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[80] Bundle 2, page 898, section 3; and paragraphs 2.2–3 of LASA's response to paragraph 3.2 of first amended statement of claim in case LC D529/11.
[81] Bundle 3, page 1111, section S4, P4.
[82] Bundle 1, pages 43, 45, 46, and 537; and Bundle 2, page 732.
[83] Bundle 1, page 142, paragraph 153.
[84] Bundle 2, pages 825–6.
[85] Bundle 3, page 1109.
[86] Bundle 2, pages 990–1, paragraph 2.7.

58. Quoted below, LASA would repeatedly vaunt the employment of Senior Litigators as a key achievement in its 'Report on Completion of Strategic Plan 2009–2012', both in the Board's 'Annual Performance Report 2011–12' and in Vedalankar's CEO report for that year.

THE CONCEALED ILLEGAL ABORTION OF LASA'S STRATEGIC PLAN 2009–12 IN REGARD TO THE EMPLOYMENT OF SENIOR LITIGATORS BEFORE IT WAS COMPLETED, UNLAWFULLY LEAVING A THIRD OF THESE CRITICAL BUDGETED AND FUNDED POSTS VACANT, IN CONTRAVENTION OF THE PFMA, AS THE CONSTITUTIONAL COURT HAS NOTED

59. In October 2007, four months after Parliament enquired whether LASA 'employed senior litigators',[87] LASA advertised to recruit applicants for appointment to its nine newly created Senior Litigator posts,[88] after which the candidates selected for the Johannesburg, Pretoria, Cape Town and Port Elizabeth posts were approved on 8 December 2008[89] and appointed.[90] The Bloemfontein and Mahikeng posts were filled later on.[91] No appointments were made to the Pietermaritzburg, Durban and Kimberley posts pursuant to the

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[87] Bundle 2, page 816.
[88] Bundle 1, page 537.
[89] Bundle 3, pages 1094 and 1097. Material irregularities in the approval process will be canvassed in another part of this complaint to follow.
[90] Bundle 3, page 1093.
[91] Bundle 3, pages 1073 and especially 1076 compared with pages 1077 and especially 1080. These two budget applications show five Senior Litigator posts were vacant in February 2010, and that the vacancies dropped to three in February 2012, which means two of them were filled after February 2010 (at Bloemfontein and Mahikeng). To obstruct the complainant's investigation and determination of the date(s) on which these latter two appointments were made (sometime after February 2010, well after the irregular abortion of the Pietermaritzburg and Durban recruitments in November 2009; see paragraphs 67 and 68), Hundermark is hiding the records of 'All six Senior Litigator appointments'. These were duly requested on 1 August 2016 under section 18 of PAIA, and after they were illegally and unconstitutionally refused in September, were sued for, along with other documents, two weeks later in October 2016 under section 78 of PAIA (case 11187/16P). The case was eventually argued in the Pietermaritzburg High Court on 30 August 2019, nearly three years later, after being repeatedly held up by various dilatory tactics, and reserved judgment is pending. Once they've been disgorged by order of court, the withheld documents will be used in support of further parts of this complaint to follow, concerning several instances of 'material irregularity' as defined by section 1 of the PFMA, including 'fraud'.

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initial advertisement and recruitment process, and LASA readvertised the three posts in 2009.[92]

60. The re-advertisement of the Kimberley post in May 2009[93] failed to attract a suitable applicant,[94] and on 24 March 2010, LASA's Legal Services Technical Committee accepted that the vacant post was 'redundant'[95] since there'd 'never been a demand for' it[96] and resolved to abolish it and transfer its budget to a second Senior Litigator post to be created for the Eastern Cape at Mthatha,[97] on the basis cogently argued by the Regional Operations Executive for the region[98] that 'We currently have one Senior Litigator who is stationed at Port Elizabeth. It is a huge challenge for this one person to provide support to the whole Region' with its 'four High Court seats [at] Port Elizabeth, Grahamstown, Bhisho and Mthatha',[99] the latter three many kilometres distant from Port Elizabeth.

61. The two vacant Pietermaritzburg and Durban posts in KwaZulu-Natal were simultaneously readvertised in June 2009[100] and again two months later in August.[101]

62. Just as they'd done before the original advertisement of the nine Senior Litigator posts in 2007, LASA's responsible management executives duly 'determined [that] a "real" need exists for the position[s] to be filled before [the] process of recruitment [was] initiated'[102] before readvertising the Pietermaritzburg and Durban posts in 2009, in due compliance with their obligation to do so under section 3.1 of Chapter 2 on 'Recruitment' in the Senior Management Services Public Service Handbook[103] ('SMS Handbook') issued by the Department of Public Service and Administration. LASA's own 'Policies and

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92 Bundle 1, pages 43, 45, and 537; and Bundle 2, page 732.
93 Bundle 2, page 732.
94 Bundle 2, page 736, 'Background', second paragraph.
95 Bundle 2, page 738, paragraph 1.
96 Bundle 2, page 736, 'Background', first paragraph.
97 Bundle 2, page 709, paragraph 4.1.7.
98 Bundle 2, page 738, header; and page 740, final entry.
99 Bundle 1, page 739, paragraph 2.2.
100 Bundle 1, pages 43–44.
101 Bundle 1, page 45.
102 Bundle 2, page 789.
103 Bundle 2, pages 787–801.

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Procedures on Recruitment, Induction, Probation and Relocation'[104] ('Recruitment code') states its conformity with the SMS Handbook: 'This policy and procedure aims at ensuring that appropriate recruitment procedures are followed, in line with statutory legislation and business practices[105] ... [It] provides the Legal Aid Board with clear guidelines to be followed when a vacancy exists.'[106]

63. Section 3.3 of the SMS Handbook requires that such responsible management executives ensure that 'the position is budgeted for'[107] and Note 17 of LASA's Approval Framework applicable at the time mandated consistently: 'It is the responsibility of the line function Executive to ensure that such [appointment] is provided for in the budget and MTEF and that a vacancy exists in respect of the post concerned.'[108]

64. The 'line function Executive'[109] in regard to Senior Litigator posts is NOE Nair, and before the recruitment processes for the Pietermaritzburg and Durban Senior Litigator were recommenced in 2009, he would have duly confirmed that the two posts had been budgeted for – as indeed LASA's recruitment/vacancy/budget statistics for November 2009[110] show they were.

65. Four of the candidates attracted by the re-advertisement of the Pietermaritzburg and Durban Senior Litigator posts in 2009 were shortlisted;[111] and on 12 November 2009[112] they were duly interviewed by a duly constituted selection panel of LASA's most senior lawyers in the region,[113] following which two suitably qualified and experienced candidates were duly and unanimously

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[104] Bundle 2, page 717.
[105] Bundle 1, page 228, section 1.1.2.
[106] Bundle 1, page 228, section 1.1.3.
[107] Ibid.
[108] Bundle 2, page 1040.
[109] Bundle 1, page 19.
[110] Bundle 2, pages 1028 and 1029: 'Vacant' and 'Budget' columns.
[111] Bundle 1, page 245.
[112] Bundle 1, page 244. The date of the interviews is incorrectly recorded on the recommendation report as 6 November 2009; in fact they were held on the 12th.
[113] Bundle 1, page 248.

selected and recommended by the panel, one for each of the Pietermaritzburg and Durban posts[114] for which they'd respectively applied.[115]

66. In sum, the selection and recommendation process was conducted impeccably properly in compliance with LASA's Recruitment code and with similar official codes of recruitment practice in the public sector observed by LASA.[116]

67. The two candidates duly recommended for the Pietermaritzburg and Durban posts were not appointed, however, and the approval process to finalize their recruitments governed by the Approval Framework[117] was silently aborted by national-level officers of LASA,[118] no reason initially given.[119]

68. In a confirmatory affidavit put up in legal proceedings for the true information of the trial judge, NOE Nair corroborated[120] then Corporate Services

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[114] Bundle 1, page 247, paragraph 6.
[115] Bundle 2, page 827.
[116] The irregular manner in which the selection panel framed its recommendations of the two candidates after duly selecting them will be discussed in another part of this complaint to follow, as will the many unlawful irregularities committed by LASA's national executives in the matter, *inter alia* by unlawfully gerrymandering the qualifying criteria for the posts in a failed attempt to bias the process in favour of one of the applicants, Ngcamu AJ (as he used to be), a long-time judicial colleague of LASA chairperson Mlambo JP, who was then head of the Labour- and Labour Appeal Courts, and who'd repeatedly got him appointed as an acting judge of the Labour Court over a period of about six years prior to the interviews. To be discussed in another part of this complaint to follow, this long suppressed, determinedly concealed, critically relevant information was finally forced out of LASA through PAIA litigation in April 2016, years after the trial of and judgment in the misconceived, correctly dismissed labour action mentioned above (LC D529/11), which had been wrongly founded on unfair discrimination.
[117] Bundle 2, page 1036. Under section 8.2.2.b of the Approval Framework, the NOE (Nair) has 'Final approval' authority, provided that the CEO (then Vedalankar) 'Must agree' with the appointment.
[118] To be identified in light of relevant documents in another part of this complaint to follow.
[119] Bundle 1, page 19. This is a letter by NOE Nair on 3 August 2011, under pressure of the complainant's enquiry more than seven months after the silent abortion of the Pietermaritzburg and Durban Senior Litigator recruitments, alleging that 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [*sic*] put on hold due to various reasons. I can now confirm we will not be proceeding with the filling of any of these posts.' The mendacity of Nair's first allegation will be exposed in another part of this complaint to follow. The mendacity of his second allegation is exposed in paragraph 88 below; in sum, Nair, Vedalankar and Clark have all admitted on oath that no record whatsoever exists to show that LASA duly took any such decision not to fill the posts. Discussed in paragraphs 83–5 below, such a decision would anyway have been *ipso facto* unlawful under the PFMA, as the Constitutional Court confirmed in the *Zungu* case.
[120] Annexure 'DM15' to Mtati's answering affidavit in the application to subpoena Mlambo JP for cross-examination at the trial of case LC D529/11. (LASA neglected to annex this confirmatory affidavit to the answering affidavit provided to the complainant, and only furnished it after the trial. So if it's not in the court file LASA will have a copy, otherwise the complainant can make his copy available.

Executive Thembile Mtati's truthful evidence on affidavit, given *qua* attorney on Mlambo JP's instructions, that the Pietermaritzburg and Durban 'recruitment ... was aborted immediately after the first round of interviews.'[121] In other words (LASA's words), it was 'immediately after the first round of interviews' that 'the decision to abort the recruitment of the Senior Litigator, Pietermaritzburg'[122] was taken, and with it the recruitment process for the Durban Senior Litigator post – off the record, without authority, and therefore unlawfully, as discussed below.

69. Many months later, under persistent, rising pressure to account – ultimately to the Minister and to the chairperson of the Portfolio Committee, both of whom had separately and independently instituted enquiries into the matter, and after that to several courts – LASA's top officers advanced a shambles of manifestly untruthful, shifting, vacillating, radically contradictory, mutually exclusive and destructive excuses, all objectively demonstrably false, for not completing the Pietermaritzburg and Durban Senior Litigator recruitments, and several months later for cancelling the transfer of the Mahikeng Senior Litigator to the new Mthatha Senior Litigator post, for which he'd been selected and recommended in May 2010. Another part of this complaint to follow will quote and refute, in light of LASA's own records, the profusion of chaotically inconsistent changing lies told by LASA's top officers to falsely justify the off-the-record, unauthorized, unlawful abortion of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments, and to cover ethical recruitment corruption (jobs for pals) in the case of the Pietermaritzburg post – starting with 'there was a funding shortage at the time that [the complainant] had applied for the Senior Litigator post',[123] i.e. on 2 October 2009,[124] which is to say 'there was no ... funding ... to fill the vacant posts'[125] – which blatant lie was afterwards substituted with other completely different contradictory blatant lies.

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[121] Paragraph 13.4 of Mtati's answering affidavit in the application to subpoena Mlambo JP in LC D529/11.
[122] Paragraph 28 of LASA's original response to the original statement of claim in LC D529/11.
[123] Paragraph 48.3.1 of LASA's original response in LC D529/11.
[124] Bundle 2, page 827.
[125] Paragraph 49.6 of LASA's original response in LC D529/11.

70. The result of the illegal abortion of the three substantially complete recruitment operations for the Pietermaritzburg, Durban and Mthatha Senior Litigator posts, and the unlawful deliberate failure to complete LASA's Strategic Plan 2009–12 regarding the employment of Senior Litigators, is that these then and still budgeted and funded top critical specialist legal professional posts have unlawfully deliberately been left vacant for a decade since the due selection and recommendation of suitable candidates for the Pietermaritzburg and Durban posts in November 2009, and the irregular selection and recommendation of a suitable candidate for internal lateral transfer[126] and appointment[127] to the Mthatha post on 24 May 2010.[128]

71. LASA isn't a government department in the 'public service' according to the definition in sections 1 and 8 of the Public Service Act 103 of 1994, so neither the Public Service Regulations nor the SMS Handbook's 'Recruitment'[129] chapter applies directly to LASA as a public entity listed in Schedule 3 of the PFMA, but as quoted in paragraph 62 above, LASA's Recruitment code states that LASA's recruitment operations must be conducted in accordance with such regulations.

72. Official 'business practices'[130] for public sector recruitment prescribed by the Public Service Regulations, both in Part IV, section C.1A.2, of the former Regulations applicable in 2009 and 2010, and in section 65(7) of the new Regulations promulgated in 2016, with which LASA's Recruitment code is 'in line',[131] are: 'A funded vacant post ... shall be advertised within six months after becoming vacant and be filled within 12 months after becoming vacant.'[132] Indeed, LASA has acknowledged that 'the recruitment process for the senior litigator positions' was required to 'be completed within a reasonable time'[133] – in default of which, section C.1A.3 of the Regulations, applicable at the material

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[126] Paragraph 99.5 of Mtati's answering affidavit in the application to subpoena Mlambo JP in LC D529/11.
[127] Paragraph 92.1 of LASA's answer to pre-trial conference agenda in LC D529/11.
[128] Bundle 2, pages 994 and 996. The several material irregularities in the Mthatha recruitment will be addressed in another part of this complaint to follow.
[129] Bundle 2, pages 787–801.
[130] In the language of section 1.1.2 of LASA's Recruitment code. Bundle 1, page 228.
[131] Bundle 1, page 228, section 1.1.2.
[132] Bundle 3, pages 1115 and 1117.
[133] Bundle 1, page 381, paragraph 15.

time, required that 'the reasons for the non-compliance shall be recorded in writing.'[134] In breach of the Regulations, the Pietermaritzburg, Durban and Mthatha Senior Litigator posts were deliberately not filled 'within 12 months after becoming vacant' or at all, and no 'reasons for the non-compliance' were 'recorded in writing'.[135]

73. In unlawful contravention of official 'business practices' prescribed for the conduct of recruitment operations in the public sector – which LASA's Recruitment code, approved by the Board,[136] requires LASA's management executives to observe – three budgeted and funded Senior Litigator posts at LASA have been vacant since their creation in November 2006,[137] for over thirteen years now.

74. Very much more serious than unlawfully failing to comply with codified recruitment practice in the public service, and irrespective of the mess of contradictory lying excuses later forged and uttered by CLE Hundermark, CEO Vedalankar, NOE Nair and chairperson Mlambo JP under pressure to explain why the selected and recommended candidates for the critical Pietermaritzburg, Durban and Mthatha Senior Litigator posts weren't appointed, LASA's

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[134] Bundle 3, page 1115.

[135] In November 2011, two years after the abortion of the Pietermaritzburg and Durban Senior Litigator recruitment processes 'immediately' after the candidate recommendations were made in November 2009, followed by the abortion of the Mthatha recruitment several months later as CEO Vedalankar and NOE Nair came under pressure to finalise the Pietermaritzburg appointment – even as the Bloemfontein and Mahikeng Senior Litigator recruitments proceeded and were finalised with appointments made – NOE Nair made a 'Report to Board' (Bundle 2, page 869) alleging absolutely falsely that the three Senior Litigator posts at Pietermaritzburg, Durban and Mthatha 'have remained vacant due to recruitment challenges.' Nair compounded his lie to the Board by making up a second quite different, also absolutely false reason, unsupported by any records: 'We have since decided not to fill the remaining positions until we are satisfied that our objectives determined for this position [*sic*] is [*sic*] being achieved by the current incumbents.' Nair's lying spree continued with a third outright fabrication in which he absolutely falsely and slanderously alleged, contradicted by LASA's professional quality assessment reports, that LASA's incumbent six Senior Litigators were incompetent and underperforming and needed urgent professional auditing 'by a retired judge', which blatant lie he told about them Nair later retracted under oath in court. The several different lies Nair told the Board to justify not filling the Pietermaritzburg, Durban and Mthatha Senior Litigator posts, and his 'operational reasons' perjury in a subsequent affidavit, will be addressed and refuted with reference to material documents in another part of this complaint to follow.

[136] Bundle 1, page 228, footnote.

[137] As mentioned in paragraph 60 above, the original Kimberley Senior Litigator post was abolished and a new post created at Mthatha, with the budget for the former transferred to the latter.

deliberate failure to fill these budgeted and funded critical posts, and its failure to duly apply the salary revenue it budgets for the posts and receives for them from the Treasury via the Department, has unlawfully contravened and continues to unlawfully contravene the PFMA.

CRIMINAL AND OTHER CAPITAL CONTRAVENTIONS OF SECTIONS 53(3), 53(4), 55(1)(a) & 55(2)(a) OF THE PFMA, READ WITH SECTION 86 'OFFENCES AND PENALTIES'; AND CRIMINAL CONTRAVENTIONS OF SECTION 17(2) OF THE POWERS, PRIVILEGES AND IMMUNITIES OF PARLIAMENT AND PROVINCIAL LEGISLATURES ACT 4 OF 2004 IN FALSELY REPORTING TO MISLEAD THE JUSTICE PORTFOLIO COMMITTEE

75. Section 1 of the PFMA defines **'unauthorised expenditure'** *inter alia* as 'expenditure not in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the purpose of the main division'.

76. Presenting the then recently enacted PFMA to the Finance Portfolio Committee of the National Assembly on 19 March 2001, the Treasury explained the gravity of 'underexpenditure' as a form of unlawful 'unauthorised expenditure':

> [T]he definition of unauthorised expenditure is ... also not spending according to the programme description of the specific department. ... The Minister [of a Department; or, in the case of a public entity, its Board as accounting authority][138] must ensure budget is spent in accordance with the original budget plan. ... [N]o one is allowed to have unauthorised expenditure. ... National Treasury ... will ... follow up should there be any indication of ... underexpenditure.[139]

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[138] Quoted in paragraph 79 below, section 1 of the PFMA identifies the Board as LASA's 'accounting authority', and LASA stated accordingly in its annual report 2011/12: 'The Board is the accounting authority of Legal Aid South Africa under the Public Finance Management Act 1 of 1999 (as amended).' Bundle 2, page 1053, paragraph 2.2.3.

[139] Bundle 3, page 1119. The transcript of the meeting doesn't identify which Portfolio Committee the Treasury representative addressed, but it looks certain to have been the Finance Committee.

77. When a member of the Portfolio Committee deplored that 'there are a few departments that repeatedly engage in underspending. This results in poor delivery', and he 'asked how the Act addresses this situation for the people on the ground who are suffering', the Treasury representative responded: 'The Minister must ensure that the budget is spent in accordance with the original budget plan. ... Should there be any underexpenditure, the Minister must report to the Cabinet.'[140]

78. LASA isn't a department of state, but the point is the same: 'underexpenditure' by a public entity like LASA and the failure of its Board to 'ensure that budget is spent in accordance with the original budget plan' is extraordinarily serious; indeed, shown below, it constitutes financial misconduct and a breach the PFMA. Aggravating this particular case, it 'results in poor delivery' and 'people on the ground who are suffering', namely the indigent in KwaZulu-Natal completely deprived, and in the Eastern Cape substantially deprived, of access to complex constitutional and other specialist litigation services pertinently envisaged by LASA's Strategic Plan 2009–12 and the two plans following it. The effect of this unlawful underexpenditure, as a result of corruption in LASA's top governing and executive ranks, is that these 'people on the ground ... are suffering' from 'poor delivery' of expert legal services, despite financial provision for them in LASA's annual budgets, met by the Treasury. Causing substantial harm to ... the general public' (per the definition of 'material irregularity' in section 1 of the PAA), LASA's corrupt and complicit officers named paragraphs 6 and 7 of this complaint have effectively denied any hope of 'social justice'[141] to these 'people on the ground who are suffering' when their 'Constitutional rights and socio-economic rights'[142] are violated, inasmuch as their state-funded access to the courts, which they can't themselves afford, has been practically blocked in furtherance of a cynical corruption cover-up.

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[140] *Ibid.*

[141] Quoted in paragraph 55 above, LASA's Strategic Plan 2015–20 aims 'To give content to the Constitution through impact litigation – which is able to address Constitutional rights and socio-economic rights and develop jurisprudence on social justice matters.'

[142] *Ibid.*

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79. Under section 1 of the PFMA, "**"accounting authority"** means a body or person mentioned in section 49', which section provides:

> (1) Every public entity must have an authority which must be accountable for the purposes of this Act.
>
> (2) If the public entity–
>
> (a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity[.]

80. Section 56(1)(a) of the PFMA provides: 'The accounting authority for a public entity may ... in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity'; and accordingly on 24 November 2007 the Board as LASA's accounting authority duly 'delegate[d] to the Chief Executive Officer all the powers entrusted or delegated to the accounting authority in terms of the Act'.[143]

81. Section 56(2)(c) of the PFMA provides that the delegation 'does not divest the accounting authority of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.' That is, the Board remains ultimately responsible for ensuring that the funds LASA receives from the Treasury are spent as budgeted, recommended, and approved.

82. Section 53 of the PFMA prescribes:

> ...
>
> (3) A public entity which must submit a budget in terms of subsection (1), may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the National Treasury has been obtained.
>
> (4) The accounting authority for such a public entity is responsible for ensuring that expenditure of that public entity is in accordance with the approved budget.

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[143] Bundle 2, page 1040, Note 30.

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83. In contravention of section 53(3), LASA has been engaging in unauthorised expenditure in the form of underexpenditure, and in this manner accumulating millions of rands in unauthorised surplus over the past decade, by budgeting for nine Senior Litigator posts but only filling six of them with the salary budget received for them, and deliberately not filling its remaining three vacant Senior Litigator posts – following an unrecorded, unauthorised, backroom decision taken illegally (discussed below).

84. The Constitutional Court has unanimously affirmed in *Sibongile Zungu v Premier of the Province of KwaZulu-Natal and Others* [2018] ZACC 1 (22 January 2018) that deliberately not filling a budgeted and funded post in the public sector, and not spending the salary budget received for it on employing a suitable officer to fill it, contravenes the PFMA. Indeed, our apex court noted that this trite principle was beyond issue and common cause between the parties:

> [8] ... The Premier submitted that, had the position ... been left vacant, he would have been in breach of the provisions of the Public Finance Management Act (PFMA) which preclude him from leaving the position ... vacant. ...
>
> [9] ... The Labour Court further stated that the defence by the Premier that he was bound by the PFMA was not challenged by the applicant. ...

85. CEO Vedalankar's contravention of section 53(3) of the PFMA in not applying LASA's Senior Litigator budget to the employment of suitably qualified and experienced trial lawyers in its Pietermaritzburg, Durban and Mthatha Senior Litigator posts amounts to financial misconduct – for which Mlambo JP and the Board are ultimately responsible – in that section 83 of the PFMA provides:

> (1) The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently–

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(a) fails to comply with a requirement of section ... 53 ... or 55; or

(b) ...

(2) If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.

(3) An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.

(4) Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation.

86. Section 55(1)(a) of the PFMA prescribes:

> The accounting authority for a public entity ... must keep full and proper records of the financial affairs of the public entity.

87. Consistently with this provision, section 12 of LASA's Code of Conduct and Ethics requires:

> Accurate and reliable records of many kinds are necessary to meet the LEGAL AID BOARD's legal and financial obligations and to manage the affairs of the LEGAL AID BOARD. The LEGAL AID BOARD's books and records should reflect all business transactions ... and the employees responsible for accounting and record-keeping functions are expected to be diligent in enforcing proper practices.[144]

88. NOE Nair has repeatedly conceded,[145] and CEO Vedalankar[146] and HRE Clark[147] have likewise confirmed – all under oath – that no record whatsoever

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[144] Bundle 2, page 778, paragraph 12.
[145] Bundle 1, page 381, paragraphs 14, 15 and 16; page 382, paragraph 22; page 383, paragraph 29; page 385, paragraph 35.
[146] Bundle 1, pages 390–1.
[147] Bundle 1, pages 392–3.

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exists of any decision taken by any competent authority at LASA,[148] or indeed by anyone at all,[149] to abort LASA's substantially completed recruitment processes for its critical Senior Litigator posts at Pietermaritzburg, Durban and later on at Mthatha, for which suitable candidates had been selected and recommended, and to 'freeze'[150] the posts, for any reason.[151]

89. In sum, for ten years three budgeted and funded critical specialist legal professional posts have unlawfully deliberately been kept vacant without any record of any decision of this extraordinarily important financial and operational decision involving many millions of rands and hugely affecting critical service delivery.[152] Besides contravening section 12 of LASA's Code of Conduct and Ethics, this gross irregularity in not making and keeping a record of the decision

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[148] Annexure W to the Legal Aid Guide, titled 'Legal Services Technical Committee Terms of Reference', explains: 'The Board delegates authority to the CEO, the Management Exco [Management Executive Committee], LSTC ['Legal Services Technical Committee'], other committees and officials through its Approval Framework.' Bundle 2, page 767, section 3.2.3. Section 5 of the Guide specifies the 'Responsibilities of LSTC': 'The LSTC shall have collective responsibility for: ... 5.3. the execution of Board strategy, policies, programmes and plans relating to the legal services delivery programme of the Legal Aid South Africa.' Bundle 2, pages 775–6. To be addressed in another part of this complaint to follow, a variety of false, contradictory claims have been made about who took the decision to abort the recruitments and to freeze the posts, and who was consulted about it. (About which no records exist.)

[149] To be discussed in another part of this complaint to follow, Vedalankar claimed (Hundermark almost certainly ghost-writing for her) that she and Nair decided this 'in July [2010]' – untruthfully and anyway *ultra vires* their powers and therefore illegally. *First*, as mentioned just above, the Legal Services Technical Committee is LASA's decision-making authority in regard to the implementation of Board policy to hire Senior Litigators – as illustrated by its abolition on 24 March 2010 of the Kimberley Senior Litigator post and its creation of the Mthatha one. *Second*, contradicting and refuting her (Hundermark's) claim that she was party to the original unrecorded, unauthorised decision to abort the Pietermaritzburg and Durban Senior Litigator recruitments, Vedalankar's email records show that by late July 2010 she wasn't even aware of the decision, not until October 2010, nearly a year later, when she wrote to the complainant (Hundermark almost certainly ghost-writing) alleging that she and Nair had taken this decision.

[150] *Ipso facto* illegal under the PFMA, as the Constitutional Court confirmed in *Zungu*.

[151] To be quoted and discussed in another part of this complaint to follow, the several untruthful, mutually contradictory and objectively contradicted, totally different reasons fabricated and advanced – including on affidavit, to the Minister, to the Portfolio Committee, and to the courts – have zigzagged wildly over time, ultimately criminally.

[152] Until the selection and recommendation of suitable candidates for appointment to the Pietermaritzburg and Durban Senior Litigator posts in November 2009, when the recruitment process was quietly halted, LASA had repeatedly tried filling the posts, as required by the PFMA and the Public Service Regulations, and had advertised them repeatedly: first in 2007 and twice again in 2009 (Bundle 1, page 537, and pages 43 and 45). Created in March 2010 (Bundle 2, page 709, paragraph 4.1.7; and Bundle 3, page 1120), the Mthatha Senior Litigator post was advertised the following month in April (Bundle 3, page 1111: 'Closing date – 07 May 2010'), and after the short-listing of applicants in May (Bundle 3, pages 1122–3), interviews were held and a selection and recommendation made on 24 May (Bundle 3, page 1122; and Bundle 2, pages 994–7).

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to abort the recruitments and 'freeze' the posts (for wildly disparate reasons given much later under pressure to account) contravenes section 55(1)(a) of the PFMA and constitutes criminal financial misconduct under section 86(2):

> An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.

90. The unauthorised, off-the-record decision to abort the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments after the selection and recommendation of suitable candidates for appointment to the posts, and the indefinite and practically permanent 'freezing' of the top professional posts – for a decade now – was a major change to LASA's Strategic and Business Plans. Section 1.1 of the Approval Framework required the Board's 'Final approval'[153] for any change to LASA's 'Strategic Plan', and section 1.2 required that the Board 'Must be consulted (before)'[154] executive management changed the 'Business Plan'. But as NOE Nair confirmed on affidavit in April 2011: 'The Board was ... not informed of the decision'.[155] That is, the unrecorded decision was taken without necessary authority under the Approval Framework[156] (an internal regulation, a form of subordinate legislation) and was consequently illegal for that reason as well – and hence a 'material illegality' as defined by section 1 of the PAA and accordingly of concern to the Auditor-General.

91. Section 55(2)(a) of the PFMA prescribes:

> The annual report and financial statements ... must ... fairly present the state of affairs of the public entity, its business, its financial results, its

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[153] Bundle 2, page 1034.
[154] Ibid.
[155] Bundle 1, page 385, paragraph 36.
[156] In November 2011, two years after the illegal, concealed abortion of the Pietermaritzburg and Durban Senior Litigator recruitments in November 2009, NOE Nair mentioned incidentally in a 'Report to Board' that the posts hadn't been filled – not because of lack of budget for them, as originally falsely alleged, but for other equally false reasons enumerated in footnote 135 above. All the chopping and changing excuses for not filling the three vacant posts will be treated in another part of this complaint to follow.

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performance against predetermined objectives and its financial position as at the end of the financial year concerned.

92. In its Annual Performance Report 2011–12 presented to the Portfolio Committee on 9 October 2012,[157] LASA's Board[158] misleadingly stated in its 'Report on Completion of Strategic Plan 2009–2012': 'Senior Litigators employed are working on complex matters and matters in higher courts'.[159] Vedalankar repeatedly made the same misleadingly allegation in her CEO Report included in LASA's Annual Report 2011/12, presented to the Portfolio Committee on the same day: 'Senior Litigators employed are working on complex matters in the higher courts.'[160] Again in her discussion of 'the completion of our three-year Strategic Plan period 2009–12', she claimed: 'To a large extent we were able to make the strategic shift that we mapped for the 2009–12 Strategic Plan (SP) period as indicated below ... We employed Senior Litigators who are working on complex matters and matters in higher courts.'[161]

93. These statements about the employment of Senior Litigators made by the Board in LASA's Annual Performance Report 2011/12, prefaced by Mlambo JP's chairperson's report, and by Vedalankar in her CEO report for 2011/12, were intended to imply to the Portfolio Committee and to induce it to believe that LASA's Strategic Plan 2009–12 regarding the recruitment of Senior Litigators to handle complex constitutional and other specialist litigation and to mentor LASA's legal staff in conducting it had been successfully implemented and completed. Indeed, Vedalankar's claim that 'Senior Litigators employed are working on complex matters in the higher courts'[162] was immediately preceded by the statement: 'Our specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts and children's matters is in place and practitioners are continuously trained in handling these specialist matters.'[163]

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157 Bundle 2, page 897.
158 Bundle 3, paragraph 3.2.3.c.
159 Bundle 2, page 897.
160 Bundle 2, page 902.
161 Bundle 2, page 1054.
162 Bundle 2, page 902.
163 Ibid.

94. In truth and in fact, contrary to Vedalankar's false claim about this, such 'specialist capacity' wasn't 'in place', inasmuch as three of LASA's nine budgeted and funded Senior Litigator posts were still unfilled, then six years after the creation of the nine posts in 2006. As a result of recruitment corruption and a now disintegrated attempt to cover it up, KwaZulu-Natal had and still has no such 'specialist capacity' at all, and the Eastern Cape's 'specialist capacity' was and remains seriously constrained – ten years after the selection and recommendation of suitable candidates for appointment to the Pietermaritzburg, Durban and Mthatha Senior Litigator posts.

95. For the same reason, Vedalankar lied in her CEO Report in implying that in KwaZulu-Natal LASA's legal 'practitioners are continuously trained in handling these specialist matters', as in other provinces, because as a result of recruitment corruption and its fumbled cover-up, KwaZulu-Natal has no Senior Litigators at all to 'train' them, i.e. to 'Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff' as envisaged in the advertised job description;[164] to 'provide support for practitioners in more complex matters', as the respondent's Annual Report 2009/10 puts it;[165] and for 'protecting the rights of women and children ... In very complex matters, our Senior Litigators provide support and advice to practitioners that need it.'[166]

96. Mlambo JP and the Board well knew that these claims – that Senior Litigators had been employed in fulfilment of LASA's Strategic Plan 2009–12, and that specialist legal professional capacity was now in place for the conduct of complex litigation and for training LASA's practitioners – were false, because a year earlier in November 2011, NOE Nair presented a 'Report to Board' with the soporific title 'Senior Litigators Reporting Relationships and Job Clarification',[167] in which he advanced new, quite different untruthful excuses (unsupported, contradicted and refuted by LASA's own records) having nothing whatsoever to do with the budgetary insufficiency story initially falsely alleged (also

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[164] Bundle 1, page 45.
[165] Bundle 1, page 142, paragraph 153.
[166] Bundle 2, pages 825–6.
[167] Bundle 2, page 869.

unsupported, contradicted and refuted by LASA's own records) to justify his failure (as chairperson of the Legal Services Technical Committee) to fill LASA's remaining three Senior Litigator posts with the candidates recommended for them by approving the selection panels' recommendations (his responsibility),[168] after the collapse, when tested and exposed, of the bogus financial insufficiency cover-story for 'freezing' the three vacant Senior Litigator posts at point that the recruitment processes had been completed. (All the different, clashing, chopping and changing cover-stories variously told in correspondence, on affidavit, to the Minister, to the Portfolio Committee, and in court will be quoted and treated in other parts of this complaint to follow.)

97. In short, in making their false annual report to the Minister and to the Portfolio Committee, Mlambo JP and the other members of the Board well knew, as CEO Vedalankar did, that their claims in it were substantially false and misleading, and accordingly they all contravened section 55(2)(a) of the PFMA (fully quoted above), requiring that their 'annual report and financial statements ... fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned.'

98. Section 83 of the PFMA (fully quoted above) provides that 'The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently ... fails to comply with a requirement of section ... 55' for which 'every ['board'] member is individually and severally liable[169] ... An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty. ... Financial misconduct is a ground for dismissal or suspension'.

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[168] Under section 8.2.2.b of the Approval Framework, NOE Nair has 'Final approval' authority, subject to the assent of the CEO (then Vedalankar); she 'Must agree'. Bundle 2, page 1036.
[169] The Department's representative on the Board, Pieter du Rand, was then and is still a member.

99. Having since retired from LASA, Mlambo JP and Vedalankar can't be dismissed or suspended under section 83,[170] but they remain exposed to criminal prosecution under section 86 of the PFMA, 'Offences and penalties', subsection (2) of which provides:

> An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.

100. In sum, by dishonestly misrepresenting 'the state of affairs of [LASA], its business, its financial results, its performance against predetermined objectives [set out in its Strategic Plan 2009–12] and its financial position as at the end of the financial year concerned' in LASA's 'annual report and financial statements' for 2011/12, so as to mislead and defraud LASA's constitutional oversight authority, the Justice Portfolio of the National Assembly, and induce it to believe wrongly that (i) LASA's Strategic Plan 2009–12 regarding the employment of Senior Litigators had been implemented and that such specialist legal service delivery capacity was now in place, (ii) LASA had filled its vacant posts, especially its critical posts, and (iii) LASA was applying its Senior Litigator budget to the employment of Senior Litigators, Board chairperson Mlambo JP, his fellow directors in October 2012,[171] and CEO Vedalankar all committed financial misconduct and criminally contravened section 55 of the PFMA, for which they're liable to be jailed under section 86(2).

101. In deliberately falsely reporting to and misleading the Justice Portfolio Committee in LASA's annual report for 2011/12, prefaced with Vedalankar's CEO report, Mlambo JP, other members of the Board at the time and CEO Vedalankar furthermore criminally contravened section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of

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[170] Du Rand can be.
[171] Including Du Rand.

2004 ('Powers, Privileges and Immunities Act'),[172] for which they're liable to be jailed:

> 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.

102. Mlambo JP's and the Board's and CEO Vedalankar's fraudulent deception of the Minister and the National Assembly regarding the employment of Senior Litigators and specialist legal professional capacity being in place additionally failed to comply with 'Strategy C4' of the respondent's Strategic Plan 2009–12, namely 'To timeously account to Parliament and the Executive Authority so they are well informed of Legal Aid South Africa strategy and programmes' – a material irregularity. 'Strategy C4' specifically required 'Timeous and Accurate ... Interaction with Minister' and 'Accurate ... Interaction with Parliamentary Committees'.[173] And section 1 of the PAA includes 'fraud' as a 'material irregularity' of concern to the Auditor-General.

103. Displaying a similar flagrant contempt for the truth[174] in her[175] entry in LASA's 'Business Plan 2011/12' in section P26–10 headed 'Talent acquisition and retention', HRE Clark dishonestly concealed from the Board, to which the plan was submitted for review,[176] that a third of LASA's critical Senior Litigator posts

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[172] Under section 1 of the PAA, a 'material irregularity' includes 'any ... contravention of ... legislation', and under section 5(1A) this statutory crime is of direct concern to the Auditor-General.

[173] Bundle 2, page 1058. More examples of their dishonestly false, criminal reporting to the Portfolio Committee on other occasions will be canvassed in other parts of this complaint to follow.

[174] Clark's deposition to conflicting false affidavits, a crime, will be treated in another part of this complaint to follow.

[175] Bundle 2, page 877, 'Responsible Executive': 'HRE'.

[176] Bundle 3, page 1104, paragraph 6.1.

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had long been vacant since their creation in November 2006,[177] despite the selection and recommendation of suitable candidates for appointment to them in November 2009[178] and May 2010.[179] To the contrary, full well aware that the posts hadn't been filled, and in a fraud on the Board, and hence a 'material irregularity', Clark deliberately falsely claimed: 'No longstanding vacancies'.[180]

104. Profoundly aggravating Mlambo JP's and the Board's and CEO Vedalankar's criminal contraventions of the PFMA and of the Powers, Privileges and Immunities Act in their and their colleagues' fraudulent cover-up of ethical recruitment corruption (jobs for pals) gone wrong,[181] is their corrupt motive for dishonestly misleading the Portfolio Committee in their reports, namely to frustrate and defeat the National Assembly's constitutional oversight responsibility imposed by section 55(2)(b)(ii) of the Constitution 'to maintain oversight of ... organ[s] of state' like LASA, and to prevent the National Assembly holding them to account for unlawfully deliberately not filling LASA's three remaining Senior Litigator posts at Pietermaritzburg, Durban and Mthatha: (i) in contravention of the PFMA; (ii) in an illegal unauthorised deviation from LASA's Strategic Plan 2009–12 and Business Plans based on it; and (iii) in contemptuous disregard for both the Minister's and the Portfolio Committee's express wishes that LASA fill its vacant posts, especially critical posts, and that LASA hire Senior Litigators to ensure that the indigent have access to specialist litigation expertise and that LASA's lawyers have experienced litigation lawyers to mentor them.

105. Had chairperson Mlambo JP and the Board and CEO Vedalankar not criminally deceived and defrauded the Portfolio Committee it would have detected (i) their financial misconduct in unlawfully deliberately not filling LASA's three remaining vacant, budgeted and funded Senior Litigator posts, and

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[177] As mentioned in paragraph 60 above, in March 2010 the Kimberly post was abolished and a new post created at Mthatha, with the budget for the former transferred to the latter.
[178] Bundle 1, pages 244–8.
[179] Bundle 2, pages 994–7.
[180] Bundle 2, page 877. To be shown in another part of this complaint to follow, Clark mendaciously and later perjuriously participated in covering up the corrupt, illegal abortion of the Pietermaritzburg and Durban Senior Litigator recruitments.
[181] To be detailed with supporting documents in another part of this complaint to follow.

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in not applying the budgeted revenue received for them to the employment of suitably senior lawyers to fill them, and (ii) the multitude of capital transgressions of the PFMA committed in corruptly and illegally cancelling – off the record and without authority – the substantially completed Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments after the selection and recommendation of suitable candidates for appointment to the posts.

106. Chairperson Mlambo JP's and the Board's and CEO Vedalankar's successful criminal fraud perpetrated on the National Assembly, by presenting to it a false and misleading annual report for 2011/12, constitutes a clear-cut 'material irregularity' on multiple scores within the definition given in section 1 of the PAA, including 'non-compliance with, or contravention of, legislation, fraud ... or a breach of fiduciary duty identified during an audit performed under this Act that resulted in or is likely to result in ... the misuse ... of a public resource or substantial harm to a public sector institution or the general public'.

CONCLUSION

107. In the language of section 20(2)(c) of the PAA, LASA's 'reported performance' repeatedly falsely described in its annual report for 2011/12 concerning the employment of Senior Litigators, in which it was alleged that LASA had completed its Strategic Plan 2009–12 and had put 'in place' its planned specialist litigation and professional mentoring capacity, is seriously at odds with 'its predetermined objectives' in this regard set out in the plan.

108. LASA's deliberate failure over the past ten years to fill its budgeted and funded Senior Litigator posts at Pietermaritzburg, Durban and Mthatha, created to provide expert constitutional and other specialist litigation services to the indigent, is a seriously unlawful dereliction of its obligation stipulated in section 20(3) of the PAA to ensure its 'resources [are] procured economically and utilised efficiently and effectively.'

109. This 'serious or persistent material breach of ... uniform treasury norms and standards', per section 216 of the Constitution, every year for the past

decade – 'compliance with' which 'norms and standards ... [t]he national treasury must enforce' – presents a constitutional basis for the Treasury to 'stop the transfer of funds to' LASA as a seriously and persistently delinquent 'organ of state'.

110. Section 5(3) of the PAA empowers the 'Auditor-General ... in the public interest [to] report on' Mlambo JP's, the Board's and Vedalankar's criminal and other contraventions both of the PFMA and of the Powers, Privileges and Immunities Act and to 'submit such a report to the relevant legislature', namely the National Assembly – specifically the Speaker and the Justice Portfolio Committee – 'and to any other organs of state with a direct interest in the matter', namely the Treasury; the Minister; the Department's Director: Third Party Funds; the Public Protector; the Judicial Service Commission; and the National Director of Public Prosecutions.

Signed at Eshowe on 19 February 2020

ANTHONY BRINK

Signed before me at Eshowe on 19 February 2020 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and who affirms its contents to be true to the best of his knowledge and belief.

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S. MSHALI CS

COMMISSIONER OF OATHS

Name: Sipiwe Mshali

Address: 73-79 Main Street

Capacity: Constable

SUPPORT SERVICE - SCM
2020 -02- 09
ESHOWE
KWAZULU-NATAL

PART ONE: ADDENDUM

COMPLAINT TO THE AUDITOR-GENERAL
AGAINST:

1. LASA CFO REBECCA HLABATAU, ARISING FROM HER WILFUL DERELICTION OF HER PROFESSIONAL OBLIGATIONS IN REGARD TO LASA'S COMPLIANCE WITH SECTION 53(3)&(4) OF THE PUBLIC FINANCE MANAGEMENT ACT AND SECTION 21 OF THE LEGAL AID SOUTH AFRICA ACT; AND,

2. LASA'S BOARD SECRETARY AND OTHER NATIONAL MANAGEMENT EXECUTIVES OF LASA, IDENTIFIED HEREIN, CONCERNING THEIR SAME WILFUL DERELICTION OF THEIR RELATED RESPONSIBILITIES –

IN EACH CASE A 'MATERIAL IRREGULARITY' WITHIN THE PURVIEW OF SECTION 1 OF THE PUBLIC AUDIT ACT

I, Anthony Robin Brink, affirm:

1. I am an advocate residing at 36 Pearson Road, Eshowe, KwaZulu-Natal, and the complainant in Part One of a complaint to the Auditor-General made in February 2020 and acknowledged in March regarding major ongoing contraventions of the Public Finance Management Act 1 of 1999 ('PFMA') by certain past and current national management executives of Legal Aid South Africa ('LASA'), and multiple acts of serious 'material irregularity' committed by them within the contemplation of section 1 of the Public Audit Act 25 of 2004.

2. Part One of my complaint and proof of dispatch and receipt are accessible online at illegal-aid.co.za/AG.

3. In this Addendum to Part One of my complaint, I show that Rebecca Hlabatau, Chief Financial Officer ('CFO') of LASA, has been deliberately derelict in her professional obligation to ensure LASA's compliance with section

53(3)&(4) of the PFMA, and with section 21 of the Legal Aid South Africa Act 39 of 2014 ('LASA Act'), and that LASA's Board Secretary and other national management executives have likewise been deliberately derelict in discharging their similar obligations, rendering all of them complicit in their national office colleagues' serious non-compliance with the PFMA and other corruption called to their attention. An error contained in footnote 16 of Part One of my complaint is corrected in the Appendix annexed to this Addendum.

4. Hlabatau's and these other top LASA officers' non-compliance with their professional obligations to LASA, thereby enabling to continue unchecked the grave contraventions of the PFMA brought to their attention (detailed in the main body of Part One of my complaint to the Auditor-General), comprise in each case a 'material irregularity' within the definition given in section 1 of the Public Audit Act 25 of 2004 ('PAA'). In a word, had they done their jobs they could have ended (i) the illegal deliberate underexpenditure of LASA's budget in the sum of many millions of rands, (ii) the resulting prejudice to the indigent, and (iii) the massive reputational harm to which LASA now stands exposed.

5. On 8 January 2019, a year before delivering Part One of my complaint to the Auditor-General, I addressed a six-page letter to Hlabatau under the heading, 'LASA'S ONGOING, REPEATED, GROSSLY ILLEGAL BREACH OF THE PFMA INVOLVING IRREGULAR EXPENDITURE OF MANY MILLIONS OF RANDS', in which I pertinently called the matter to her attention.

6. A copy of my letter and proof of delivery by email are annexed marked 'A' and 'B' respectively.

7. As CFO of LASA, Hlabatau is responsible, or at least shares responsibility for ensuring compliance with section 21 of the LASA Act. It provides:

> 21 The funds of Legal Aid South Africa consist of–
>
> (a) money appropriated by Parliament; and
>
> (b) money received from any other source,
>
> and must be budgeted for, managed and accounted for, in terms of the Public Finance Management Act.

8. In an egregious, unlawful failure to comply with her professional duty to LASA, CFO Hlabatau ignored my letter and took no steps to ensure that her delinquent fellow national management executives Chief Executive Officer Vidhu Vedalankar (retired some months later), National Operations Executive Brian Nair, and Human Resources Executive Amanda Clark remedied their non-compliance with section 21 of the LASA Act, by seeing to it that the 'money appropriated by Parliament', 'budgeted for' by LASA, and paid to it by the Treasury via the Justice Department for the employment of nine Senior Litigators at various seats of the High Court is duly 'managed and accounted for, in terms of the Public Finance Management Act' – specifically 'in terms of' section 53(4), requiring that the 'expenditure of [a] public entity is in accordance with the approved budget', and of section 53(3) prohibiting the 'accumulat[ion] of surpluses unless the prior written approval of the National Treasury has been obtained' – by filling all nine of these critical budgeted and funded posts. As the Constitutional Court confirmed in principle in the *Zungu* case, mentioned in my letter, three of these posts at Pietermaritzburg, Durban, and Mthatha* have unlawfully been left vacant for a decade since the selection and recommendation of suitable candidates to fill them in November 2009 and May 2010. (*The budget for the Mthatha post appears to have been restored to the original Kimberley post, still vacant.)

9. As the cc list at the head of my letter to Hlabatau and the cc bar of my covering email show, I copied my letter to then CEO Vedalankar, NOE Nair, and HRE Clark, all implicated in it, as well as to Chief Operations Officer Jerry Makokoane, Internal Audit Executive Sethopo Mamotheti, and Board Secretary Langa Lethiba.

10. In view of his primary role in covering up the pervasive and systemic corruption at LASA detailed in Part One of my complaint (and more will be charged in further parts to follow), I didn't copy Chief Legal Executive Patrick Hundermark. Nor did I copy Legal Executive Thembile Mtati, who until his later resignation had functioned only as Hundermark's ventriloquist's puppet in multiple dishonestly false documents given to him to sign.

11. Being centrally involved in the corruption and its cover-up detailed in my letter to Hlabatau, I didn't expect Vedalankar, Nair, and Clark to respond to my letter copied to them, and indeed they didn't. My purpose in copying them was to confront them squarely, on the record, with the grave illegality detailed in my letter; but also to create an opening for a conciliatory resolution of my claim to my appointment to the Pietermaritzburg Senior Litigator post for which I was duly selected and recommended a decade ago.

12. I was preparing to meet Vedalankar's 'challenge' to me in her letter of 28 January 2011 (quoted below), in which she'd strangely furtively refused for the third time my PAIA request of August 2010 for access to key public records I'd asked for, chiefly regarding her and Nair's cancellation of my recruitment to LASA's Senior Litigator post at Pietermaritzburg (my request was first mutely refused in September by being ignored; then expressly refused in October on spurious grounds, abandoned under SAHRC pressure; then refused again in January 2011 on different spurious grounds, also eventually abandoned under legal pressure):

> You accuse us and persist with your baseless accusations of financial improprieties and misrepresentations to the Portfolio Committees etc. I challenge you to present your investigative results of Legal Aid SA's financial mismanagement; wasteful and fruitless expenditure to the Auditor General.

13. As said, I also copied my letter to Hlabatau to Board Secretary Lethiba, who is responsible (per LASA's annual report 2009/10) for:

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

14. Lethibe's deliberate failure to carry out these specific responsibilities, after receiving my letter copied to him, prevented the Board, and specifically its Audit and Risk Subcommittee, from discharging its oversight function over the executive management of LASA's operations, and prevented it from remedying Vedalankar's, Nair's and Clark's illegal, unauthorised, unrecorded, substantial departure from a key objective of its Strategic Plan 2009–12 and subsequent strategic plans, namely to employ Senior Litigators to render specialist constitutional and other complex litigation services to the indigent in KwaZulu-Natal and in the Eastern Cape to enable them to realise their 'Constitutional rights and socio-economic rights and [to] develop jurisprudence on social justice matters' 'through impact litigation', as LASA's Strategic Plan 2015–20 puts it, which strategic objective Vedalankar and Nair obstructed and frustrated by criminally illegally aborting the substantially complete Pietermaritzburg, Durban and Mthatha recruitments, off the record, without authority, and by illegally leaving these three budgeted and funded critical Senior Litigator posts vacant.

15. I also copied to IAE Mamotheti my letter about Vedalankar's, Nair's and Clark's egregious contraventions of the PFMA, some criminal, and other gross misconduct in trying to cover it up. By rights, Mamotheti should have been appalled and been moved to protect LASA against the tremendous risk to which my letter showed it was exposed. Instead, siding with his corrupt head office colleagues, Mamotheti turned a blind eye to it, did nothing, and allowed the illegality I described to continue unchecked.

16. COO Makokoane's indifference to the corruption I'd brought to his attention, in which he was not directly involved, and his failure to respond to and act upon my letter (like previous correspondence he also ignored), detailing the most serious non-compliance with the PFMA, involving many millions of rands and the obstruction of critical specialist legal service delivery to the poor, evinces his election with Lethibe and Mamotheti to close ranks around their delinquent national office colleagues Vedalankar, Nair and Clark and to make common cause with their unlawful, criminal and other gross misconduct detailed in my letter. As corporate executive attorneys Hundermark and Mtati long ago did.

17. In sum, besides new CEO Mantiti Kola, virtually the entire top management structure of LASA has shown itself to be complicit in the illegality in question; and since Nair and Hundermark are now members of LASA's Board and are certain to misdirect and corrupt its deliberations and decisions, there's scant prospect that LASA's contraventions of the PFMA and the material irregularities detailed in Part One of my complaint will be remedied by the Board, by instituting disciplinary proceedings against the delinquent officers I've identified and by directing that the executing officers delegated by section 8.2.2(b) of LASA's Approval Framework to co-approve selection panels' Senior Litigator candidate recommendations – namely the NOE (Nair, who 'Originates' and has 'Final approval' authority) and the CEO (Kola, who 'Must agree' with him) – carry out their joint responsibility in this regard, so as to put an end to LASA's ongoing contravention of sections 53(3)&(4) of the PFMA in deliberately keeping its remaining three budgeted and funded critical Senior Litigator posts unfilled, in further contravention of section 21 of the LASA Act, to the massive prejudice of critical expert litigation service delivery to the indigent.

Signed at Eshowe on 1 June 2020

ANTHONY BRINK

Signed before me at Eshowe on 1 June 2020 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and who affirms its contents to be true to the best of his knowledge and belief.

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COMMISSIONER OF OATHS

Name: CLEOPAS MSEMA

Address: 73-79 Main Str; Eshowe

Capacity: Warrant officer

035-4734280

SOUTH AFRICAN POLICE SERVICE
CRIME INVESTIGATION SERVICE
2020 -06- 01
ESHOWE
KWAZULU-NATAL

36 Pearson Road
Eshowe 3815
KwaZulu-Natal
8 January 2019

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

Cc:
CEO Vidhu Vedalankar
COO Jerry Makokoane
NOE Brian Nair
HRE Amanda Clark
IAE Sethopo Mamotheti
Board Secretary Langa Lethiba, for consideration by the Board
Lwazi Bam, Chairperson: South African Institute of Chartered Accountants
Martin Welz, Editor and Publisher: *Noseweek*
And to other national newspaper editors later on

Dear Ms Hlabatau

LASA'S ONGOING, REPEATED, GROSSLY ILLEGAL
BREACH OF THE PFMA INVOLVING IRREGULAR EXPENDITURE
OF MANY MILLIONS OF RANDS

1. Your primary responsibility as Chief Financial Officer of Legal Aid SA ('LASA') is to ensure that your employer and its officers comply with the Public Finance Management Act 1 of 1999 ('PFMA').

2. One year ago our **Constitutional Court** observed in paragraphs 8 and 9 of its unanimous judgment in *Zungu v Premier of the Province of KwaZulu-Natal and Others* [2018] ZACC 1 (22 January 2018) that for an organ of state to allow a budgeted and funded post to be '**left vacant**' constitutes a '**breach of the**

provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position ... vacant.'

3. Since November 2009 – that is, *for nearly a decade now* – CEO Vidhu Vedalankar, NOE Brian Nair and HRE Amanda Clark have deliberately illegally '**left vacant**' LASA's budgeted and funded Senior Litigator posts at Pietermaritzburg and Durban in a flagrant '**breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position[s] ... vacant.**'

4. For almost as long, since May 2010, LASA's budgeted and funded Senior Litigator post at Mthatha – duly transferred two months earlier from Kimberly by resolution of LASA's Legal Services Technical Committee to meet the reported pressing need for it – has been deliberately illegally '**left vacant**' by these management executives in the same flagrant '**breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position ... vacant.**'

5. This is despite the recommendation by selection panels of eminently qualified candidates for the three posts in those months, myself included. NOE Nair has repeatedly admitted on affidavit and in his evidence given in court that no record whatsoever exists to show that any decision was ever duly taken by any competent authority – indeed by anyone at all – to abort the said three Senior Litigator recruitment processes and not to fill the budgeted and funded posts for any reason.

6. The specific '**provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position[s] ... vacant**' and which make it *seriously illegal* for a budgeted and funded post to be '**left vacant**' by the management executives of a public entity, and which '**provisions of the Public Finance Management Act**' also make it a *serious criminal offence* to fail to 'keep full and proper records of the financial affairs of the public entity' – for which the guilty executives can be jailed for five years – are enumerated and discussed with their extreme implications in my founding affidavit in my third of three applications currently pending before the Pietermaritzburg High Court for orders compelling access to certain financial records I duly requested under the Promotion of Access to Information Act 2 of 2000 ('PAIA'), which your

resident legal moron, Chief Legal Executive and deputy information officer Patrick Hundermark, illegally and unconstitutionally refused me in his usual, furtive routine, starting with his advice in 2010 to repeatedly illegally and unconstitutionally refuse my first PAIA request in August, which I made at the outset of my investigation of the corrupt true circumstances in which the recruitments were cancelled. (These finally came to light in April 2016, after Hundermark's total capitulation at court two months earlier to five other PAIA applications I'd previously brought, and his final forced delivery of a crucial record that he'd previously illegally refused repeatedly in 2010, then released in 2011 heavily censored illegally with a black Koki, then illegally refused again in 2015, namely the uncensored, complete recommendation report of the selection panel that picked me, containing the pivotal, long-suppressed information that my rival for the gig was none other than Board chairperson Mlambo JP's long-time former judicial colleague, whom he'd repeatedly appointed as an acting judge of the Labour Court over a period of about six years, while Judge President there before moving on to the Gauteng High Court.)

7. To refresh your understanding of these basic principles of public finance management, namely the *serious illegality* of a budgeted and funded post being '**left vacant**' by a public entity, and the *serious criminality* (jail time) of failing to 'keep full and proper records of the financial affairs of the public entity', I've posted a material excerpt of my said affidavit for you to read. It's accessible online via a list of hyperlinks I've prepared and posted at goo.gl/QEYbwe. My complete affidavit and all the others filed in my three PAIA applications, all set down together for argument in a few weeks time on 15 March 2019, are accessible via the same link.

8. I suggest you make a careful study of the '**provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position[s] ... vacant**' that I cite and discuss in my affidavit, which '**provisions**' make it *seriously illegal* for budgeted and funded posts to be '**left vacant**', and also make it a *serious criminal offence* (jail time) to fail to 'keep full and proper records of the financial affairs of the public entity', such as a record of a backroom decision involving many millions of rands taken in the course of a cover-up of top-level recruitment corruption, especially when this

backroom decision is corruptly motivated, unauthorised, and itself illegal. And therefore obviously unrecorded to dishonestly conceal it.

9. Numerous chopping and changing, radically contradictory, mutually destructive, lying cover-stories have been told to me, to the Justice Minister, to the Justice Portfolio Committee (a crime), to the SAHRC, and to the courts (a crime) to mask the true reason the posts haven't been filled, in illegal breach of the PFMA, namely everyday recruitment corruption in the form of jobs for pals (which corrupt plan I frustrated by insistently pressing for my appointment). The recruitment corruption of which I speak, and Board chairperson Mlambo JP's central involvement in it (he wanted his chum in the post for which I was selected and recommended), and the multiplying, chaotic, now hopelessly disintegrated cover-up that your national office colleagues mounted, is finely particularised with piles of supporting documents in my answering affidavit filed in Pietermaritzburg High Court case 12124/16, which I quickly won *without even being called on to argue* and which LASA (Hundermark) lost on 27 October 2017, at vast wasted cost of many hundreds of thousands if not millions of rands (which amount Hundermark is naturally illegally resisting revealing to me in his characteristic contempt for the information transparency provisions of the Constitution, hence my second PAIA application to the High Court to compel him to open LASA's books to me, to be argued in March). My answering affidavit in the big case that LASA (Hundermark) brought and lost against me is accessible at the above-mentioned link. The recruitment corruption is further described in my founding and replying affidavits in my pending PAIA applications mentioned in paragraph 7, likewise accessible via the same link.

10. Luckily for you, the said recruitment corruption and all the wildly divergent lies told over the years to cover it – including such criminal lies as perjury, lying and false 'confidential' reporting to the Justice Portfolio Committee to successfully pervert an enquiry it instituted, and false and misleading annual reporting – has nothing to do with you, and you're not to blame for it. But as LASA's CFO you're directly responsible for checking and ending Vedalankar's, Nair's and Clark's deliberate illegal failure to apply the many millions of rands in salary budget which the National Assembly has voted year after year to fund the top specialist legal professional posts (created at the special instance of the

National Assembly, expressly concerned about inadequate legal professional expertise at LASA, repeatedly conceded by Mlambo JP and Hundermark), and which LASA has received year after year from the Treasury via the Justice Department's Third Party Funds division, in an ongoing, annually repeated '**breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position[s] ... vacant**', which '**provisions of the Public Finance Management Act**' make it seriously illegal for LASA's budgeted and funded Senior Litigator posts at Pietermaritzburg, Durban and Mthatha to be '**left vacant**' for nearly a decade now, as I said. Even as CEO Vedalankar criminally misled the Portfolio Committee, the Minister, and the public in her CEO report for 2011/12 by falsely claiming in regard to the completion of the Strategic Plan 2009–2012 that 'Senior Litigators employed are working on complex matters in the higher courts.' And again: 'We employed Senior Litigators who are working on complex matters and matters in higher courts.' The same half-truth (= whole lie) was told in the 'Report on Completion of Strategic Plan 2009–2012' included in LASA's Annual Performance Report for 2011/12, signed off as the perfect truth for the true information of the Portfolio Committee, the Minister, and the public by Board chairperson Mlambo JP and CEO Vedalankar: 'Senior Litigators employed are working on complex matters and matters in higher courts' – when in truth and in fact one third of these top posts – six out of nine – had been corruptly 'frozen' off the record, right after suitably qualified and experienced candidates had been selected for them. HRE Clark lied similarly in LASA's 'Business Plan 2011/12': 'No longstanding vacancies' – when in truth and in fact the Pietermaritzburg and Durban Senior Litigator posts at the top of LASA's professional ranks had been vacant for many years since their creation in November 2006, and the Mthatha post since its creation in March 2010. The multiple criminal lies Board chairperson Mlambo JP has told in the matter, strenuously trying this kick away this unwanted dog pursuing him very determinedly, are the subject of several capital complaints against him currently pending before the Judicial Service Commission. They're accessible online, together with his dismal response, and my invited reply to it, via the above-mentioned link.

11. To be copied to the Minister, the Portfolio Committee and other interested parties once I've completed it after the argument of my PAIA applications in March, I have a substantially complete, comprehensive report in preparation for the Auditor General, in which I closely detail the massive illegal financial irregularity and corruption in question and request a special audit of LASA; and I intend including in my report your response or non-response to this letter.

12. Your response or non-response will reveal whether as CFO of LASA you take seriously your professional responsibilities and obligations to your one-and-a-half-billion-rands-a-year public entity, or whether like COO Jerry Makokoane, you've decided rather to make common cause with the lawless, corrupt clique running LASA by looking away from the gross illegality and criminality I've pertinently called to your attention, and would consequently like to end your career sacked and disgraced like former ESKOM CFO Anoj Singh.

13. There's big trouble coming for your colleagues this year, so you need to choose sides wisely. You might even consider asking them: *Wouldn't it be better to start talking to Brink with a view to finding out on what generously compromised terms he's prepared to settle his indisputable claim to his long overdue appointment, as well as all his pending and intended future litigation and all his pending and intended future complaints against us, before this cancerous, suppurating boil finally bursts very publicly, and blows its pus all over the place, including over bystanders like me?*

14. For reporting to the Auditor General, I look forward to your advice of your intentions, by email please.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com

B

Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

ONGOING CONTRAVENTION OF THE PFMA BY LASA INVOLVING MANY MILLIONS OF RANDS

1 message

Anthony Brink <anthonybrink.sa@gmail.com> 8 January 2019 at 17:07
To: RebeccaH@legal-aid.co.za, vidhuv <VidhuV@legal-aid.co.za>, briann <BrianN@legal-aid.co.za>, JerryM@legal-aid.co.za, SethopoM@legal-aid.co.za, AmandaCl@legal-aid.co.za, langal@legal-aid.co.za, saica@saica.co.za, Martin Welz <editor@noseweek.co.za>

Rebecca Hlabatau
Chief Financial Officer, Legal Aid SA

Dear Ms Hlabatau
I attach an important letter for your careful attention and response.
Yours sincerely
Anthony Brink

Cc:
CEO Vidhu Vedalankar
COO Jerry Makokoane
NOE Brian Nair
HRE Amanda Clark
IAE Sethopo Mamotheti
Board Secretary Langa Lethiba, for consideration by the Board
Lwazi Bam, Chairperson: South African Institute of Chartered Accountants
Martin Welz, Editor and Publisher: *Noseweek*

Hlabatau 8.1.19.pdf
52K

Appendix

Footnote 116 of Part One of my complaint to the Auditor General contains an error, identified here in italics:

> 116. The irregular manner in which the selection panel framed its recommendations of the two candidates after duly selecting them will be discussed in another part of this complaint to follow, as will the many unlawful irregularities committed by LASA's national executives in the matter, *inter alia* by unlawfully gerrymandering the qualifying criteria for the posts in a failed attempt to bias the process in favour of one of the applicants, Ngcamu AJ (as he used to be), a long-time judicial colleague of LASA chairperson Mlambo JP, *who was then head of the Labour- and Labour Appeal Courts, and who'd repeatedly got him appointed as an acting judge of the Labour Court over a period of about six years prior to the interviews.* To be discussed in another part of this complaint to follow, this long suppressed, determinedly concealed, critically relevant information was finally forced out of LASA through PAIA litigation in April 2016, years after the trial of and judgment in the misconceived, correctly dismissed labour action mentioned above (LC D529/11), which had been wrongly founded on unfair discrimination.

I've just discovered that I was misinformed about this. Though Ngcamu and Mlambo JP were indeed judicial colleagues in the Labour Court, the latter was only appointed to head the Labour- and Labour Appeal Courts in 2010. The italicised portion of the footnote therefore stands to be corrected by deletion.

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

I, Anthony Robin Brink, affirm:

1. I am an advocate residing at 36 Pearson Road, Eshowe, KwaZulu-Natal, and the complainant in Part One of a complaint to the Auditor-General in February 2020 ('Part One') regarding major ongoing contraventions of the Public Finance Management Act 1 of 1999 ('PFMA') by certain past and current national management executives of Legal Aid South Africa ('LASA'), and multiple acts of serious 'material irregularity' committed by them within the contemplation of section 1 of the Public Audit Act 25 of 2004 ('PAA').

2. An Addendum to Part One ('First Addendum') delivered earlier this month proves the complicity in these contraventions of Chief Financial Officer Rebecca Hlabatau; of two other named national executives; and of the Board secretary. Part One and its First Addendum are accessible online at illegal-aid.co.za/AG.

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

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

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

B. C.

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

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

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

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

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

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

B. C.

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

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

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

AB B. C.

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

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

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

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

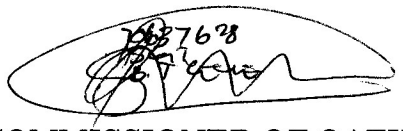
16. In the premises, Hundermark's perjuries fall within the definition of 'material irregularity' in section 1 of the PAA, and are a matter of direct formal concern to the Auditor-General accordingly.

Signed at Eshowe on 29 June 2020

ANTHONY BRINK

B. C.

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

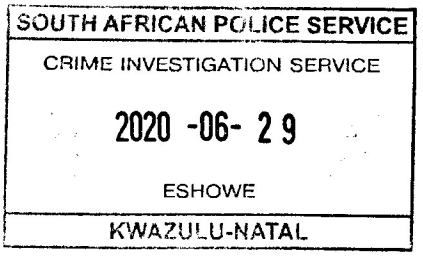


COMMISSIONER OF OATHS

Name: CELE BHEKOKWAKHE

Address: 73/79 MAIN STREET ESHOWE

Capacity: SERGEANT



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

CASE NO: 5239/2018P

In the matter between:

ANTHONY BRINK	Applicant
and	
VIDHU VEDALANKAR N.O. INFORMATION OFFICER LEGAL AID SOUTH AFRICA	First Respondent
PATRICK HUNDERMARK CHIEF LEGAL EXECUTIVE LEGAL AID SOUTH AFRICA	Second Respondent
LEGAL AID SOUTH AFRICA	Third Respondent

RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

PATRICK ROBERT HUNDERMARK

do hereby state under oath that:

1.

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

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

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

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

[redacted]

[redacted]

[redacted]

[redacted]

FACTUAL BACKGROUND

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

AB B.C.

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

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

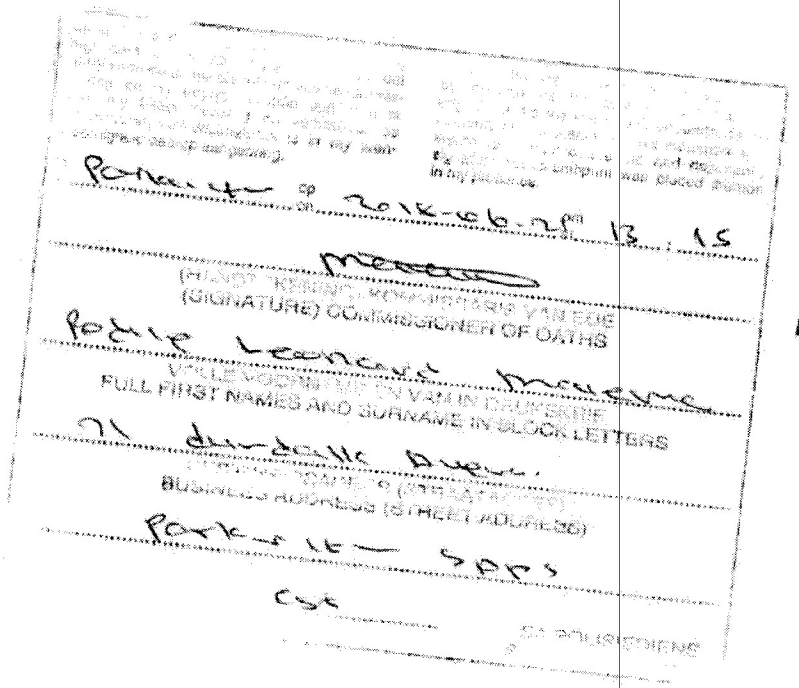
PATRICK ROBERT HUNDERMARK

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

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

7135252.6
Meleve CST
COMMISSIONER OF OATHS

Full Names: Leonard Mavena
Designation: CST
Address: 71 dundalk Ave
Parkview


Parkview op 2018-06-21 13:15
(PRINT) KERRIN MOHAMMADBHOY VAN EDE
(SIGNATURE) COMMISSIONER OF OATHS
Police Leonard Mavena
VOLLE VOORNAME EN VAN IN DRUKSKRIF
FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS
71 dundalk Ave
BUSINESS ADDRESS (STREET ADDRESS)
Parkview Sapd
CSR
DA AANDUIDINGS

SOUTH AFRICAN POLICE SERVICE
STATION COMMANDER
21-06-2018
CLIENT SERVICE CENTRE
PARKVIEW
SOUTH AFRICAN POLICE SERVICE

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY ROBIN BRINK Applicant

and

LEGAL AID SOUTH AFRICA Respondent

APPLICATION FOR LEAVE TO APPEAL AND TO LEAD FURTHER EVIDENCE ON APPEAL

The applicant hereby applies for leave to appeal to the Labour Appeal Court against the dismissal of his claim, and to present further evidence in that court, on the grounds set out herein.

PART ONE
APPLICATION FOR LEAVE TO LEAD FURTHER EVIDENCE ON APPEAL

1. The applicant applies for leave to lead further evidence of two email records, discovered by the respondent after trial, proving categorically that the respondent's single witness Brian Nair perjured himself in court on two distinct peripheral issues – thus devastating his credibility as a witness generally, and specifically the reliability of his pivotal allegation, which the court accepted and believed as the perfect truth and on which the case largely turned, that he didn't know the applicant's political background at the material time, because he didn't open and read the applicant's CV detailing it and the selection panel's recommendation of him referring to it when these were emailed to him on 26 November 2009 as PDF attachments after the interviews and selection – not until the end of the following year or maybe early the year after that when he decided to read them out of curiosity.

2. At trial Nair testified under cross-examination that (following the applicant's several complaints to the SAHRC about the respondent's persistent unlawful refusals to comply with his requests for records under the Promotion of Access to Information Act 2 of 2000 ('PAIA') probing the reason for the abortion of his recruitment, and the respondent's repeated false reporting to the SAHRC under section 32 to conceal this from the National Assembly in the SAHRC's section 84 annual reports on public body compliance with PAIA):

    (i) he didn't know that the SAHRC had held a special PAIA training workshop for the respondent's national office staff; and,

    (ii) he didn't know that the SAHRC had targeted and audited the respondent for PAIA compliance.

3. After trial, and with a view to gathering further documentary evidence inter alia for Nair's criminal prosecution for his many perjuries in the case – one being his novel claim in court not to have known of the applicant's political background until the end of 2010 or early 2011 when he decided out of curiosity to read the applicant's CV, which new story contradicted his earlier, different story told on affidavit before trial in this regard, telling a totally different story (see Part Two below) – the applicant tested the veracity of these novel, unanticipated, and improbable allegations made in court under oath by the respondent's deputy information officer Nair with a request for records under the Promotion of Access to Information Act 2 of 2000 ('PAIA').

4. Among the records flushed out of the respondent with the applicant's PAIA requests were two emails showing that, contrary to his lies about this under oath in court, Nair indeed:

    (i) well knew that the SAHRC had held a special PAIA training workshop for the respondent's national office staff; and,

    (ii) well knew that the SAHRC had targeted and audited the respondent for PAIA compliance.

5. *Ad the PAIA workshop*: On 26 August 2011 Nair was briefed by one of the respondent's in-house attorneys, Upkaar Mungar, about the SAHRC's intention to hold a special PAIA training workshop for the respondent's national office staff. In a comprehensive, one-and-a-half page email to Nair under the pointed subject-heading 'Training in Promotion of Access to Information Act 2 of 2000', Mungar informed Nair: 'The South African Human Rights Commission is planning a training programme for Legal Aid SA' and asked him to 'indicate the names of staff who you would like to attend the training and who deal with PAIA matters'. Mungar detailed the 'Draft Programme' for the PAIA

training workshop; some 'Reading Materials' on the Act; and the intended 'Outcomes' for attendees, which, in a nut, were their future ability to handle PAIA requests in compliance with the Act.

6. This new evidence shows Nair indeed knew about the SAHRC's special PAIA training workshop held for the respondent's national office staff, and that in denying it he brazenly and contemptuously lied to court under oath, confident that the court would accept and believe any lie he told it.

7. *Ad the PAIA audit*: In its section 84 report on public body compliance with PAIA included in its 2011/12 report for the Minister and the National Assembly, following the applicant's complaints, the SAHRC reported the respondent as a PAIA defaulter. Concerning the failure of such public 'institutions' as LASA to comply with their PAIA compliance reporting obligations, the SAHRC singled LASA out by citing 'A case in point … where a complainant brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA's 2010/11 section 32 report despite the fact that the requests were made in that financial year. … The Commission intends auditing LASA fully in the course of the 2012/13 financial year.' (All records quoted here are in the applicant's trial document bundles.)

8. When on 9 October 2012 Nair and CEO Vedalankar appeared together before the Portfolio Committee to present the respondent's annual report, Committee chairperson Luwellyn Landers MP queried SAHRC's negative section 84 report with them, as did Committee member John Jeffery MP (now Deputy Minister), who voiced the Committee's consternation about the 'report … that stated the South African Human Rights Commission was unhappy with LASA and their cooperation in terms of PAIA' (per the Parliamentary Monitoring Group's transcription of the record of the presentation). 'The Chairperson [of the Portfolio Committee] told the [LASA] delegation that they would arrange for Legal Aid to view the PAIA report.'

9. After viewing the SAHRC's PAIA report of the respondent to the National Assembly as a PAIA defaulter, Nair knew full well of the SAHRC's intentions of 'auditing LASA fully in the course of the 2012/13 financial year'; and indeed he saw them realised: On 14 January 2013 the SAHRC emailed Nair's PA: 'Please find attached a PAIA Audit Questionnaire and Letter for the Information Officer's consideration. The email to be placed before Mr Thembile Mtati and Mr Brian Nair (their respective PAs are cited in the email) as well.' (the words in parenthesis appear in the original, and their PAs are indeed 'cited in the email' address bar)

10. This new evidence shows Nair indeed knew full well about the SAHRC's audit of the respondent for PAIA compliance, and that in denying it he brazenly and contemptuously

lied to court under oath, confident that the court would accept and believe any lie he told it.

11. Besides unequivocally demonstrating Nair to be a perjurer, and so an unconvicted criminal, who evidently lies freely on oath about anything, and whose evidence generally therefore can't be trusted and relied on in any respect, the new evidence of these email records very directly relevantly demonstrates that Nair's denials of knowledge of facts recorded in documents emailed to him can't be trusted – such as his similar denial of his knowledge of the applicant's political background detailed in his CV, and referred to in the recommendation, emailed to him after the interviews by KZN ROE Mdaka.

12. It follows from Nair's proven lies on oath in (i) denying his knowledge of the SAHRC's PAIA training workshop and (ii) denying his knowledge of the SAHRC's PAIA audit, that in similarly denying his knowledge of the applicant's political background at the material time (innately improbable and already contradicted by him on affidavit before trial), Nair lied about this as well, thus committing a fraud on the court, and successfully defrauding it, thereby leading to the failure of justice that resulted from the dismissal of the applicant's claim.

PART TWO
APPLICATION FOR LEAVE TO APPEAL

Introductory Note

13. The applicant records that, to his prejudice, this application has been drawn without sight of the transcript of the trial; that the registrar refused to transmit to the trial judge his written request, telefaxed to court and copied to the respondent, for a directive that the respondent deliver to the applicant the extra copy of the transcript that it long ago printed for him, and insisted that he instead travel to court and make a photocopy of the court's copy at a likely cost of about R3000; and that the respondent's Corporate Legal Manager Solly Sekgota refused to agree to release the extra copy of the transcript sitting idly on a shelf in the respondent's Durban office, remarking that since the applicant had no case and his suit had cost the respondent a lot of money, it had been discussed and decided that the applicant should content himself with listening to the audio recording of the two-week trial on the CD sent him. There was no time for any of this.

14. Consequently, this application is not referenced to the record of the trial by page and line number in the usual course as the respondent intended it to be, in the similar manner that his heads of argument are meticulously and comprehensively footnote-

referenced to the documentary record, pleadings and affidavits. Nor is this application referenced to the latter papers. All references to these herein can be found in the applicant's heads, which likewise contain all references to the contradictions canvassed below between Nair's evidence in court and his and the respondent's different pleaded and sworn versions before trial and yet more different versions advanced in correspondence and reports. The applicant's heads also contain all relevant references to the respondent's Approval Framework and Recruitment code and other documents mentioned herein.

Grounds of Application for Leave to Appeal

15. In summary, the applicant applies for leave to appeal on the grounds inter alia that the court:

- fundamentally misdirected itself in misallocating both the evidential and final onuses;
- wrongly failed to hold the respondent to its pleaded case, and upheld a defence never pleaded;
- cited and relied on irrelevant reported cases as precedent authority for a wrong proposition of law;
- duly found that Nair had not been an honest witness, without identifying any of his many perjuries that it found the applicant had demonstrated, then failed to weigh the implications of this nuclear adverse finding for his general credibility and the trustworthiness and reliability of his core claims (i) as to why he didn't process the applicant's appointment (two successive excuses, one new) and (ii) that he didn't know of the applicant's political background described in his CV and referenced in the recommendation, because he never opened and read them until more than a year after receiving them;
- wrongly failed to assess and reject Nair's evidence in light, variously on different scores, of: its inherent improbability; his contradictory evidence on affidavit before trial; the contradictions between his evidence and the respondent's pleaded and sworn case before trial; and the contradictions between his evidence and the documentary record flatly refuting it;
- wrongly failed to reject Nair's new excuse never pleaded (too busy taking stock of court coverage, and preparing for management and Board meetings), variants of which had been previously alleged (too busy preparing the budget; too busy presenting the budget; and difficulty 'coordinating a meeting time suitable for all

members of the panel' – explicitly retracted by him on affidavit, after the applicant had shown it to be false, then revived by him in court, claiming that his retraction on oath was a mistake, then contradicting this excuse;

- wrongly failed to reject the budgetary insufficiency excuse, indeed pleaded, but flatly contradicted and refuted by the respondent's comprehensive documentary record, concerning its transient budgetary uncertainty for a few months in 2010 and the specific limited measures the record shows it took to meet it;

- wrongly failed to reject Nair's pivotal claim that he was unaware of the applicant's opprobrious and deeply unpopular minority political background at the material time, because he only learned of it more than a year after receiving the applicant's CV mentioning it, along with his recommendation by the selection panel referencing it, when he decided out of curiosity to open and read these documents emailed to him as PDF attachments after the interviews and selections – having regard to the inherent implausibility of this story, and moreover to the fact that he diametrically contradicted it by telling a different story on affidavit before the trial, namely that he'd learned of the applicant's politics much earlier and from a different document, namely from the applicant's letter to CEO Vedalankar in July 2010 describing it;

- wrongly failed to note that Nair's evidence diametrically contradicted and demolished the respondent's version, repeatedly advanced in correspondence, pleadings and affidavits before trial, that (i) budgetary insufficiency at the time the applicant applied for and was interviewed and recommended for the post prevented his appointment, and (ii) the respondent's three vacant senior Litigator posts at Pietermaritzburg, Durban, and Mthatha had to be simultaneously frozen for this reason;

- wrongly failed to apply the principle it duly stated, namely that when an employer lies about its reason for an adverse employment decision, the most likely reason it does so is to cover an illegal discriminatory motive – having regard to the lies Nair told at trial about why he didn't proceed with the applicant's appointment, all unequivocally demonstrated by the applicant;

- wrongly held the applicant had failed to lead evidence to prove an issue that was common cause on the pleadings – that the Pietermaritzburg Senior Litigator post was a critical position – when the applicant nonetheless indeed referred in his heads to several pieces of evidence in the documentary record before court, refuting Nair's false denial in his evidence of this agreed fact; and,

- unfairly and massively prejudiced the applicant by ruling at the outset of trial that he would not be permitted to cross-examine the respondent's officers whom he'd subpoenaed.

Particulars of the applicant's grounds of appeal

16. Ad paragraph 1 of the judgment: The court overlooked the applicant's amended Draft Order, handed up at the close of argument drawn to accord with Mlambo AJA's (as he then was) formulation of the special damages (i.e. lost income) award he made in the Gordon case, also handed up.

17. Ad paragraph 2: The court failed to note the fact that the applicant's pleaded defence version that the three Senior Litigator posts at Pietermaritzburg, Durban, and Mthatha – consistently advanced prior to trial to the applicant in correspondence and on affidavit, and repeatedly to court in pleadings and interlocutory affidavits – was contradicted and wrecked by its single witness Nair, who testified that the cancellation of the Mthatha Senior Litigator recruitment had nothing to do with any budgetary consideration.

18. The court erred in not finding that the comprehensive documentary record before it shows that the respondent's transitory budgetary uncertainty arising on 10 March 2010 and the sole measure taken much later in July 2010 to meet it, namely to temporarily hold recruitment to some lower criminal court public defender posts, had no bearing on its massively accelerated recruitment and new post creation drives across all ranks, including another Senior Litigator recruitment at Mthatha, in the following April to June first financial quarter, which staff recruitment drive otherwise continued in the second quarter July to September 2010 and then peaked in the third October to December quarter, and that *this record diametrically contradicted and refuted as untrue* CEO Vedalankar's claim to the applicant on 18 October 2010 that 'In July 2010' she had frozen the Pietermaritzburg, Durban, and Mthatha posts as a cost saving measure, in that had this been true, there'd have been a record of this alleged management resolution and necessary Board resolution approving this major deviation from its Strategic Plan, which part of it the respondent specifically, but falsely, has reported to the Minister and to Parliament as having been completed.

19. Ad paragraph 5: The court failed to note the evidently abnormal telephonic instruction given that all CVs should be sent up to Nair, including those of the interviewed candidates whom the selection panel had rejected and had 'eliminated' (respondent's word in its pleadings) from consideration for appointment.

20. Ad paragraph 7: The court failed to note the implication of Clark's initial communication with the applicant noted in this paragraph, namely that five months after deciding not to proceed with finalizing the applicant's recruitment, Nair had not informed her as the

respondent's national HRE about this, even as (as LSTC chairperson) he'd invited applications from the regions to motivate for a new Senior Litigator post on 25 February 2010, and, having accepted Mthatha's motivation, had ordered the 'Immediate' recruitment of a Senior Litigator for Mthatha on 24 March 2010, with advertising taking place in April, the same month that the applicant approached Clark, while the finalisation of his recruitment stood halted all the while.

21. Ad paragraph 8: In her affidavit handed in at trial in lieu of oral evidence (she'd failed to remain in attendance), Clark expressly confirmed it was certainly Brijlal; it was not 'probably' him as misstated in the judgment.

22. Ad paragraph 9: The court failed to note the striking change in Clark's animus towards the applicant and her preceding unprofessional, strange avoidance of the applicant's calls, after Nair returned to head office from Cape Town, mentioned in paragraph 8.

23. The applicant will contend on appeal that Clark's change of conduct and newly hostile animus towards the applicant after Nair's return to head office strongly suggests the prejudice the applicant complained of, especially her appalling rudeness; her calculated opacity in response to the applicant's pressing plea for information either way; her false pretence that the respondent's failure to communicate with the applicant for five months since his interview was normal and acceptable business practice (having implicitly conceded in her previous email that the silent delay was untoward), and that his enquiry for information five silent months after his interview was somehow unreasonable; her dishonest concealment of the fact that the applicant had been recommended, by stating he'd merely been interviewed, and her dishonest suggestion that the applicant had an unfounded expectation of being appointed; her dishonest suggestion that the selection panel hadn't made a clear recommendation; her telling proposal that the applicant should withdraw his application for the post; and her radical change of tune in now discouraging him from contacting the respondent again, having previously encouraged it.

24. Ad paragraph 11: The court failed to note the significance of this email, namely that it shows categorically that (a) eight months after the applicant's selection, with nothing done to finalize his appointment, even as the Mthatha recruitment had commenced and concluded on 24 May 2010 with Skibi's recommendation as 'best candidate', Vedalankar knew nothing of the Pietermaritzburg and Durban Senior Litigator recruitments; and that (b) until the applicant's letter to Vedalankar in July, the freezing of Senior Litigator posts had never been discussed and agreed with her as a possible cost-saving measure between 'early this year' and the end of July, as she falsely alleged in her October 2010 letter.

25. Ad paragraph 11: The court failed to note that Skibi, and no other candidate interviewed for Mthatha, was orally told his appointment and transfer had been cancelled. Though the letter Mdaka sent to the applicant indeed conveyed 'an apology for the delay in informing candidates of the outcome of the interview process' (per the judgment), in fact it didn't inform the candidates of the outcome of the interview process, which was that the applicant and Mngadi had been recommended and the two other candidates 'eliminated' (respondent's word in its pleadings).

26. Ad paragraph 12: Section 27 automatically deems as a refusal a failure to respond within the 30 calendar days of the delivery of a PAIA request allowed by section 25. This wasn't the applicant's interpretation of the situation, as the court wrongly suggested here.

27. The court failed to note that Vedalankar strangely initially tacitly (later expressly) refused to provide the applicant with any of the records he'd requested about the circumstances in which his appointment had been aborted, instead of playing open cards with him about this, as someone with nothing to hide would have done, as PAIA and section 32 of the Constitution required of her.

28. Ad paragraph 13: The court failed to note that the budgetary explanation advanced to the applicant was a blatant lie to him: The 'recession' had nothing to do with it, and the respondent's 'baseline budget' wasn't 'cut' at all, even less 'by a significant amount'.

29. The only financial issue the respondent faced in 2010 was when its additional OSD phase 1 allocation would be paid – not if. It had been paid the previous year 2009/10 (during the year, not included in the baseline budget) and was expected to be included in the 2010/11 baseline budget, but wasn't (again it was paid during the year in December 2010).

30. So there was never any serious question in the minds of the respondent's management executives, Nair included, that it would be paid; and this is why recruitment and new post creation soared across all ranks, even after the respondent was 'suddenly confronted' (respondent's expression in its pleadings) with this budgetary issue on 10 March 2010.

31. The court failed to note that the full documentary record shows that, contrary to the lie told the applicant in Vedalankar's letter that 'Since early this year, management has had to identify positions which could be frozen', the first suggestion that any posts might be frozen was in Vedalankar's second letter to the Director General on 13 April 2010, and that the posts she was referring to were lower criminal court public defender posts only, not Senior Litigator posts at the top of the respondent's specialist professional staff establishment.

32. The freezing of recruitment to 56 of these posts to save costs was proposed by Nair to Makokoane, Vedalankar and Clark on 15 July 2010; and on the 16th Makokoane recommended this to the Board for approval. Which measure, a deviation from its Strategic Plan, the Board approved on 31 July 2010.

33. The court failed to note that no record whatsoever exists to vouch that Senior Litigator posts were to be frozen, having particular regard to Cachalia JA's reported observation during the debate of the Presidency's appeal to the SCA in the *Mail and Guardian*'s PAIA case, quoted by the applicant in his reply to the respondent's heads, 'Government is not a glorified spaza shop'. There must 'a paper trail', 'a minute', 'a record' for all its decisions and operations.

34. To the contrary, the extant records contradict Vedalankar's lie to the applicant about this: critical posts, distinguished in Makokoane's report to the Board from the non-critical posts he identified to be frozen, were to be prioritised for filling.

35. The court failed to note that Vedalankar lied to the applicant in alleging that the Senior Litigator posts at Durban and Pietermaritzburg had been frozen for budgetary reasons, and that the Mthatha Senior Litigator post had been frozen for the same budgetary reasons, repeated in the pleadings and interlocutory affidavits – which story Nair disclaimed in his evidence.

36. Ad paragraph 14: The court failed to note that when Vedalankar wrote to applicant on 18 October 2010 claiming that budgetary insufficiency prevented his appointment, the respondent's budgetary uncertainty over when its OSD phase 1 funding would come through had been resolved, not just 'in principle' (per the judgment) but in fact, by inclusion of the outstanding OSD allocation in the national medium term budget in October, as she'd told the Justice Portfolio Committee the week before.

37. Ad paragraph 16: The court failed to note that the fact that the Department had paid the respondent its OSD phase 1 funding the previous year shows that the respondent's real concern was *when* its OSD phase 1 allocation would be paid, not *whether* it would be paid. This is why recruitment took off and spiked in the first quarter April to June 2010, while the respondent's appointment remained halted, off the record, with Clark not told about it before the second half of April 2010 and Vedalankar not told until the end of July, both communications prompted only by the applicant's insistent appeals to Clark for information and then to Vedalankar for the finalisation of his appointment.

38. Ad paragraph 17: The court failed to note the fact that the LSTC was the respondent's operational engine room responsible for the practical implementation of the Board's Strategic Plan, inter alia to recruit Senior Litigators to beef up its professional service delivery capacity; and that Nair had no power, on his own initiative and without Board

approval, to frustrate the implementation of the Strategic Plan and to silently stop the recruitment of duly selected candidates to two of the respondent's most senior professional posts.

39. Ad paragraph 18: The court failed to note that the urgently mandated Mthatha recruitment process shows that budgetary concerns about when OSD phase 1 for 2010/11 would be paid had no bearing on Senior Litigator recruitment, or indeed any other recruitment, whose increase actually spiked, relative to the preceding and succeeding quarter, as recorded in paragraphs 20 and 21 of the judgment.

40. The court failed to note that the dire need for a second Senior Litigator to serve the Eastern Cape, based at Mthatha, pressed by Mtati in his motivation for it – whereas the Northern Cape had reported it had no need for a Senior Litigator at Kimberly – made utter nonsense of Nair's new claim in court that he couldn't persuade Vedalankar of the need for the new Mthatha post and to approve the abolition of the unneeded Kimberly one.

41. Ad paragraph 19: The court failed to note anywhere in the judgment that Vedalankar was referring to public defenders appearing in the lower criminal courts only, not to the respondent's specialist professional posts – as borne out by Nair's and Makokoane's later recommendations in this regard in July.

42. Paragraph 20: The court failed to note that the respondent's massive new post creation drive in the first quarter April to June 2010, after learning on 10 March 2010 that its OSD phase 1 allocation hadn't been included in its baseline budget (just as it hadn't the previous year, and was paid later in the year), did not dampen the respondent's implementation of its Strategic Plan to expand its services in the least. To the contrary this boomed, just as new staff recruitment did. And that this brute fact is inconsistent with and completely discredits Nair's false evidence that he'd stopped the applicant's recruitment on account of budgetary concerns.

43. The court failed to note that the respondent's boom in recruitment in the first quarter refutes as a blatant lie the respondent's repeated, sworn claim to court before trial that it froze recruitment to *all* its vacant posts on account of its uncertainty over when it would get its OSD phase 1 funding.

44. The court also failed to note that by 13 October 2010, the date of chairperson Mlambo JP's sunny public statement quoted in this paragraph, the respondent's budgetary uncertainty about when its OSD phase 1 grant would be paid had ended, and it accordingly resumed recruiting lawyers to fill the lower criminal court posts duly frozen on the record with Board approval, with its energetic recruitment in the third quarter October to December 2010 then peaking for the year.

45. On these uncontested facts, the respondent's claim to have been unable to finalise the applicant's appointment is manifestly insupportable, and the court erred in not making this obvious, objectively indicated finding.

46. Ad paragraph 21: The court gravely misdirected itself by unjustifiably talking down the potent cogency, lethal to the respondent's case, of the hard statistics that the applicant extracted from the respondent's own reports and tabulated for court, which statistics the respondent expressly admitted after the first pre-trial conference, and which shatter the respondent's false budgetary alibi for not concluding the applicant's appointment over the period of April to June 2010 after the March disappointment to learn that the OSD phase 1 allocation hadn't been included in the respondent's baseline budget for the year as promised and repeatedly confirmed in January.

47. On any objective appraisal, these brute statistics exploded the respondent's false budgetary alibi for stopping the applicant's appointment; and the court misdirected itself to the applicant's great prejudice by wetting this dynamite he brought to court, by suggesting, by dint of its unwarranted, repeated insertion of phrase 'appeared to', that these figures were less than rock-solid.

48. Since there's no indication in the judgment that it did so, the court then, after discounting the destructive force of the respondent's own statistics, failed to accord them due consideration and weight in assessing the truth of the respondent's budgetary justification pleaded for aborting the applicant's recruitment.

49. Ad paragraph 22: After duly noting that Skibi was indeed selected and recommended for a lateral transfer to the Mthatha post, the court failed to address the fact that, as shown by the applicant, the respondent's claims that he'd been shortlisted for a second round of interviews was false on both scores, being contradicted by (i) the language of the recommendation that he be appointed directly to the post, without any second interview, and (ii) the respondent's admission that, contrary to its earlier false claim to court about this, no shortlist was drawn for second interviews for the Mthatha post. That is, the applicant showed unequivocally that the respondent had been untruthful in previously alleging to court that a shortlist had been drawn.

50. The court failed to note the obvious contradiction between Nair's evidence, ridiculous on its face and consistently contradicted by the respondent's pleadings and interlocutory affidavits, that all interviewed candidates had to undergo second interviews, including those rejected and eliminated by the selection panel as unsuitable, in that had this been true, there wouldn't have been a shortlist drawn for a second round of interviews for Mthatha, because, according to Nair in court, all interviewed candidates interviewed by the selection panel would have to be interviewed again by his

so-called second round panel – just as he claimed in evidence, all interviewed candidates, including rejected candidates, had been interviewed by his second round panel in all past Senior Litigator recruitment.

51. Ad paragraph 23: The court failed to mention anywhere in its judgment that although the Department didn't have spare funds to *immediately* pay the respondent its OSD phase 1 (and now phase 2) funding, as recorded in the Report to Board of 16 July, the Minister had assured it that provision for payment would be made in the 'mid-year budget adjustments in September/October 2010', and said he didn't want service delivery interrupted.

52. (The court failed to note the likelihood that the Minister's concern that service delivery not be interrupted is why the respondent has concealed from the Minister and Parliament (also concerned that the respondent should fill its budgeted vacant posts) the fact that it has indefinitely frozen its three remaining vacant Senior Litigator posts with no record of this whatsoever. The respondent has repeatedly falsely reported to them that Senior Litigators have been employed in the implementation and completion of the Strategic Plan.)

53. That is, even before Nair proposed to Makokoane to freeze recruitment to some lower criminal court public defender posts, which he explained in his evidence was really just to send a message to spur the Department into paying, the money was assured by the Minister.

54. Ad paragraph 24: The court failed to note that Nair's proposal to freeze recruitment to 56 lower criminal court practitioner posts had no bearing on Senior Litigator recruitment; and that had Nair contemplated further savings by freezing recruitment to the respondent's top three vacant professional posts to save costs, he would have proposed this. These enormously important facts didn't even get a mention in the judgment.

55. The court failed to note that Nair's explicit email subject-heading and the contents of his email very precisely identified the posts he had in mind to freeze: some lower criminal court public defender posts, more of them if necessary and some even lighter paralegal and administrative positions if more savings were still necessary after that.

56. The court failed to note that this refuted Nair's perjury that his identification of posts was not specific and exhaustive. To the contrary, his email shows there was no question of freezing recruitment to any higher level posts, much less at the very top of the respondent's professional staff establishment.

57. Ad paragraph 25: The court failed to note that the record unambiguously shows that the only posts to be frozen for budgetary reasons were some lower criminal court public defender posts, but only temporarily, and that unspent savings from the 2010/11 financial year were to be applied to make up any balance.

58. Ad paragraph 26: With respect, all this is correct. The record referred to here shows there was never any question of freezing Senior Litigator recruitment to save costs. And it shows that any management decision not to implement its Business Plan based on the Board's Strategic Plan to hire Senior Litigators, for which the Department had provided funding, required Board approval. There's never been any. Yet the court failed to note in its judgment (i) the telling absence of any record to support the pleaded defence of budgetary insufficiency preventing the applicant's appointment, and (ii) the glaring irregularity of the wholly off the record unauthorised abortion of the applicant's recruitment to the respondent's top professional post.

59. The court also failed to find and note that according to the LSTC Terms of Reference in the Legal Aid Guide, and the Approval Framework, (i) Nair and Vedalankar didn't have the power on their own to freeze recruitment to the respondent's vacant Senior Litigator posts, and (ii) such a resolution for any operational reason was the prerogative of the LSTC – with Vedalankar and Nair approving or disproving it as executing authorities delegated by the Approval Framework. All on the record, obviously.

60. Ad paragraph 27: The court failed to note that the only posts affected by the OSD uncertainty were 56 public defender posts. All other recruitment carried on normally, thus contradicting Vedalankar's claim to the applicant in her October 2010 letter that 'In July 2010' she and Nair had 'immediately' frozen the Pietermaritzburg, Durban, and Mthatha Senior Litigator posts for want of sufficient budget. About which there's no record whatsoever.

61. Ad paragraph 28: The court misdirected itself on the facts. It was on 3 August 2010, four days after the Board approved on 30 July the temporary freezing of some lower criminal court posts only, that Nair alleged to the applicant that the respondent had decided to put on hold the finalization of its Senior Litigator appointment processes and had now decided not to fill the positions. No records whatsoever exist to vouch this, and the extant records contradict it, as mentioned earlier. On 16 August 2010 the applicant received another letter this time from Mdaka on Nair's instructions, alleging similarly.

62. The court failed to note the tremendous significance of the respondent's studied failure to communicate with the applicant after his selection, and its studied unpleasant communication on 30 April 2010 calculated to drive him away. The court also failed to note the respondent's purpose in not communicating with him (until his letter to

Vedalankar in July forced its hand). In an own-goal scoring question, the applicant was asked in cross-examination why he hadn't concluded from the silence that he'd been unsuccessful and walked away. The question revealed precisely Nair's fraudulent intention at the time, but the court didn't note it.

63. Ad paragraph 29: The court misdirected itself in wrongly stating that the applicant 'changed track and dispensed with' calling the witnesses he'd subpoenaed.

64. The record shows that besides Nair, the three other officers whom the applicant subpoenaed (Vedalankar, Clark, and Board member du Rand) failed to remain in attendance during the trial, and had returned to Gauteng without the court's leave when the applicant wanted to call them.

65. In light of the court's ruling on the first day of the case that the applicant would not be permitted to cross-examine them, he elected to salvage the situation by accepting, in lieu of their oral evidence, affidavits submitted by Clark and Du Rand answering his brief interrogatories. When Vedalankar refused to cooperate in this way like the others, and refused to answer the few neutral written questions he asked her, the applicant declined to call her, expecting in light of the respondent's repeated sworn assurances to court, in the supporting affidavit founding its failed application to quash the applicant's subpoenas, that she was a central witness for the respondent, and that she would testify for the respondent and thereby subject herself to cross examination by the applicant. (But she stayed away to avoid this.)

66. Ad paragraph 30–41: With respect, all this is correct, and it establishes the applicant's reasonably supported apprehension of political prejudice, fortified by the documentary evidence he extracted from the respondent, under persistent, determined, illegal resistance (refusal to comply with PAIA, then refusal to discover), that the budgetary and several other explanations advanced for the abortion of his appointment were fake.

67. Ad paragraph 42: With respect, all this is correct. Indeed the comprehensive financial records – determinedly withheld and very reluctantly discovered by the respondent only following the applicant's repeated appeals to the SAHRC and then his repeated appeals to court (application brought to compel discovery, and two judicially supervised pre-trial conferences at court) – show that its transient budgetary uncertainty for a few months in 2010 never had any bearing on Senior Litigator recruitment generally, as especially evinced by the Mthatha recruitment, and that it was not the reason his appointment was aborted. The court failed to draw this obvious conclusion.

68. Ad paragraph 43: With respect, all this is correct. However, the applicant also testified with reference to the respondent's records that its OSD phase 1 funding had been paid in the previous year, so there was never any genuine apprehension that it wouldn't be

paid at all in 2010/11; the trouble was just that until it was paid, the respondent was operating on an unbalanced budget.

69. The court failed to note that indeed the respondent's certain expectation of its OSD phase 1 funding is evidenced by its massively escalated recruitment and new post creation drives in April to June 2010, which objectively refute Nair's perjury in claiming he'd halted the applicant's appointment in this period out of financial concern.

70. Ad paragraph 44: In fact it's common cause that Mngadi was put off in April/May 2010, i.e. after the applicant began pressing Clark about his recruitment, but the court failed to note the contradiction between this admission and Nair's lying denial that Mngadi was put off at this time. The respondent even volunteered in its answer to the applicant's first pre-trial conference agenda that Nair gave the instruction that Mngadi be put off at this time, and later justified why it did so, and why it didn't tell the applicant the same thing at the time. The court failed to note Nair's clearly demonstrated perjury in court about this.

71. Indeed Skibi was recommended on or about 24 May, but the court failed to note the significance of the fact that only Skibi was told of the cancellation of the Mthatha appointment and no other candidates, which further tends to show that he'd indeed been approved, which is why he was 'ready to start' when his transfer was abruptly cancelled wholly off the record after the applicant asked Vedalankar to finalise his appointment, now eight silent months (besides Clark's second 'Get lost' email in April) after his interview, and Nair needed to contrive a cover story for having aborted it, involving the alleged simultaneous cancellation of the Mthatha recruitment – only to abandon this major leg of the false alibi in court.

72. Indeed the respondent's claims that Skibi was (i) recommended and (ii) shortlisted for a second interview were exposed as lies by the plain language of the recommendation itself and by the respondent's admission that in truth and in fact no such shortlist was drawn, after falsely claiming on oath before trial that one was.

73. Ad paragraph 45: Indeed it's the respondent's own version that no posts were cut – this is not just the applicant's averment. The undisputed facts are that recruitment to some lower criminal court public defender posts were frozen for two months before recruitment to them resumed upon news of the inclusion of OSD funding in the national mid-term budget, and all these frozen posts were then filled '100%' as Vedalankar later reported.

74. Indeed the record shows (it was not just according to the applicant) that Nair didn't propose that cancelling the Senior Litigator recruitments and freezing the remaining posts could achieve further savings. His email spoke only of a number of lower criminal

court public defender posts, more if necessary, and some even lighter paralegal and administration posts if further budget savings were still necessary after that.

75. Nair's email plainly shows that he never stated to Makokoane, Vedalankar, Clark, and CFO Hlabatau that the recruitment process to finalize the appointments to all vacant Senior Litigator posts had already been put on hold for various reasons. The court failed to note the destructive significance of this for Nair's evidence and for the respondent's case.

76. Ad paragraph 46: The court seriously misdirected itself in stating that the applicant's case against the budgetary alibi advanced to him comprised the points listed in the judgment here: a crude mishmash of facts indeed material to discrediting the budgetary alibi, others immaterial to it and relevant to various other unrelated aspects, with other crucial facts on which the applicant relied omitted. The applicant emphasized in oral argument that his case was made comprehensively in his meticulously referenced heads, and that his summary and oral address were no substitute.

77. The applicant's main case against the respondent's budgetary alibi for aborting his recruitment is that the respondent's records comprehensively document the OSD phase 1 funding uncertainty, its resolution in January 2010, its reappearance on 10 March 2010, and its resolution again in October and December 2010; and these records show categorically that the abortion of the applicant's recruitment had nothing to do with any budgetary consideration – as do the complete record of the cost-cutting measures proposed and approved in July 2010, and the respondent's recruitment statistics in 2010.

78. With respect, the first point, '> Mr Nair…', is correct; and this is why, appreciating his decision to block the applicant was gravely illegal and a contravention of the EEA, Nair did not sign his approval or disapproval of the applicant for a second interview, as provided at the foot of the recommendation. (His new story in court about not opening and reading the recommendation and CVs emailed to him, contradicted by him on affidavit before trial, is dealt with below.)

79. The Approval Framework required Nair, in consultation with Vedalankar, to approve or disapprove the recommendation as delegated executing authorities; and the public service codes required him to record his reason for not approving, if he didn't. Nair's so-called second round interview scheme was incontestably illegal for all the many different reasons repeatedly set out by the applicant in court and in his heads with reference to the relevant provisions of the Recruitment code and Approval Framework.

80. In its second point, '> Mr Nair…', the court misdirected itself in stating that Nair was specifically personally prejudiced against the applicant. This was not the applicant's

case, which was that the respondent is institutionally opposed to the applicant's particular political activism. Reciting the applicant's case extensively on this score earlier in the judgment, the court didn't record any reason to doubt it.

81. In oral argument, the applicant illustrated the sort of general prejudice exhibited by Nair by mentioning the analogy of a white loans officer in a bank in a deep Southern town in the US in 1965, approached by a black lawyer or businessman for a mortgage to buy a house in the white suburbs. Racial discrimination in housing and education has just been outlawed by the federal Civil Rights Act of 1964. The loans officer is no seething racist, but because the situation is awkward for him, since racial discrimination was until recently fine and the norm in refusing such applications, he merely pushes the loan application aside, unsigned either way, hoping the applicant will just go away. This was the illegal act of discrimination, no more, no less, and it's essentially what happened in the instant case.

82. It wasn't in issue at trial that the applicant is a member of a constitutionally protected, politically vulnerable, aggressively marginalised and politically ghettoised minority class, and in need of the protection of the Bill of Rights of the Constitution and of the EEA to safeguard his fundamental rights in our democracy.

83. The applicant's apprehension of prejudice was not solely based on Nair's and Vedalankar's repeated appearance on an in-group mailing list of some of the world's leading ARV-drug promoting activists. It was based on much more; and the court misdirected itself in mischaracterising the applicant's apprehension of prejudice in the narrow, reduced and simplistic manner in this paragraph. It had a much broader factual basis, as correctly recited earlier in the judgment.

84. Ad '> In any event…': Indeed the off the record, unauthorised, unapproved abortion first of the Durban and later the Mthatha appointments was contrived to camouflage the abortion of the applicant's appointment. At trial, however, Nair abandoned the Mthatha leg of the cover-story, which means Vedalankar lied to the applicant about it in her correspondence with him; and the respondent, Nair instructing, lied to court before trial in consistently alleging that the Mthatha recruitment was also cancelled for budgetary reasons in its pleadings and interlocutory affidavits. Indeed the budget constraints story in relation to the cancellation of the Senior Litigator recruitments was an afterthought, wholly unsupported and contradicted by the records.

85. The court failed to note Nair's major departure from, and contradiction of the respondent's pleaded case about Mthatha, a story alleged to the applicant right from the beginning and consistently through the respondent's many pleadings and affidavits. The court failed to attach the due weight this radical shift warranted in its assessment of

the veracity of the respondent's defence version and Nair's starkly contradictory evidence about it. The court failed to note the boldly invented and staunchly maintained defence version started falling apart as soon as Nair started testifying.

86. Ad '> There had been…': Indeed the respondent's own statistics, admitted by it after the first pre-trial conference, show a massive increase in staff recruitment in 2010 and a massive increase in new post creation in the April to June first quarter of 2010. The court failed to note the destructive significance of this for the respondent's case.

87. The court failed to note, much less give any weight to Nair's blatant, stupid lie in court, when confronted with the new post creation statistics, that the respondent didn't increase its staff establishment during the year – when the respondent had formally admitted before trial that its own statistics show that in the first quarter April to June 2010 alone it had created almost as many new posts as it did in the whole of the preceding year. The court failed to note Nair's blatant, stupid perjury about this, showing that he'll lie on oath about anything, even in the teeth of the objective hard admitted facts that refute his stupid lies at a glance.

88. And indeed the respondent's December 2010 statistics reflect that the Pietermaritzburg and Durban Senior Litigator posts remained budgeted vacant posts and not frozen as Vedalankar falsely alleged to the applicant on 18 October 2010 for the first time eleven months after his successful interview.

89. The court failed to note, much less give any weight to this incontrovertible fact refuting the lie told the applicant and repeated to court that the posts have duly been permanently frozen. Before trial, Vedalankar and the respondent had alleged that Mthatha had been frozen too. At court Nair changed the story about this completely. The court failed to note this, much less record its destructive implications for the assessment of Nair's honesty or mendacity under oath.

90. Ad '> The next round…': Indeed Nair had no power to create a second round interview process, for all the reasons detailed by the applicant in evidence and recapitulated in argument; and there can be no serious dispute about this. The respondent is not a 'glorified spaza shop'. The conduct of its officers in carrying out staff recruitment is finely and precisely regulated, as in other public entities, to prevent corruption, nepotism, and unfair discrimination. Nair's and other officers' unauthorised deviation from the Recruitment code and Approval Framework was a clear-cut breach of 'the rule of law', which Mlambo JP claims the respondent respects, but which the court failed to note. But the illegality of the second round interview scheme had nothing to do with the falsity of the budgetary alibi, for which reason the applicant never contended it did.

91. Ad '> Mrs Vedalankar's …': Indeed Vedalankar and Nair had no power on their own without (i) an LSTC resolution, (ii) full national management executive committee approval, and (iii) Board approval, to permanently freeze recruitment to three Senior Litigator posts. The employment of Senior Litigators, whom Parliament is specifically concerned should be employed, is part of the Board's Strategic Plan presented to the Minister and Parliament; and the employment of Senior Litigators has been repeatedly been reported in the respondent's reports on its completion of its last Strategic Plan as such, with the off the record abortion of three Senior Litigator appointments and the permanent, off the record freezing of the three vacant posts dishonestly concealed from both the Minister and from Parliament. The court failed to note this scandalous state of affairs, and left it under the carpet.

92. The court failed to note that the provisions of the LSTC Terms of Reference and the Approval Framework show that Vedalankar and Nair acted ultra vires on their own version of how they aborted the applicant's appointment, as alleged in Vedalankar's October letter – which story Nair changed in court, now deleting the Mthatha bit, contradicting the respondent's pleaded case, and implying that Vedalankar lied to the applicant in October 2010 (and in her affidavit in April 2011) to pump up the story, on the time-tested principle, well know to liars, that the grander the lie the more convincing it sounds.

93. Ad '> The respondent's annual …' to the end, '> In short …': All this is incontestably true, and it flatly refutes the story told to the applicant about why his appointment was aborted, yet the court failed to note it.

94. Ad paragraph 47: The court misdirected itself on the facts in stating that Nair placed the bundle of documents he'd received (the recommendation and the CVs) in his drawer, implying he'd printed them. This wasn't his evidence. The expression 'dropped them into his bottom drawer' was the applicant's, an old English idiom meaning to deliberately put a document aside, permanently unattended.

95. The court failed to note, as the applicant pointed out in argument, that there could have been nothing 'premature' about Nair opening and reading the important documents sent to him concerning the respondent's most senior, repeatedly advertised professional posts. Nothing prevented him recording his approval or disapproval of the recommendations – either as he was required to do by the Approval Framework after consulting with Vedalankar to establish her agreement with the appointments or otherwise, or for second round interviews, as the form provided under his home-brewed double interview scheme.

96. The respondent consistently insisted in its pleadings and affidavits that Nair had to sign the recommendation before second round interviews could take place. In court, contradicting the respondent's pleaded and sworn version on this score, Nair denied it.

97. Nair's evidence that he only opened the documents well over a year after receiving them, out of curiosity, which is when he learnt of the applicant's political background stands contradicted by the different story he confirmed on in an affidavit before trial, namely that it was when the applicant wrote to Vedalankar in July 2010, again detailing his political background, that he became aware of it.

98. Ad paragraph 48: The court failed to note that Nair's evidence that all the CVs of the interviewed candidates, including those not recommended and eliminated, had to be given to the so-called second round panel for consideration by him and other mostly legally unqualified officers was a childishly obvious lie, making nonsense of the selection process and rendering futile its considered selections.

99. The whole point of the selection panel was to weed out the less suitable and identify the 'most suitable' candidates for appointment to the Pietermaritzburg and Durban posts respectively.

100. The court failed to note that Nair's suggestion that he, a former schoolmaster now business manager, along with some other business managers in the head office plus the *non-executive* board chairperson, could choose and recommend for appointment somebody found unsuitable and rejected by the selection panel of senior lawyers is too foolish to warrant further argument.

101. The court failed to note that Nair's unbelievably silly new story, which it accepted and believed without demur, is contradicted most recently in the case, and many times before this, by section 4.6 of the amended response: 'the selection panel had to identify candidates who had to undergo a second round of interviews' – from among all the shortlisted, interviewed candidates.

102. The court failed to note that Nair's evidence that there was nothing for him to sign and that provision for his signature was included at the foot of the recommendation report by the regional office by mistake, is exposed as perjury on two counts.

103. First, the form provides for his approval of the recommended candidates for second round interviews, and it's the respondent's consistently repeated, pleaded and sworn version that without Nair's signature, there could be no second round interviews. Nair's new story in court was contradicted and refuted by the respondent's own pleadings and affidavits.

104. Second, provision was duly made for Nair's approval at the foot of Skibi's recommendation, although this time there was no mention of any so-called second round interviews.

105. The court failed to note Nair's obvious perjury about this, and its implications for the credibility of his evidence regarding the central dispute in the case.

106. But most important, the court failed to note the fundamental hard fact that Nair's so-called second interview scheme was illegal for all the reasons stated by the applicant in evidence and in his heads, referenced to the respondent's Recruitment code and Approval Framework.

107. The court failed to note Nair's ludicrous lie in alleging that his so-called second interview panel was free to interview for appointment a candidate rejected as unsuitable by the duly constituted selection panel of senior lawyers. More especially since this contradicted the respondent's pleadings and affidavits about the eliminated candidates being out of the running. And the court failed to note the implications of this lie for the credibility of his evidence about the central dispute.

108. Since it was never the applicant's contention that the so-called second interview panel was 'a rubber-stamp of the first panel', Nair's evidence in this regard was entirely pointless, except to confound the truth and attempt to throw sand in the court's eyes by setting up this non-issue as a distraction.

109. The court failed to note that the applicant showed incontestably with reference to the provisions of the Recruitment code and Approval Framework that he cited, that Nair's unauthorised, legally and practically incompetent second interview panel that he'd devised off the record without the Board's approval, as required, was wholly illegal.

110. Nair's evidence that he and his so-called second round panel could interview applicants including those 'who may have not been recommended for further interviews' is too absurd to require further discussion, more especially since it's contradicted by the respondent's own pleadings and affidavits. The court failed to note this.

111. Forced by the incontrovertible objective recorded facts, Nair conceded that no budgetary problem of any sort prevented the applicant's appointment when he was recommended. This evidence contradicted the respondent's lies to the contrary, repeatedly made in the respondent's pleadings and affidavits, that budgetary uncertainty at the time the applicant applied for the post and was recommended for it prevented his employment.

112. Ad paragraph 49: The court failed to note the transparency of Nair's feeble perjury to justify not looking at and signing the recommendation and acting to finalise the applicant's appointment, namely that January was the busiest month of the year because: (i) the executives had to take stock of coverage under the business plan – in truth and in fact, statistics were compiled monthly, (ii) they had a management executive committee meeting at the end of the month – in truth and in fact this was routine throughout the year, and (iii) they had to prepare for the Board meeting in February – in truth and in fact this was also routine.

113. The court failed to note that the respondent had previously concocted and advanced quite different excuses for not finalising the applicant's appointment, namely that it was too busy preparing its budget, and too busy presenting its budget.

114. The court failed to note that this shows Nair was improvising a pile of lying excuses in court, contradicted by previous lying excuses given.

115. The court also failed to note that Nair had told the Minister and Parliament yet further different excuses, contradicting all these: it was not that the executives on his second round interview panel were too busy doing all these things, it was just that they had difficulty 'coordinating a meeting time suitable for all members of the panel' – except that Clark didn't even know of the selections until April 2010, and being in charge of arranging the second panel, the respondent said before the case, couldn't have asked anyone for dates by then, and when this lie to the Minister and to Parliament was pointed out by the applicant, Nair retracted his lie to them on affidavit as 'an error', 'palpably an error', then in court, again under oath, retracted his sworn retraction as a mistake.

116. The court failed to note that all these different contradictory stories told the applicant, told the Minister and Parliament, and told court (a variety of stories told court before and at trial) about why the applicant's appointment was not promptly finalised meant none could be accepted and believed, and the court erred in not rejecting them all as lies told to cover the real reason.

117. Ad paragraph 50: Nair's evidence in court that he first heard the applicant's name in July but didn't learn of his political background until the end of the year or early the following year, when he decided to read his CV and the recommendation of him out of curiosity, is exposed as perjury by his different story told on his instructions and confirmed by him on affidavit that he learned of the applicant's political background much earlier and in a different way, namely in July 2010 when he read the applicant's letter to Vedalankar that she'd passed to him for reply.

118. It follows that Nair lied under oath in court, as well as under oath before commissioner of oaths before trial, in claiming ignorance of the applicant's political background until at least eight months after receiving the applicant's CV when he read his July letter to Vedalankar (claimed before trial) or more than a year later (claimed in court).

119. The applicant pertinently raised this fatally destructive central contradiction in his heads and during oral argument. The court failed to even mention it, even less note that neither of Nair's mutually destructive contradictory versions given under oath could be accepted.

120. The court also failed to note that Nair's brand-new claim in court that he didn't know of the applicant's political background until more than a year after receiving the recommendation and CV revealing it, when he finally read them, features nowhere in the respondent's many reports, pleadings and affidavits addressing the applicant's complaints of political prejudice.

121. Since Nair repeatedly lied about his knowledge of the applicant's political background at the material time, i.e. late November/December 2009, only, telling different lies on oath about this, his denial built on this false denial that the applicant's political background played no part in the matter could obviously not be accepted and relied on. The court failed to note this.

122. The court failed to note that Nair's false denial in court that the applicant's appointment was immediately aborted is squarely contradicted by the respondent in its very true claim on affidavit (Nair instructing) that the applicant's recruitment was 'aborted immediately' after his interview.

123. Ad paragraph 51: The court failed to note that the only problem at the end of 2009 was that funding for OSD phase 1 hadn't yet been assured for inclusion in the baseline budget for 2010/11 – like in the previous financial year 2009/10, when the money had been paid separately during the year.

124. The court failed to note that in January 2010 the question of OSD phase 1 funding was completely resolved at a meeting with the Department, and confirmed by a subsequent letter from it and another from the Treasury.

125. The court failed to note that Nair's claim in court that about that time, March/April 2010, the executives began to deliberate intensively on the possibility that the department would not fulfil its financial commitments was outright perjury contradicted and exposed by the respondent's records.

126. First, Vedalankar's March and April letters show that the respondent was concerned about the Department's failure to include OSD phase 1 funding in the respondent's

baseline budget as undertaken. And her April letter shows that the only posts contemplated for possible freezing were lower criminal court practitioner posts.

127. Second, there was never any question of the Department not fulfilling its commitment to provide OSD phase 1 funding for the year, as Nair falsely told the court under oath, because it had duly paid this money in the previous financial year, albeit separately.

128. Third, Senior Litigators are not employed to provide 'coverage at courts', but rather, as the respondent states in its advertisements and reports, to provide expert litigation services in major cases in the upper courts, mentor junior staff, and furnish legal opinions as and when required.

129. Fourth, the cost cutting records of July 2010 confirm that the only posts contemplated for freezing in Vedalankar's April letter were lower criminal court public defender posts.

130. And fifth, irrespective of the OSD phase 1 uncertainty recruitment and new post creation boomed tremendously. As Vedalankar (truthfully) told the applicant in her January 2011 letter, the respondent had embarked on these hugely accelerated recruitment and new post creation drives confident the money would come through – despite the discovery that the money hadn't been included in the baseline budget.

131. The court failed to note Vedalankar's contradiction of Nair's perjury that the executives worried that the Department wouldn't honour its commitment to continue funding in 2010/11 the respondent's OSD phase 1 scheme that it had commenced implementing the previous year. Which commitment the Department did honour, after the Minister's assurance recorded in Makokoane's Report to Board of 16 July 2010; and the funding was included in the national mid-term budget in September/October, resulting in the respondent's resumption of recruitment to some of its briefly frozen lower court public defender posts – but not the resumption of the applicant's recruitment to the applicant's top-echelon specialist Senior Litigator post at Pietermaritzburg, frozen off the record. The court failed to note any of this.

132. Ad paragraph 52: The court failed to note that Nair's claim that 'To his mind Senior Litigator recruitment was not an urgent consideration' so didn't have to be achieved promptly was transparent perjury: (i) the Durban and Pietermaritzburg posts had been advertised three times, and twice in 2009; (ii) Nair and his LSTC had designated the recruitment of a Senior Litigator for Mthatha as 'Immediate', meaning it was an 'urgent consideration', and indeed, recruitment for it proceeded briskly; and (iii) the recruitment of Senior Litigators was part of the Board's Strategic Plan, repeatedly reported as such, for Nair and his LSTC to implement, and Nair had no power to decide on his own not to do so.

133. The court failed to note that Nair's claim that 'There was a real possibility that the respondent would not get the money' was transparent perjury. The OSD scheme had been extended to the respondent, and phase 1 implemented; and the money had been paid for the previous year 2009/10, albeit separately from the baseline budget payment, so there couldn't have been any genuine apprehension that the OSD phase 1 funding wouldn't come through for 2010/11, as it had the previous year.

134. The court failed to note that at the same time that Nair claimed to have delayed the finalization of the applicant's appointment 'until clarity on the issue was obtained', the respondent had embarked on massively accelerated recruitment and new post creation drives.

135. The court failed to note that Nair did not have the power to freeze any recruitment envisaged by the Strategic Plan, budgeted by the respondent's management executives, approved by the Board, and funded by the Department, without a resolution of the LSTC, the agreement of the entire management executive committee, and a resolution of the Board approving it.

136. The court failed to note the absurdity of Nair's transparently dishonest claim that there was no need to inform anyone of his decision to silently halt the applicant's appointment (and Mngadi's promotion), even as the Mthatha recruitment commenced. The Justice Centre Executives concerned, the Human Resources Executive, and the Regional Human Resources Manager, all needed to be informed. Equally the successful candidates needed to be informed, especially the applicant (unlike Mngadi, not already employed by the respondent) lest he mistakenly conclude from the silence that he'd been unsuccessful, walk away and make other career plans. (Indeed, that the applicant should walk away under this mistaken impression was Nair's fraudulent intention, betrayed during the applicant's cross-examination on Nair's instructions.)

137. The court failed to note the transparent dishonesty of Nair's childishly feeble claim that he didn't inform the Justice Centre Executives in Durban and Pietermaritzburg because he didn't want to cause panic. They could hardly have been panicked by being told that he'd decided to freeze the appointments of the candidates recommended for appointment as Senior Litigators at their centres until the OSD uncertainty had passed.

138. Ad paragraph 53: The court failed to note the transparent falsity of Nair's claim to have told Vedalankar and Clark that he'd delayed finalizing the Senior Litigator appointments on account of budgetary concerns, considering that he was (i) signing his approval for the appointment of scores of other legal and general staff in the first quarter April to June 2010 – before this in the last financial quarter of 2009/10 and in January to March 2010 too; and (ii) he had overseen the recruitment of a Senior Litigator for Mthatha,

urgently mandated by him and his LSTC in March two weeks after the news of the OSD issue.

139. The court failed to note that Vedalankar did not have the power to advise Nair to freeze the posts without Board approval.

140. The court failed to note that no record whatsoever exists to vouch Nair's claim that it was resolved between Vedalankar, Clark and himself to freeze the Senior Litigator appointments. The court failed to note that had they duly done so in July 2010, as alleged, a record would have existed, for as Cachalia JA remarked during the debate of the Presidency v Mail & Guardian PAIA appeal in the SCA, 'Government is not a glorified spaza shop'; there must be a 'paper trail', 'a record', 'a minute' of all its decisions and operations, and remarking further that even high officers tell lies – like General Colin Powell telling lies to the Security Council about Iraq's so-called Weapons of Mass Destruction – so they can't be believed by a court without substantiating documents for their disputed claims. The court failed to evaluate Nair's evidence in light of this.

141. The court failed to note that the Senior Litigator posts were never abolished and remain fully funded budgeted posts to this day, so Nair's evidence about his and Vedalankar's power to abolish posts on their own is irrelevant; but anyway they can't abolish them without a resolution of the LSTC recommending this, because as illustrated by (i) the abolition of the Kimberly Senior Litigator post, the LSTC decides and Vedalankar and he agree or disagree as executing authorities; and (ii) according to Nair in evidence, Vedalankar would not agree to approve the *LSTC's resolution to abolish* the Kimberly post and create another at Mthatha, despite his and the LSTC's unanimous support for this, based on the recommendation and motivation of the two regions concerned.

142. The court failed to note that Nair's perjury in court that Mngadi was definitely not told in April/May 2010 that the Senior Litigator recruitments had been cancelled, is contradicted and exposed by both the respondent's pleadings and affidavits, in which (i) it's explicitly admitted that Nair instructed that Mngadi be told this at that time, long before July, and (ii) this information given to Mngadi at this time, 'instead of the Applicant', is even justified with a feeble reason.

143. The court failed to note that Nair's perjury that the information of Mngadi about the cancellation of the recruitments definitely didn't originate from him is contradicted and exposed by the respondent's pleadings, drawn on Nair's instructions, in which the respondent actually *volunteers* that 'Mr Nair issued the instruction' that Mngadi be told this in April/May 2010, many months before the applicant was told in August, only after he pressed Vedalankar to finalise his appointment.

144. Ad paragraph 54: The court failed to note that although nothing in the Recruitment code prevents the holding of second round interviews, nothing in the code provides for it either; and that in recruiting staff the respondent's officers are bound to comply with the Recruitment code and Approval Framework, both instruments mandated by the Board, to transparently regulate recruitment and eliminate corruption, nepotism, and unfair discrimination, repeatedly cautioned against in the code.

145. The court failed to note that Nair had no power to devise a second round interview scheme by mostly unqualified administrative personnel with no legal knowledge to second-guess or even supplant the selection panel constituted of senior lawyers.

146. The court failed to note that *non-executive* Board chairperson Mlambo JP's powers in staff recruitment are limited by the Approval Framework to approving or disapproving the appointment of the CEO and NOE – and no other staff – in committee with the rest of the Board, not alone or with any management executives; and his unauthorised involvement in Senior Litigator recruitment, stepping in to interview candidates already comprehensively interrogated by duly constituted selection panels comprised of the respondent's senior lawyers has been ultra vires and unlawful, irrespective of his preeminent legal acumen as senior judge.

147. The court failed to note the ludicrous, transparent dishonesty of Nair's perjury that all the CVs in Senior Litigator recruitments had to be sent to his so-called second round panel, including those of the rejected candidates, and that this panel of his was free to interview for appointment a candidate found unsuitable and eliminated by the selection panel. The court failed to note the implications of Nair's obvious perjury about this for the credibility of his evidence going to the centre of the case.

148. The court failed to note the significance of Nair's special telephonic instruction (it wasn't Clark; she was kept in the dark until April 2010) ordering the KZN RHRM to include the CVs of the rejected candidates, which plainly shows that the rejected candidates' CVs were not sent up in the ordinary course, and obviously so since they were out of the running; and indeed the respondent admits they were out of the running in its pleadings.

149. The court failed to note Nair's perjurious exaggeration in claiming that his second panel had 'often' rejected candidates recommended by selection panels, when in truth and in fact this had only happened once, in the case of the candidate previously recommended by the selection panel for the Pietermaritzburg Senior Litigation post, but rejected by the second interview panel. The court failed to note that even when testifying about a true fact, Nair compulsively perjured himself by dishonestly exaggerating under oath.

150. The court failed to note the contradiction between Nair's allegation in court that all Senior Litigators had been interviewed twice, and the pleadings which alleged that some of them hadn't, and that those who hadn't had proved to be professionally incompetent.

151. The court failed to note the contradiction between this pleaded story about the allegedly incompetent Senior Litigators and Nair's changed story in court, now retracting this false slur on them and testifying that their professional performance wasn't in question, he was just concerned about the type of work they were doing. The court failed to note this clear instance of perjury on Nair's part, since the pleadings were drawn on his instructions.

152. The court failed to note that under cross-examination, contradicting his repeated allegation about this in the pleadings and affidavits, including in the amended response, that the ROE has the final say, Nair admitted that the Approval Framework allows the ROE no role in the approval of Senior Litigator appointments at all, after the recommendations made by selection panels.

153. Ad paragraph 55: The court failed to note that Nair's new lie to the Board in his November 2011 'Report to Board' (after the applicant had refuted the respondent's budgetary-three-posts-frozen-at-once sham in his extensive original statement of claim) that the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitment processes had *failed to attract suitable candidates* is contradicted by the fact that (i) Skibi was already a Senior Litigator, (ii) no question has ever been raised about Durban High Court Unit Manager Mngadi's suitability (he was found suitable by the selection panel), and (iii) after first pretending that the applicant, an admitted advocate for thirty-one years, and widely experienced on both sides of the bar and bench, was under-qualified, he switched to pretending that he was over-qualified, because his experience was predominantly civil, whereas the respondent wanted Senior Litigators to argue criminal appeals.

154. The court failed to note that Nair's dull, changing perjury regarding the work Senior Litigators do – to mainly argue pedestrian criminal appeals – is exposed again and again by the respondent's records describing it very differently.

155. The court failed to note the transparent dishonesty of Nair's claim in court that the applicant didn't meet the qualifying criteria. He did, and the selection panel's note that he had only eight years high court experience was wrong in light of the information about this in his CV. But anyway it was irrelevant, because no record exists to show that the uniquely high qualifying criteria imposed on the second KZN recruitment process in

2009, but not on the Kimberly one in the same year, nor in the Mthatha one the following year, were ever duly authorised.

156. The court failed to note that had Nair honestly believed that the applicant, an admitted advocate of then twenty-five years vintage, with an unusually wide breadth of legal experience was unqualified for the post, he could have recorded this as his reason for rejecting the applicant.

157. The court failed to note that Nair's dissembling in his evidence that the applicant, probably more highly professionally experienced than anyone else employed by the respondent, was unqualified for the post was just more of his endless, easy, casual, mindless, obvious, dull-witted perjury.

158. The court failed to note that Nair transparently perjured himself in pretending that he doubted the truth of the applicant's claims in his CV to have litigated in the Supreme Court of Appeal and Constitutional Court, merely because he hadn't provided the specific case citations, as if he really believed the applicant had lied in his CV about his professional experience in these forums (both cases in fact reported).

159. The court failed to note that Nair's dishonest insinuation that the short-listing and selection of the applicant was in some manner corrupt was not supported by any particulars, and was itself a corrupt and perjurious attempt to deceive and misdirect the court and a fine illustration of his basically dishonest personal character, the truth simply not being in him.

160. Ad paragraph 56: The court failed to note the dull and obvious contradiction between Nair's claims that (i) he intended pending his approval of the Mthatha candidate following his selection until the resolution of the OSD uncertainty, and that once it was resolved he would then finalize the appointment and not have to start again with the recruitment process, and (ii) the frozen appointment process for the applicant could not be revived in the same way on resolution of the OSD uncertainty and the applicant appointed to avoid the respondent having to start again with the recruitment process.

161. The court failed to note the gross improbability of Nair's brand-new story in court about the reason for the cancellation of the Mthatha recruitment, contradicting the respondent's repeatedly pleaded and sworn case about this, and contradicting the different story Vedalankar told the applicant in October 2010, repeated in January 2011, and confirmed before a commissioner of oaths as the perfect truth by her, Nair and Clark in their PAIA affidavits in April 2011.

162. The court failed to note that Vedalankar could have had no reason to disapprove the LSTC's unanimous resolution to abolish the long vacant and redundant Kimberly Senior

Litigator post, where it reportedly wasn't needed, and to create a new post at Mthatha, where it was sorely needed according to then ROE Mtati. As NOE and chairperson of the LSTC, Nair was better aware of the respondent's operational requirement on the ground than Vedalankar was, and he supported the cost-neutral transfer of the budget, and (as he claimed under oath) repeatedly tried to persuade her to agree, but she wouldn't, so the Mthatha recruitment had to be aborted, and the Senior Litigator budget sent back to where it wasn't needed.

163. The court failed to note that any such alleged executive decision by Vedalankar had to be minuted, and Nair admitted he knew of no such minute.

164. The court failed to note that the Mthatha post couldn't have been advertised unless it had been created and approved, because the Approval Framework required that Clark confirm the available budget for it, thus further giving the lie to Nair's rank perjury in court about this.

165. The court failed to note that this brand-new story of Nair's in court about why the Mthatha appointment was cancelled couldn't possibly have been true, and his obvious perjury about it meant nothing he said in court could safely be believed.

166. The court failed to assess the credibility of Nair's evidence about this having regard to its inherent improbability for the above reasons and further to the fact that Vedalankar told the applicant a completely different story in her letter of 18 October 2010 three months after allegedly disapproving the transfer of the budget, which story she persisted with in her January 2011 letter and then under oath in April 2011.

167. The court failed to note the significance of Nair's claim to have ordered the cancellation of the Mthatha recruitment wholly off the record, and that no record whatsoever exists of this.

168. The court failed to note the plainly obvious perjury of Nair's claim that the Eastern Cape selection panel never signed its recommendation of Skibi for Mthatha, having regard to the sworn allegation in the first discovery affidavit that the letter covering its transmission from the regional office in Port Elizabeth to head office in Johannesburg had been 'lost in transit'. It goes without saying that the covering letter wouldn't have been sent without the recommendation it covered. And the recommendation wouldn't have been sent to Nair unsigned, because Nair couldn't have acted on an unsigned recommendation.

169. The court failed to note the likelihood from this and from all the other material facts that Nair indeed received the signed recommendation of Skibi and that he approved it, which is why Skibi had been 'ready to start' and the Mthatha Justice Centre was

expecting him, when his transfer was abruptly cancelled, orally, off the record, itself a glaring irregularity.

170. The court failed to note that the record unequivocally shows that Nair had no reason not to approve the appointment of Skibi following a briskly conducted recruitment he'd urgently mandated, because his 15 July 2010 email proves that he only had in mind to freeze a limited number of lower criminal court posts to trim costs, more if necessary, and some even lighter posts if still necessary after that – not Senior Litigator posts.

171. The court failed to note that Skibi wouldn't have been 'ready to start' had he not been approved by Nair, and told so.

172. The court failed to note that only Skibi was telephoned and told the Mthatha Senior Litigator job was off, not the other interviewed candidates, showing further that Skibi had been selected and approved and was about to begin, when Nair cancelled his transfer off the record.

173. The court failed to note that Nair's manifest perjury that his July email to Makokoane was not meant to be exhaustive is exposed by both the cold print of its subject-heading and by its contents, both of which proposed cutting, i.e. freezing recruitment to 56 lower criminal court public defender posts, more of the same, and some even more junior paralegal and administration positions if still necessary after that to find more savings.

174. The court failed to note that had Nair considered freezing recruitment to any other more senior posts such as Senior Litigator posts, he would have included them in his email to Makokoane and other management executives to agree and for the Board to approve.

175. The court failed to note that before the applicant's letter came in at the end of the month, there was no question of freezing recruitment to any of the respondent's other posts, let alone critical top level professional posts.

176. The court failed to note that although Nair's proposed cuts didn't completely meet the OSD phase 1 shortfall, Makokoane proposed to the Board the following day that this shortfall be accommodated by applying unspent budget savings to the balance to be made up – not freezing senior professional staff recruitment, which the record shows anyway proceeded after July uninterrupted.

177. The court failed to note Makokoane's information to the Board that critical posts would be prioritized for recruitment, implicitly referring inter alia to Senior Litigator posts. (It was common cause on the pleadings that Senior Litigator posts are critical, and the court's mistake about this later in the judgment will be addressed below, as will

Nair's perjury in pretending they aren't critical and that the respondent's bottom-professional-rung lower criminal court public defender posts are – contradicted by the respondent's pleadings volunteering that Senior Litigator posts are critical.) That is, there was no question of freezing critical Senior Litigator posts, and Nair's email to his fellow executives and Makokoane's report to the Board, both in July, prove it beyond serious disputation.

178. The court failed to note the contradiction between Nair's claims to have merely slowed down the recruitment process – absolutely true (for a change) in regard to the recruitment of a limited number of lower criminal court public defenders – with his permanent, off the record abortion of three critical Senior Litigator recruitments.

179. The court failed to note Nair's manifest perjury in claiming that its public defender posts at the bottom of the respondent's professional ranks are critical posts, whereas its top echelon specialists posts, specially created to address Parliament's concerns about inadequate legal expertise within the respondent, are not critical.

180. The court failed to take note of all the many pieces of evidence enumerated by the applicant in his heads that unequivocally show Nair to have perjured himself about this. Also because it's common cause on the pleadings (the respondent actually volunteered the description) that Senior Litigator posts at the summit of its professional ranks are critical.

181. The court failed to note that the Senior Litigator posts have always been budgeted and funded ever since they were created (spare budget was reported available at the time), and the respondent's 'tough times' were no more than some temporary uncertainty about when its OSD phase 1 funding would come through in the 2010/11 financial year, having regard (i) to its payment the previous year, and (ii) to the Minister's undertaking to ensure it would be included in the national mid-term budget in October. There was never any question that it would be paid, as indeed it was.

182. The court failed to note that if any of the respondent's Senior Litigator posts were to be *permanently* done without, for any reason, the Board had to approve this – just as it had to approve, and did approve, executive management's proposal to do without 56 lower courts public defenders, but only *temporarily* until the end of the financial year.

183. The court failed to note that Nair did not have the power to decide on his own to 'do without' Senior Litigators, whose employment was mandated by the Board's Strategic Plan and whose employment was repeatedly specifically reported to the Minister and to Parliament. Nor did he have the power to decide this with Vedalankar. Especially off the record, and then concealed from the Minister and from Parliament in the respondent's reports on its completion of its last Strategic Plan, in the course of the cover-up.

184. The court failed to note the transparent dishonesty of Nair's perjurious dissembling that Parliament isn't especially concerned that the respondent's critical posts be filled, having regard to the fact that the respondent is part of the Justice cluster, and having regard further to Parliament's pointed enquiries about the vacancy rate among the respondent's professional staff.

185. Ad paragraphs 59 and 60: With respect, all this is correct.

186. The court failed to weigh and assess the veracity of Nair's evidence. Instead, the court took everything Nair said on its face, and accepted and believed it, even when it was childishly incredible on its face, contradicted by the records, unsupported by the records, contradicted by the respondent's pleadings and affidavits, and contradicted by his reports to the Minister, to Parliament, to the Board, and by his own affidavits.

187. The court mischaracterised the case as one involving contradictory versions, to the extent that the veracity of the applicant's evidence, objectively supported every leg of the way, was never in question, only the correctness or otherwise of his conclusion from all the objective facts he presented that the respondent had unfairly discriminated against him under cover of a lying budgetary camouflage alibi – advanced to him for the first time nearly a year after his interview under pressure of his repeated enquiries, and finally at the sharp point of a comprehensive PIAIA request, first illegally ignored then repeatedly illegally expressly refused.

188. On the other hand, the veracity of the respondent's elaborate justification for aborting his appointment was squarely in issue, and it accordingly behoved the court to carefully assess the credibility of the respondent's sworn and pleaded claims that budgetary considerations prevented the finalisation of the application's appointment, and that such considerations had resulted in the abortion of the simultaneously recruited Durban post and the subsequently recruited Mthatha post – stories Nair completely changed at trial (i) in conceding there was no financial bar to prevent the applicant's appointment at the time he was interviewed and recommended, and (ii) in admitting that the cancellation of the Mthatha Senior Litigator recruitment had nothing to do with any budgetary consideration, which means Vedalankar lied to the applicant in her letters of 18 October 2010 and 28 January 2011, and perjured herself in her affidavit of 8 April 2011.

189. Ad paragraph 61: The court completely misdirected itself in citing and relying on the Barnard case for direction in determining the applicant's complaint that the respondent had unfairly discriminated against him under cover of a lying budgetary camouflage. The Barnard case involved frank discrimination, which the employer properly justified with

regard to its constitutional imperative to achieve fair racial representivity in its senior ranks.

190. Ad paragraph 62–63: The court's dicta in these paragraphs are entirely irrelevant, as indeed it mentions in the first sentence of its following paragraph 64 (except to suggest that the court surmised undeclared racial discrimination in the instant case).

191. Ad paragraph 64: The court fundamentally misdirected itself in holding that 'the determination of the issue at hand as well as the controlling law should still be the one outlined in Harksen vs Lane and others', because, as in Barnard, the Harksen case involved *frank differentiation* and whether it was justified or not – and not disputed *covert* discrimination under a financial camouflage, as alleged by the applicant in the instant case. The instant and cited cases are totally incomparable.

192. The Barnard and Harksen cases consequently had zero application to the determination of the applicant's complaint, and the court misdirected itself in relying on them.

193. Ad paragraph 65: The court fundamentally misdirected itself by misallocating the onus of proof, and in determining the dispute on the mistaken premise that 'The applicant … carried the burden to prove the existence of the discrimination complained of' and that there was an 'onus resting on him' to do so – irrelevantly citing as authority for this wrong basic premise the Harksen, Kadiaka and Germishuys cases, none of which had any bearing on the issue – and then proceeding to hold that the applicant had failed to discharge this onus.

194. The Employment Equity Amendment Act 47 of 2013 ('EEAA'), assented to by the President on 14 January 2014, was proclaimed under section 30 to be effective from 1 August 2014.

195. Section 6 of the EEAA amended section 11 of the Employment Equity Act 55 of 1998 ('EEA'), which deals with the 'Burden of Proof' in unfair discrimination claims.

196. Through a manifest oversight by the legislature (shown below), section 11 of the EEA had previously been silent regarding the incidence of the onus of proof in *covert* unfair discrimination claims, and had reversed the onus only in *frank* unfair discrimination claims (as in the Barnard case). That is, until the amendment, there was no *statutory provision* in South African labour law governing the allocation of onus in *covert* unfair discrimination litigation in the labour arena (but not outside it; see below).

197. A *covert* employment discrimination complainant naturally has a much harder row to hoe in establishing his claim where the discrimination is denied and the employer's *unspoken mental prejudice* against him must be inferred from the totality of the

circumstantial evidence, than one in *frank* employment discrimination, where it is openly admitted but justified. So for his effective legal protection, such a *covert* unfair discrimination complainant has an even greater need for a reversed onus than a complainant in a *frank* discrimination case.

198. Section 11 used to provide:

> Whenever unfair discrimination is alleged in terms of this Act, the employer against whom the allegation is made must establish that it is fair.

199. The old section 11 made no provision for the reallocation of onus in *covert* unfair discrimination claims, such as the applicant's.

200. Amended, the new section 11(1) provides:

> If unfair discrimination is alleged on a ground listed in section 6(1), the employer against whom the allegation is made must prove, on a balance of probabilities, that such discrimination –
>
> (a) did not take place as alleged, or
>
> (b) is rational and not unfair, or is otherwise justifiable.

201. Whereas section 11(1)(b) restates and refines the original provision reversing the onus of proof in *frank* unfair discrimination complaints, section 11(1)(a) fills the statutory lacuna in regard to *covert* ones and likewise reverses the onus in these cases too.

202. In weighing the evidence and deciding the applicant's claim, the court was bound to apply section 11 as amended. Judgment was delivered many weeks after the amendment of section 11, and the applicant was entitled to the benefit of this amendment and to the decision of his claim under *current* South African labour law as *codified* by the amended section regarding the incidence of the onus of proof in *covert* unfair discrimination claims.

203. It didn't do so, and it wrongly adjudicated the case on the basis that the applicant bore the ordinary onus of proof – such as rests on civil plaintiffs in the ordinary course. This was a fundamental and fatal misdirection vitiating the fairness of the trial.

204. For the several reasons enumerated below, however, even *before* the statutory *codification* of the reallocation of the onus of proof in *covert* unfair employment discrimination claims on 1 August 2014, and in the absence of a statutory provision regulating the incidence of onus in such claims, the respondent nonetheless bore the ultimate onus to prove that it had not unfairly discriminated against the applicant as he'd complained.

205. (The applicant was himself mistaken both at trial and during argument in believing that, prior to the proclamation of the EEAA on 1 August 2014 explicitly shifting the final onus, he bore it – as under US federal law. The McDonnell Douglas framework prescribed by the US Supreme Court in 1973 (mentioned in the applicant's heads), imposes an *evidential onus* on the employer where a grievant makes out a plausible case that he has been unfairly discriminated against, but it doesn't shift the *ultimate burden of proof*, as many countries have done in accordance with progressive international labour law trends reported and recommended by the ILO, given effect either by way of statutory provision or judicial development of the law. The McDonnell Douglas framework was just the first, early, partial move in the development of equitable onus allocation in unfair discrimination litigation, supported by the ILO.)

206. As the Minister of Labour explained during the Second Reading of the Employment Equity Amendment Bill on 24 October 2013:

> The main aim of this bill is to give effect to fundamental Constitutional rights, including the right to equality, fair labour practice and protection against unfair discrimination … and to ensure that South Africa complies with and meets its obligations in terms of the International Labour Organisation standards.[1] … [T]his Bill emanates from the International Labour Organisation, ILO, Convention'.[2] … [South Africa] participated in the standard commissions during the ILO conference.[3]

207. Since the EEA had been silent about the onus of proof in *covert* unfair discrimination claims before its amendment, the Labour Court was bound to look to the equities and to 'the International Labour Organisation standards' of labour jurisprudence in its allocation of the final onus in the applicant's case, agreed to by South Africa's representatives participating in the commissions setting them, and recommended and reported by the ILO.

208. The amendment of section 11 of the EEA, codifying the reversed onus in *covert* unfair discrimination claims, conforms to the ILO's recommendations in this regard, in keeping with South Africa's obligations to apply and comply with the international labour standards it sets in its reports:

> ***Equality at work: The continuing challenge*. Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. Report of the Director-General. International Labor Conference 100th Session 2011**:

[1] Law and case bundle, page 228.
[2] Law and case bundle, page 233.
[3] Ibid.

Provisions maintaining the burden of proof on the claimant in discrimination cases limit the effectiveness of protection in judicial proceedings and the possibilities of seeking remedies for damages inflicted.'[4] (NB: Prior to the amendment of section 11 of the EEA, there were no such 'provisions' in South African law, only a statutory lacuna, now filled in accordance with ILO standards and recommendations.)

Giving globalization a human face. **General Survey on the fundamental Conventions concerning rights at work in light of the ILO. Declaration on Social Justice for a Fair Globalization, 2008. Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution). Report III (Part 1B). First edition 2012:**

Burden of proof
One of the main difficulties in relation to allegations of discrimination in general … relates to the burden of proof. … Provisions introducing a "reversal of the burden of proof" … are among the preventive mechanisms designed to afford protection against … discrimination … in the view of the Committee. … This is also the view of certain national jurisdictions. For example, in Argentina,[457] the National Court of Appeal found that, when a worker considers her or himself to be a victim of discrimination, there must be a shifting of the burden of proof whenever the worker can "provide a reasonable indication" of the employer's hidden reason.'[5]

Fn. 457: National Court of Appeal, Fifth Chamber, Parra Vera Maxima v. San Timoteo SA conc., 14 June 2006, ruling No. 144/05 68536.

HIV and AIDS and Labour Rights: A Handbook for Judges and Legal Professionals Office**. – Geneva: ILO, 2013**

Burden of proof
… Placing the burden of proof on the worker in a discrimination case may present an insurmountable obstacle, particularly when the information and documentation necessary to establish a prima facie case of discrimination is in the hands of the employer, such as in a case of denial of access to employment. [6] … Acknowledging these difficulties, some countries have provided for a shifting burden of proof. For example, in a case alleging discriminatory failure to hire, the burden of proof will shift to the employer to show that there were other reasons for rejecting the candidate – once the complainant has produced plausible or prima facie evidence of discrimination. In Switzerland, section 6 of the Federal Act respecting equality between men and women, which came into force in mid-1996, provides for the

[4] Law and case bundle, page 207, paragraph 65.
[5] Law and case bundle, ILO, Giving globalization a human face, page 212, paragraph 192.
[6] Law and case bundle, HIV and AIDS and Labor Rights, page 220.

presumption of alleged discrimination "as long as the person invoking the procedure makes a plausible case". The CEACR [ILO Committee of Experts on the Application of Conventions and Recommendations][7] has stated that allocating the burden of proof in this way may be a helpful tool to correct a situation that could otherwise result in inequality.**[118]** A number of European countries, such as France, Germany and Italy, have adopted provisions for shifting the burden of proof to the employer in cases of employment discrimination, based on European Directives.[8] … National courts have ruled on the issue of burden of proof in cases involving allegations of HIV-related discrimination in employment. The Brazilian Federal Superior Labour Tribunal has held that, where the employer knows of the worker's HIV status, the burden rests on the employer to show that his or her decision to dismiss the worker was not discriminatory.'[9]

Fn. 118: 'ILO, *Equality in employment and occupation,* ibid, paragraph 231; see also ILO, Giving globalization a human face, op.cit., para. 885.'

209. In the absence of a statutory provision reallocating the onus in covert unfair discrimination claims before the effective date of amendment of section 11 of the EEA, this court had the jurisdiction as a court both of law and of equity[10] to allocate the incidence of onus *equitably*, and to reverse it by placing it on the employer, as courts in Argentina[11] and Brazil[12] have done, having regard to (i) the reversed onus in *frank* discrimination claims stipulated by section 11 of the EEA before it was amended, (ii) the obvious oversight of the legislature, recently remedied, in reversing the onus only in *frank* discrimination claims and neglecting to reverse it in *covert* discrimination claims, all the more necessarily for effective legal protection against unfair discrimination in such cases, (iii) the recommendations and reports of the ILO consistently urging the reallocation of the onus of proof in *covert* unfair discrimination litigation, and (iv) the reversed onus in both *covert* and *frank* unfair discrimination litigation outside the labour sphere under section 13 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ('PEPUDA'), which has stipulated, since its enactment, that in *covert* unfair discrimination litigation the respondent should bear the onus of proving

[7] Law and case bundle, page 209.
[8] Law and case bundle, HIV and AIDS and Labor Rights, page 222.
[9] Ibid, page 224.
[10] Section 151(1) of the Labour Relations Act 66 of 1995: 'The Labour Court is hereby established as a court of law and equity.'
[11] National Court of Appeal, Fifth Chamber, Parra Vera Maxima v. San Timoteo SA conc., 14 June 2006, ruling No. 144/05 68536. (Cited with approval by the ILO.)
[12] Federal Superior Labour Tribunal/Tribunal Superior do Trabalho (TST), Adriana Ricardo da Rosa v. Sociedade de Ònibus Porto Alegrense LTDA – SOPAL, Case No. TST-RR-104900-64.2002.5.04.0022, Judgment of 3 August 2011 (published 2 September 2011) (Cited with approval by the ILO.)

it did not discriminate as alleged by the complainant – evidencing the intention of our democratic Parliament in unfair discrimination claims generally in the democratic era:

> Burden of proof
> 13 If the complainant makes out a prima facie case of discrimination –
>
> (a) the respondent must prove, on the facts before the court, that the discrimination did not take place as alleged; or
>
> (b) the respondent must prove that the conduct is not based on one or more of the prohibited grounds.

210. So as to comply with section 3 of the EEA, requiring the Act to be 'interpreted –

> (a) in compliance with the Constitution;
>
> (b) so as to give effect to its purpose;
>
> (c) in compliance with the international law obligations of the Republic, in particular those contained in the International Labour organisation Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation.

– and to conform itself with international standards agreed by member countries, including South Africa, and reported and recommended by the ILO, the court was bound to shift the ultimate onus of proof and allocate it to the respondent – as courts in Argentina and Brazil took the initiative and did – even had it not been shifted by the proclamation of the EEAA.

211. In sum, the respondent carried the ultimate burden of persuasion; and the court's unfair misallocation of the final onus in deciding the case vitiates its judgment.

212. On appeal, the applicant will show that on a full and proper consideration of the dismal, manifestly untruthful, unsupported, internally contradictory and contradicted evidence given by the respondent's witness Nair – much of which wasn't treated in the judgment, despite having been pertinently pointed up in the applicant's heads of argument and in oral argument – no reasonable court would find on a correct allocation of the burden of proof that the respondent discharged its onus on a balance of probabilities to show that it did not unfairly discriminate against the applicant when it halted his appointment to the post for which he'd been recommended.

213. If the Labour Appeal Court disagrees with the applicant's case concerning onus, and holds that he, and not the respondent, bore the final onus, albeit that the respondent was subject to an evidential onus to justify its failure to appoint (which is why the respondent's application for absolution was dismissed after the close of the applicant's

case, having made out a prima facie case to answer), the applicant will show that the respondent failed to prove its pleaded case and thus to justify its failure to appoint.

214. Ad paragraph 66: In correctly noting that 'in some employment discrimination cases in which an issue of pretext arises the respondents often provide all sorts of seemingly legitimate reasons to justify its behaviour', the court failed to note the wide assortment of different, contradictory seemingly legitimate reasons advanced by the respondent to justify its behaviour: to the applicant, to the SAHRC, to the Minister, to Parliament and to this court before and during trial, one advanced, then retracted by Nair on oath, then revived adjusted, to wit: that the respondent was too busy preparing/presenting its budget to finalise the applicant's appointment (a story repeated, then dropped); that it froze *all* its vacant posts because of its budgetary concerns (a story repeated, then dropped); that the initial reason the second interview of the applicant couldn't proceed was because of difficulty fixing a date suitable to all members of the panel (Clark hadn't even been asked by April; and after the applicant, in his original statement of claim, nailed this lie told to the Minister and Parliament, the respondent (Nair instructing and confirming on oath) retracted it as 'an error', 'palpably an error'; and when in court Nair was reminded of this retraction, he feebly responded that the retraction was a mistake. In court Nair revived the initial delay story, saying he knew the second interviews couldn't proceed until mid-February, thereby contradicting the lying story he'd told the Minister and Parliament about the panel members not being able to meet because of trouble agreeing a suitable date, when the truth of it is that no one had been asked.

215. The court failed to note that even on his own new version in court, nothing prevented Nair from arranging the second interviews in the three-week period between the mid-February and 10 March 2010 when the respondent learned that its OSD phase 1 funding wasn't in its baseline budget; and that Nair's failure to take any action at all, even reading and approving or disapproving the recommendations, stands wholly unexplained. (In March despite the OSD disappointment, (i) he and his LSTC urgently mandated the Mthatha Senior Litigator recruitment, which blows his lie that from then on the OSD issue prevented Senior Litigator recruitment in particular, and (ii) recruitment generally rapidly accelerated in the next quarter, which blows his lie that any recruitment at all was affected by the OSD issue before mid-July 2010.)

216. Ad paragraph 67: The court duly noted the many instances ('a number of facts and circumstances') pointed up by the applicant showing that Nair was 'not generous with the truth', in other words, and put plainly instead of soft-soaping it in the respondent's favour, he'd not been honest with the court on a number of scores, which is to say he'd repeatedly lied to court under oath, meaning he'd repeatedly committed perjury; but the court failed to identify a single instance of Nair's gushing perjury, and failed to weigh

his many demonstrated lies on oath concerning the surrounding issues in its assessment of whether or not to accept and believe his central claims in court that (i) he didn't know who the applicant was and what he stood for at the material time because he didn't open and read the applicant's CV detailing his political background and the selection panel's recommendation referencing it until more than a year after receiving them, when he claimed in court to have opened and read them out of curiosity because he wanted to find out at last who the applicant was and what he stood for; (ii) he and his colleagues had been too busy to interview the applicant a second time until mid-February; and (iii) the uncertainty over when the respondent's OSD phase 1 funding would be paid caused him to halt the applicant's appointment in March and then freeze it at Vedalankar's suggestion in July.

217. The many obvious lies Nair told under oath in court, which the court failed to identify, are identified throughout this application, and two more are proved by the new evidence.

218. The court failed to note (even before mention of the new evidence categorically proving it), that Nair obviously perjured himself in alleging falsely that as the respondent's deputy information officer he didn't know that the SAHRC had conducted (i) a special PAIA training workshop for the respondent's national office staff, and (ii) an audit of the respondent for PAIA compliance.

219. The court failed to note that since Nair lied freely under oath about all manner of things, nothing he says could be trusted and relied on. That is, his evidence was not worthy of credence and couldn't reasonably be accepted and believed.

220. The court failed to note that besides the surrounding countryside of Nair's many lies on oath about many other things, Nair's claim to have first known of the applicant's political background at the end of 2010 or early 2011 is contradicted by him in a different story he told under oath before trial, namely that he first learned of the applicant's political background in July 2010 on reading the applicant's letter to Vedalankar, canvassing it in some detail. That is, he learned much earlier and from a different document.

221. The court failed to note these mutually destructive contradictory versions on oath before and at trial, despite being pertinently pressed in the applicant's heads of argument and again at the oral argument.

222. Instead, the trial court accepted and believed Nair's lie in court about this, describing his evidence about it as standing intact, on the basis that Nair was adamant and unshaken about it, whereas he stood exposed as a perjurer on the point – and on innumerable others as the court obliquely and insouciantly acknowledged.

223. Indeed as the court correctly noted, citing American law laid down by the Supreme Court, proof that an employer has lied generates the highly probable inference that it has lied to conceal an illegal discriminatory motive.

224. The court failed to note that the profusion of lies Nair told about his knowledge of the applicant's political background, why he didn't act to finalise the applicant's appointment, and so many other things, including his different lies to other authorities, reasonably suggested that he lied about all this to cover his real reason for aborting the applicant's appointment.

225. Since race prejudice was eliminated from the case having regard to the Calitz case in Cape Town, mentioned by the applicant in evidence and in his heads, and nepotism too in view of the fact that after three advertisements none of Nair's friends applied for the post, as the applicant mentioned in argument, the court failed, as it ought to have done, to find political prejudice to be the most probable reason for Nair's peculiar, furtive, dishonest conduct in stopping the applicant's appointment.

226. Cross-examined on the fact that Nair had told a different story in his report to the Minister and to Parliament from what he'd told court, namely that he'd learned who the applicant was when reading his July letter to Vedalankar, Nair claimed that he'd stopped reading the letter just at the point where it began detailing the applicant's political background. Which is to say, he only learned of his name in late July. The court failed to note the ridiculous, inherent implausibility of this convenient evidence Nair made up to escape the corner he was in.

227. At the commencement of oral argument, the applicant informed court that he had only received after trial Nair's confirmatory affidavit to Mtati's answering affidavit in the applicant's application for leave to subpoena Board chairperson Mlambo JP, and that Nair had confirmed thereby his instructions to Mtati that he learned of the applicant's political background on reading his July letter – brightly exposing Nair's already improbable perjury in court that he stopped reading the letter at the point it began dealing with the applicant's politics.

228. The court's failure to address this, and its absolutely wrong statement that Nair's evidence stood unshaken and intact regarding when he learned of the applicant's politics, was a fundamental failure of the judgment. In fact, Nair's already obvious perjury about this was smashed to pieces by his earlier contradictory perjury on affidavit.

229. Ad paragraph 68: The record will show that on the very eve of trial the applicant found evidence that Nair had ghost-written Vedalankar's letter of 18 October 2010 illegally refusing his entire PAIA request for 51 specified records and falsely advancing a

budgetary justification for the abortion of his recruitment, and that he'd had ghost-written Mlambo JP's secret reports to the Minister and to Parliament reiterating this lying budgetary justification and concocting a new logistical one, subsequently retracted as 'an error', 'palpably an error', by Nair on affidavit (confirming his instructions to Mtati to retract it as such) only to revive it in it court, and then give evidence contradicting it.

230. The applicant explained why in light of these stunning last-minute discoveries he'd decided to hold Vedalankar and Mlambo JP clear at trial.

231. In his replying argument, and in view of Nair's inculpation/incrimination of Vedalankar and/or Mlambo JP – denying he'd written her letters, and accusing one or the other of them of having added new (false) allegations to the report to Parliament that he'd written for Mlambo JP to sign – the applicant recorded his misgivings about this concession about their involvement, and wondered on the objective evidence whether his decisions to hold them clear of complicity (in the cover-up, not the original unfair discrimination) was justified, having regard to the pointed facts and documents he referred to in his replying argument.

232. The word 'exonerate' was opposing counsel's; was not used by the applicant; and has a different meaning from the expression to 'hold clear'.

233. The court's inadequate recordal in its judgment of the clear uncontroverted reason given on the record by the applicant for his last-minute shift regarding Vedalankar's and Mlambo JP's complicity (he'd just discovered that Nair had written their letters and reports) unjustifiably suggests the applicant was unsure about his core complaint.

234. The court failed to note that Nair implicated both of them in his evidence; and it failed to deal with the extremely grave implications of this.

235. Ad paragraph 69: The court failed to note the striking change of animus exhibited by Clark towards the applicant between her emails of 14 and 30 April 2010, the first after she had consulted Brijlal in Pinetown as to the status of the recruitment and learned from him that the applicant had been recommended, since Nair was in Cape Town on the day or on his way back from briefing the Portfolio Committee, and the second after his return to the office. She'd encouraged him to keep enquiring in her first email, but rudely put him off doing so in her second email after Nair's return.

236. The court failed to note that Clark's palpable hostility towards the applicant in her second email reeks of prejudice.

237. It was never the applicant's case that Clark knew anything about him before his first approach to her on 14 April 2010, and the record of her email later that day vouches

that his call to her was received and followed up in an impeccably professional and friendly manner. Not so her second disgraceful email.

238. Subsequent to the respondent's delivery to the applicant *during the litigation* of the record of Vedalankar's email to Nair calling on him to discuss the applicant's letter to her enquiring about when his appointment might be finalized, the applicant accepted that she knew nothing of him and his recommendation before this, and indeed Nair confirmed this in his evidence. After receiving the recommendation in November 2009, he did nothing to finalize it for eight months, and said he only told Vedalankar that he had decided not to proceed with it when she called him in to discuss the applicant's letter to her at the end of July 2010.

239. It was never the applicant's case that Nair knew of the applicant and of his political background before reading his CV, for there's no evidence that he did. It's always been the applicant's case that Nair learned of the applicant's background when he read his CV.

240. The court gravely erred in finding that 'with the exception of possibly having read the CV of the applicant, Mr Nair did not know of the applicant'.

241. On Nair's own version he read the applicant's CV and learned the applicant's political background from it. Only, he claims to have read it more than a year after receiving it, and only out of curiosity.

242. More importantly, before the trial Nair told a completely different story on oath: he confirmed on oath the instructions he gave attorney Mtati to allege to this court that it was in July 2010 when *he read the applicant's letter to Vedalankar mentioning the applicant's political background*, that he learned of it. The court failed to note this, and that the two stories under oath are irreconcilable and mutually destructive, and neither can stand and be believed.

243. Contrary to Nair's perjury that the recruitment of Senior Litigators for KwaZulu-Natal and Mthatha was a low priority, the KZN post had been advertised twice in 2009 and the recruitment of a Senior Litigator for Mthatha was designated an immediate priority after then ROE Mtati's plea for it in view of the wide distances between the four high courts that the Eastern Cape's single Senior Litigator at Port Elizabeth had to service.

244. The court failed to consider the inherent improbability of Nair's claim that he didn't open and read the recommendations and CVs to find out who the recommended candidates were, in light of the two contradictory and equally perjurious accounts he gave about when he learned of the applicant's political background.

245. Ad paragraph 70: The court failed to note the inherent implausibility of Nair's claim under cross examination – when confronted with and cornered by his claim to the Minister and to Parliament before the trial to have learned who the applicant was in July when he read his letter to Vedalankar – to have stopped reading the letter just at the point where it began to detail the applicant's political background, so he learned only of his name at that point, not his politics.

246. The court failed to find Nair's quick-thinking but hopelessly obvious cunning dodge here to be highly implausible.

247. The record of the oral argument confirms that during his preliminary 'housekeeping' remarks at the outset, the applicant informed court that the respondent had discovered Nair's confirmatory affidavit supporting Mtati's answering affidavit in the application for leave to subpoena Board chairperson Mlambo JP, after the trial. And he recorded that his cross-examination of Nair would have been quite different had Nair's affidavit not been withheld, and had it been given him before trial. (No dispute was raised by the respondent's representatives that Nair's affidavit was indeed delivered to the applicant only after the trial.)

248. The colossal implication of Nair's affidavit for the decision of the case is that Nair confirmed on oath Mtati's statement (as attorney) made on Nair's instructions that it was when the applicant wrote to Vedalankar in July 2010 that they all became aware of his political background. That is, Nair gave two completely different versions on oath about when and how he learned of the applicant's politics.

249. The court failed to weigh the veracity of Nair's claim not to have read the applicant's CV on receiving it by email attachment and only to have read it more than a year later out of curiosity, in light of his many perjuries, either manifestly obvious on their face, or categorically established having regard to his affidavits, the documentary record, and the respondent's pleadings and affidavits contradicting and exposing his perjuries.

250. Before he began testifying, Nair solemnly swore an oath before court 'to tell the truth the whole truth and nothing but the truth'.

251. The court's finding, set in insupportably euphemistic and forgiving language, that in multiple respects the applicant showed Nair to have been 'less than generous with the truth' means Nair was shown to have repeatedly violated the oath he took to be completely open and honest with the court, and that he repeatedly perjured himself, as indeed he certainly and uncontrovertibly did, manifestly so on the very face of what he said, or exposed by his previous contradictory evidence on affidavit, by the respondent's contradictory affidavits and pleadings drawn on his instructions, and by the documentary record against him.

252. The court failed to record directly, instead of obliquely and indulgently, that it found Nair to have lied on oath on numerous aspects of his evidence, and that his central evidence about not knowing the applicant's political background at the material time – innately improbable and contradicted by him in his reports to the Minister and to Parliament and his interlocutory affidavit in the Mlambo JP application – consequently couldn't be trusted, and fell to be rejected.

253. In light of its vague general finding that as a witness under oath Nair was not entirely honest, the court ought to have assessed the credibility of Nair's claim not to have opened and read his email correspondence after the KZN interviews with the greatest caution and circumspection, more especially because it's elementary that a witness found to have lied on oath on any aspect obviously can't be trusted on any central disputed claim he makes.

254. (Like in the applicant's biggest criminal case on brief: 9 counts of murder, another 7 attempted, in an AK47 attack on a jam-packed taxi during the Inkatha/UDF war. A front seat survivor was *adamant* it was the accused, was *unshaken* under relentless cross-examination, and his evidence stood *intact*. The Judge President's friendly questions and interjections indicated he believed him. Then the applicant asked a peripheral question: What were the conditions in the area at the time of the attack? Perfectly quiet and peaceful, he replied. But the investigating officer called to testify during the defence case told court that just before the taxi attack things were so tense that the police were out in force every night patrolling the area to prevent further killings, and people were sleeping in the forest in terror of being slaughtered in their beds. With the state witness's peripheral lie on oath exposed, his central identification evidence was accordingly found untrustworthy and unreliable, and the innocent accused was rightly acquitted.)

255. After allowing (in paragraph 67) that 'the applicant pointed out a number of facts and circumstances in the case of the respondent to suggest that Mr Nair was not generous with the truth', the court failed to canvass all Nair's clearly established lies and their implications for his general credibility.

256. As said, subsequent to the trial the applicant extracted further records from the respondent by dint of another PAIA request, and they prove categorically that Nair committed perjury in court on two other peripheral scores concerning the respondent's persistent, repeated illegal withholding of records duly requested by the applicant under PAIA for the purpose of interrogating the truth of the budgetary justification fed him for not proceeding with his appointment.

257. The court's finding that Nair's claim not to have read the applicant's CV when he received it 'stands intact' is insupportable. It bears repeating that Nair was equally 'adamant' and 'unshaken' in regard to several other obviously false allegations that he made, such as that all rejected and eliminated candidates were to be interviewed for possible appointment by his so-called second round panel, whereas the respondent repeatedly contradicts this in its pleadings and affidavits; and such as his claim that he didn't have to sign his approval of the recommended candidates for second interviews, also repeatedly contradicted and refuted by the respondent's own pleadings and affidavits, drawn on his instructions, and even confirmed by him on affidavit.

258. As said, and very importantly, Nair's brand-new story in court that he didn't open and read the recommendation and accompanying CVs for more than a year after receiving them features nowhere in any of the respondent's correspondence, reports, pleadings and affidavits before trial, all addressing the applicant's complaint that his appointment was blocked on account of political prejudice and giving different explanations for why the applicant wasn't appointed. The court failed to note this.

259. Ad paragraph 71: The respondent advanced completely different stories before trial for why it did not process the applicant's appointment promptly after receiving the recommendations. On Nair's instructions, it also repeatedly lied that all posts had been frozen, whereas the record shows exactly the opposite: recruitment spiked and new post creation exploded in the 2010/11 first quarter after the respondent was 'suddenly confronted' (its pleaded expression) with budgetary issues on 10 March 2010, on learning that its OSD phase 1 allocation hadn't been included in its baseline budget as undertaken and confirmed in January.

260. On any reasonable evaluation of Nair's claim about this, there could have been nothing 'premature' about opening reading and approving or disapproving the recommendations for the second round of interviews on receiving them. Had he disapproved the candidates recommended, as he was entitled to do in consultation with Vedalankar as executing authority delegated by the Approval Framework for such senior appointments, he wouldn't have had to bother asking Clark to arrange the so-called second round interviews; there would have been none to arrange. His 'premature' evidence was plainly perjury.

261. The court misdirected itself in incorrectly recording that Nair 'merely placed the bundle of documents he had received in his drawer without reading and scrutinizing the recommendation.' This wasn't his evidence. In court Nair claimed, for the first time, that he never opened and read the recommendation and CV for over a year after receiving them.

262. The court insupportably found there was nothing 'unusual or out of the ordinary which would attract his curiosity to the bundle with the email such that I should find that he probably read the applicant's CV'.

263. The documents were necessary to finalize the respondent's recruitment to its two long-vacant, critical, top-echelon, repeatedly advertised most senior professional posts in KwaZulu Natal, which Nair and his LSTC had to fill in their implementation of the Board's Strategic Plan.

264. The court's finding that these were the sort of routinely sent documents that Nair didn't have to open and read is manifestly insupportable on any reasonable objective appraisal; the court was wrong to find this; and the Labour Appeal Court will undoubtedly agree.

265. The court failed to consider the implication (not argued in court) of the *special telephonic instruction* Nair (Clark wasn't yet involved) gave the regional office in Pinetown to send him all four CVs, including those of the rejected, eliminated candidates. Had this been routine, as with the previous Senior Litigator selection process, Nair wouldn't have needed to specially call for all CVs to be sent to him.

266. The court failed to note that Mdaka sent the documents to only Nair, not to Clark as well, despite Brijlal's email to Mdaka stating that the documents were to be sent to both Nair and Clark, consistent with the respondent repeated statement in its correspondence, pleadings and affidavits that Clark was in charge of arranging the second interviews. The court failed to note that, contradicting this and perjuring himself, Nair denied she was in charge of arranging the second interviews.

267. The court failed to draw the necessary conclusion from Nair's telephone instruction that *he knew even before receiving the documents that there'd been a problematic selection*, that he'd had his finger on the pulse all along, and that he was scheming from the start to appoint a candidate rejected by the selection panel instead of the applicant.

268. The court failed to note Vedalankar's and the respondent's repeated blatant lie to the applicant, Parliament (to Hon Schäffer MP), and court that the applicant was not the only candidate selected for the post he'd applied for, and that others had been recommended for it too.

269. The court massively misdirected itself in stating that from February to July 2010 'Mr Nair was then preoccupied with a deficient budget of the respondent until he received an email from Ms Vedalankar enquiring about the applicant'.

270. First, the uncontested and incontrovertible brute evidence flatly contradicts this completely insupportable finding. The record shows that despite the respondent's

uncertainty arising on 10 March 2010 about when its OSD phase 1 funding would come through for 2010/11 (when, not if), the respondent embarked on a massively accelerated recruitment and new post creation drive, overseen by Nair as NOE and chair of the LSTC. It was not until mid-July that the respondent decided to spur the Department into paying up by resolving to freeze recruitment to a limited number of lower criminal court public defender posts, but only temporarily until the end of the year, and in the result for just two months. That is, recruitment wasn't disturbed in the least by the 'deficient budget' issue.

271. Second, the record shows that Vedalankar's letters in March and April, and meetings with the Department and Minister in July, were the sum total of the respondent's agitation to get its OSD phase 1 funding paid, and NOE Nair wasn't involved in this end of the respondent's business at all.

272. Third, there were no 'deficient budget' concerns before 10 March ('from February', per the judgment) when Vedalankar recorded in her letter to the Department that contrary to assurances given, the respondent's OSD phase 1 allocation had not been included in its baseline budget. So nothing precluded Nair from finalising the applicant's appointment in the second half of February and the first 10 days of March (or even after that, as recruitment boomed).

273. The court's finding that 'the applicant has not succeeded in showing that Mr Nair probably read his CV around the time of its receipt' is fatally incorrect both on the probabilities and as a matter of law, where the court has lumped the applicant with an evidential onus he doesn't bear.

274. To the contrary, the onus lay on the respondent to prove that Nair never read the recommendation and CVs sent to him, until more than a year after receiving them.

275. The court erred in not finding that all the applicant had to do here was show that Nair received the documents, and that he did so by presenting the evidence of Mdaka's email to Nair covering them. That Nair got the documents buy email wasn't in issue at trial.

276. It wasn't for the applicant to prove that Nair examined the documents as was required of him by the Approval Framework, delegating him executing officer with final approval power, subject to Vedalankar's agreement. There was no onus on the applicant to prove Nair read what was sent him; it was the other way round.

277. The court fundamentally and fatally misdirected itself in misallocating the onus in this regard, and holding that the applicant failed to prove that Nair read the documents sent

to him for his consideration and approval of the recommended candidates, on his version, for second round interviews.

278. The applicant will argue on appeal that it's highly material to consider that the respondent determinedly withheld Mdaka's email to Nair transmitting the recommendation and CVs.

279. The record before the court shows that, first requested by the applicant under PAIA in August 2010 and repeatedly demanded in the litigation thereafter, the respondent only surrendered it three years later, just a couple of weeks before trial, but only after the applicant had applied for and been granted a second judicially supervised pre-trial conference at court to force the discovery of this and other withheld documents – hence the change from the applicant's amended statement of claim, when he couldn't show Mdaka had sent the recommendation and CVs to Nair, to his intended second amended statement of claim, when after finally receiving Mdaka's email, he could, and pertinently pleaded the date Mdaka did so.

280. The applicant will argue on appeal (this was not argued in court) that until it was forced out of him a few weeks before trial, following the second pre-trial conference at court in June 2011 to compel full and proper document discovery, Nair intended denying having received the recommendation and CV – just as he denied receiving Skibi's recommendation for Mthatha, with its covering letter to him claimed, on oath on his instructions, to have been 'lost in transit', which at least, even on this version, means it was signed and sent (in court Nair claimed it wasn't signed), since it obviously wouldn't have been sent if not signed.

281. The applicant finally disgorged Mdaka's email to Nair covering his transmission of the recommendation and CVs with the greatest difficulty. Relying on this evidence, the applicant was finally able to prove Nair received the recommendation and his CV, detailing his politics, so as to refute the story Nair told the Minister and Parliament that he only learned who the applicant was in July when he read his letter to Vedalankar.

282. The court was wrong to hold that Nair could so easily defeat this hard-won evidence, exposing his lie to the Minster and to Parliament, by simply claiming not to have opened and read the important documents Mdaka sent him after the recommendation had been signed by all members of the selection panel, *more especially because Nair had especially phoned for all the CVs to be sent up with it*, including those of the rejected, eliminated candidates.

283. The court failed to note the respondent's first discovery affidavit was obviously perjurious and a transparent attempt to defraud the court, in alleging the covering letter for Skibi's recommendation was 'lost in transit'.

284. Ad paragraph 72: The court's finding that Nair needed to read the applicant's CV to know about his political background at the material time, namely when he decided to halt his recruitment, is not in contention.

285. It was never the applicant's case that Nair had any prior knowledge of him, but the overwhelming probabilities support the different finding that Nair indeed learned of the applicant's political background on reading his CV when he got it in November 2009 and not from reading the applicant's letter to Vedalankar in July 2010 (as he confirmed on affidavit before the trial) nor from reading the applicant's CV at the end of the year or maybe early the year after that (as he testified differently at trial).

286. The court was wrong to hold, totally irrelevantly, that he was not 'meted with any different treatment that was given to the recommended candidates for Durban and Mthatha'.

287. First, this was not his complaint for trial. Second, as a matter of recorded fact the Durban and Mthatha candidates were indeed treated differently from the applicant. Whereas the applicant was kept in the dark and given discouraging, dishonest, opaque, mixed messages by Clark in her second email of 30 April 2010, after Nair had returned to his office in Johannesburg, it's the respondent's own pleaded case that Mngadi was informed, on Nair's instructions, in April or May 2010 that the recruitment had been cancelled. This different treatment 'meted out' is even justified in the respondent's affidavits. And whereas after the applicant's appeal to Vedalankar to see to the finalization of his appointment, he was sent not one but two vague letters pretending that it had been resolved not to fill the vacant Senior Litigator posts (no record whatsoever exists to vouch this) so as to create a patina of legality, Skibi got no more than a phone call to tell him that his hoped-for transfer to Mthatha close to his home at Bizana had been cancelled. But this by the way; as said, this different treatment was not the applicant's complaint.

288. The respondent's justification advanced to the applicant and to this court before trial was that the applicant's recruitment was not preceded with for budgetary reasons. This was its pleaded defence and the respondent was bound by its pleadings at trial.

289. At trial however, Nair came up with a new story that featured nowhere in the respondent's correspondence, pleadings or affidavits, namely that it was not possible for practical reasons to convene the so-called second round interviews until mid-February 2010. A closely similar excuse was given by Nair to the Minister and Parliament. When the applicant exposed this practical excuse as a lie in his first statement of claim and in his application for leave to subpoena Mlambo JP (before his discovery on the eve of trial that Nair had ghost-written his reports), Mtati, on Nair's

instructions, and confirmed by Nair on affidavit, retracted this explanation as 'an error', 'palpably an error'.

290. So it was never the applicant's pleaded case for trial that any practical obstacles prevented the prompt finalization of the applicant's appointment. Its case for trial was that budgetary insufficiency prevented the applicant's appointment.

291. The court was therefore wrong to accept Nair's new practical excuse for not proceeding with the recruitment, never pleaded, and indeed retracted by him on oath before the case.

292. The pleaded defence was budgetary. As late as the morning of the trial the respondent repeated on affidavit in its failed application to quash the applicant's subpoenas that budgetary constraints *at the time the applicant was interviewed and recommended prevented his appointment*.

293. This lie also told earlier, and repeatedly, is blown to pieces by the hard documentary record. This record unquestionably exposes the budgetary defence as a false pretext advanced to camouflage the true reason for halting the applicant's appointment, and the court was wrong not to find this.

294. Ad paragraph 73: The court agreed with Nair's evidence in court that he didn't have to sign his approval or otherwise (with reasons if negative) of the selection panel's recommendations at the foot of the recommendation report emailed to him. But since Nair's evidence about this is repeatedly contradicted by the respondent's own pleaded and sworn case before trial, the court was wrong to accept Nair's evidence radically at odds with the respondent's own pleaded and sworn case.

295. What's more, the recommendation form provided for Nair to approve or disapprove, with his signature in this box or that one, the recommended candidates *for second round interviews*, and on the respondent's own repeatedly pleaded and sworn version Nair had to approve or disapprove the recommended candidates for second round interviews (under Nair's illicit, unauthorised, incompetent second round interview scheme that he'd devised, whereas the Approval Framework read with the Recruitment code required Nair to record his approval or disapproval of the recommendations, with Vedalankar's agreement).

296. The Recruitment code and Approval Framework do not permit legally unqualified persons like Nair, Clark and Makokoane to re-interview Senior Litigator candidates duly selected and recommended by selection panels of the respondent's senior lawyers in KwaZulu-Natal.

297. Indeed, as the judgment very rightly suggests, it's perfectly absurd that Nair should have to first approve the recommended candidate for his so-called second round interview; then approve him again in committee with the so-called second round panel (excluding Vedalankar); and then approve him a third time (now with Vedalankar).

298. Nair's second round interview scheme was plainly illegal; and although embarrassing, the court ought to have recorded its finding that Board chairperson Mlambo JP's participation in this illegal scheme, as a non-executive director whose only power in recruitment is limited to approval of the appointment of the NOE and CEO, has been unlawful, whatever his fine intentions.

299. The court failed to note the further gross irregularity of Nair's second round interview scheme in not keeping minutes and recording the proceedings – as in the case, admitted by the respondent, of the applicant previously selected for the Pietermaritzburg Senior Litigator post, but rejected off the record by the second panel; and therefore probably also the case with the candidate that the second panel approved for Port Elizabeth, re-interviewed on the same day as him. (They were the only candidates re-interviewed, not the eliminated candidates too, as Nair lied in court; but this is for the police.)

300. Ad paragraph 74: The court failed to address itself to the substance of the applicant's attack on the illegal second round interview scheme, namely that it was ultra vires, incompetent, and unlawful for all the many reasons he gave in evidence and repeated in argument; and the court was wrong not to adjudicate this ancillary issue pertinently raised by the applicant in his amended statement of claim, and find for all the reasons he set out that Nair's unauthorised, off the record, second interview scheme was illegal and therefore no lawful prerequisite to the finalization of the applicant's appointment.

301. Indeed the applicant never suggested that Nair's second round interview scheme violated Section 6(1) or the EEA, as correctly stated in the judgment, but this was irrelevant to the decision of his unfair discrimination complaint.

302. The court wrongly found that the applicant's demonstrations that Clark, Vedalankar and Nair all lied to him about the reason his appointment had not been finalised did not lay the basis for his claim that he'd been unfairly discriminated against under cover of a lying budgetary pretext falling foul of Section 6(1) of the EEA. The court failed to apply settled law in this regard.

303. The court wrongly suggested that the applicant's proper remedy was to take the matter on review. Quite the contrary, he perfectly properly referred his unfair discrimination complaint brought under the EEA to the CCMA for conciliation, as the Act required of him, and thereafter, upon the issue of a certificate of non-resolution, referred it to this court for trial, as the Act further required of him. The court wrongly

suggested that the applicant shouldn't have wasted its time referring his claim to it under the Act, but should rather have gone seeking justice somewhere else in a different sort of case.

304. The court wrongly rejected the applicant's evidence that the Pietermaritzburg and eight other Senior Litigator post at various seats of the High Court around the country are critical posts. It was common cause at trial that the top echelon Senior Litigator posts were critical, because the respondent duly categorised them as such in its own pleadings.

305. Nair's obvious perjury that the respondent's most junior professional posts are critical – whereas its most senior specialist Senior Litigator posts, specifically reported to the Minister and to Parliament as having been filled in completion of the Strategic Plan, are not critical – had only to be stated to be rejected.

306. Yet like Nair's many other obvious dull lies, the court accepted and believed his evidence about this, even as it was contradicted by the record and by the respondent's own pleadings.

307. Since it was common cause on the pleadings that the Pietermaritzburg Senior Litigator post was critical, the applicant wasn't required to present evidence to prove it was. But invited by the respondent's counsel early in the applicant's evidence to refer to the vast documentary record in his heads of argument rather than walk the court through it all, the applicant did show it was critical (even though this fact had already been admitted – actually volunteered).

308. Likewise the applicant again unequivocally showed in his heads, with reference to the respondent's records, that Nair's ridiculous allegation that the respondent's most junior professional posts were critical, not its most senior ones, was a blatant lie told under oath. The court was accordingly wrong to find the applicant never proved the post in question is critical.

309. Ad paragraph 75: The court's costs order against the applicant was unfair and at odds with legal precedent in unsuccessful suits to vindicate fundamental rights. After painstakingly carefully and very thoroughly interrogating the respondent's budgetary justification for the abortion of his recruitment by way of three successive requests for records under PAIA, and then finding this budgetary story unsupported and contradicted by the respondent's records extracted from the respondent in the face of considerable sustained resistance, causing him much lost time and hardship, the applicant finally referred his claim to this court for trial more than a year-and-a-half after the occurrence of the unfair discrimination he complained of.

310. A substantial part of the costs incurred in the case then arose on account of the respondent's fully documented consistent failures and refusals to discover documents duly requested by the applicant for trial, calculated to hinder the applicant establish the true facts, and the trial court ought to have marked its disapproval of the respondent's deplorably corrupt conduct in the litigation this regard, calculated to pervert the true and just determination of the applicant's claim on a full ventilation of all available relevant evidence.

311. The court should have likewise marked its disapproval of the further extraordinarily dishonest manner in which the respondent conducted its defence of the action, stooping to telling the foulest blatant lies about the applicant on affidavit (abandoned at trial) to cast him in the worst possible light and to poison the court against him before the trial began.

312. That is, the respondent corruptly defamed the applicant to prejudice the court against him in order to defeat the ends of justice (for precisely which criminal conduct US President Richard Nixon's special counsel Charles Colson was convicted and jailed). Yet all this went unremarked in the judgment.

313. The court accepted that the applicant made out a prima facie case for unfair discrimination, as evinced by its dismissal of the respondent's application for absolution at the close of his case, i.e. the court implicitly held that the respondent had a case to answer. As in the Barnard case. So the court ought to have made a costs order in accordance with the precedent followed in the said case, in which no orders for costs were made against the applicant for any of the litigation commencing in the Labour Court, proceeding through the LAC, the SCA, and finally the Constitutional Court, where she ultimately lost her bona fide unfair discrimination claim.

314. As a court of law and equity, the court had no good reason to annihilate the respondent in costs for bringing a carefully considered and prima facie well-supported claim to vindicate his fundamental right to political equality guaranteed by section 9 of the Constitution, after decades of oppressive political prejudice and repression during the apartheid era.

315. Punishing bona fide grievants embarking on such difficult litigation to vindicate their fundamental rights has the negative effect of chilling and deterring others whose rights have been violated and are contemplating approaching the courts for justice. It's established law (the Biowatch case) that such costs orders run contrary to the spirit and intent of our Constitution, and are contrary to public policy.

316. In the situation, the applicant respectfully contends that the LAC is likely to find differently from the trial court and uphold his claim, and that he has accordingly made out a sound, triable case for appeal.

317. On appeal, the applicant will argue that the court massively prejudiced him in the presentation and proof of his claim by wrongly and unfairly holding at the outset that he would not be permitted to cross-examine the respondent's officers whom he'd subpoenaed for trial. And that because he appreciated that they were already hostile when he subpoenaed them, he wouldn't be able to have them declared hostile for this purpose.

318. No good reason in fact or principle existed for the court's substantial hindrance of the applicant in this manner. In the U.S., for instance, Rule 607, 'Who May Impeach a Witness' under Article VI: 'Witnesses' contained in the 'Federal Rules of Evidence' provides: 'Any party, including the party that called the witness, may attack the witness's credibility.' Citing a wide range of supporting state evidence codes and reported decisions, the 'Notes of Advisory Committee on Proposed Rules' explain: 'The traditional rule against impeaching one's own witness is abandoned as based on false premises. A party does not hold out his witnesses as worthy of belief, since he rarely has a free choice in selecting them. Denial of the right leaves the party at the mercy of the witness and the adversary.'

319. Precisely, and the court ought to have ruled accordingly. If there's been such an old rule in South African law, it's manifestly unfair, stale, and wrong; and as a court of law and equity, this court should not have invoked it against the applicant to his immense disadvantage, hugely limiting the bounds of the enquiry and impacting hard on the fairness of the trial.

320. Well appreciating that the applicant was not calling the respondent's officers to the witness stand as friendly witnesses to support his claim, but rather had subpoenaed them so as to drive them out of their offices and force them into the hard light of a high court to be examined before a judge on oath under penalty of imprisonment for perjury, the court ought to have allowed and not hampered the applicant in his bid to prove his case, by prohibiting him from attacking their credibility, given that their honesty in their several written communications with him was very much in issue, as was clear to this court from the applicant's pleadings and founding affidavits in his interlocutory applications.

321. It was hugely important to the ventilation of the truth and to the just decision of the case – arising from an allegation of illegal camouflaged *prejudice* – that the applicant should have been permitted to cross-examine HRE Clark on the reason for her sharp,

palpable, radical change in animus towards the applicant from cheerfully solicitous in her telephone conversation and first email to the applicant on 14 April 2010 after speaking to KZN Human Resources Manager Baboo Brijlal about the status of the recruitment process five silent months after the interviews, to snarlingly hostile, discouraging, disingenuous, dishonest, opaque, and off-putting in her second email on 30 April, after National Operations Executive Brian Nair had returned to their Johannesburg head office. And why she failed to communicate with him again, as she ought to have done, knowing from Nair that he was the recommended candidate, who – all things being equal – the respondent wouldn't have wanted to lose.

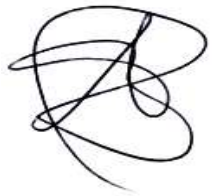
322. It was even more important to the ventilation of the truth and to the just decision of the case that the applicant should have been permitted to cross-examine CEO Vedalankar inter alia on (i) why she unlawfully disregarded and thereby tacitly refused, and then expressly refused the applicant's entire PAIA request for 51 specified records in August probing the circumstances in which his appointment had been aborted, under cover of a fake quotation from a reported judgment claimed to justify her refusal, in which words were attributed to the judge that she never wrote, whereas her actual reported dicta squarely confirmed the applicant's entitlement to the records he'd requested; and persisted in illegally refusing his PAIA requests in her second letter; (ii) her false claims concerning the respondent's budgetary issues, falsely linking them directly to the abortion of the Pietermaritzburg, Durban and Mthatha Senior Litigator appointments, (iii) her concealment from the applicant in October 2010 of her information to the Portfolio Committee a week earlier that the respondent's budgetary uncertainty had passed, but which the full record anyway shows never had any bearing on Senior Litigator recruitment, and her repeated lies to the applicant in her January 2011 letter that the respondent was still under financial pressure and faced a deficit, when, after the December 2010 OSD payment, it wasn't and didn't. Quite the contrary, the respondent reported a huge budgetary surplus in 2010/11, and in 2011/12 too. And (iv) her faking of Mlambo JP's letter on her own computer, pasting in a scanned image of his signature at the end of it (admitted in the pleadings), tersely dismissing the applicant's complaint to the Board about her illegal refusal to comply with his PAIA requests and the indications that the abortion of his recruitment had been illegally motivated.

323. The applicant respectfully craves directives that:

(a) this application not be disposed of in chambers in the ordinary course, but that the applicant be afforded an oral hearing in open court on the record at which to argue it; and,

(b) the respondent be ordered to hand over to the applicant the transcript of the trial record it has printed for him, so to enable him to argue his appeal application on level ground with the respondent, where necessary precisely reciting the evidence with reference to the transcript page and line numbers.

Signed at Eshowe on 3 October 2014.



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(Ref: Mr Thembile Mtati)

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

In re: Case D529/11

In the matter between

ANTHONY ROBIN BRINK — Petitioner

and

LEGAL AID SOUTH AFRICA — Respondent

PETITION FOR LEAVE TO APPEAL AND TO LEAD NEW EVIDENCE ON APPEAL

To: Judge President Basheer Waglay, Labour and Labour Appeal Courts of South Africa, and to the judges designated to consider this petition.

And to: Legal Aid South Africa
c/o Durban Justice Centre
332 Anton Lembede Street
Durban
(Mr Ngcamu)

The petitioner, Anthony Robin Brink, applies for an order granting him leave (i) to appeal to the Labour Appeal Court against the dismissal of his unfair discrimination claim with costs by Cele J in the Durban Labour Court on 18 September 2014, his application for leave to appeal and to present further new evidence on appeal having been refused on 27 November 2014, and (ii) to present further new evidence on appeal.

The petitioner's supporting affidavit under rule 4(1) of the Labour Appeal Court Rules is annexed hereto.

Signed at Eshowe on 7 December 2013

ANTHONY ROBIN BRINK
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IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

In re: Case D529/11

In the matter between

ANTHONY ROBIN BRINK — Petitioner

and

LEGAL AID SOUTH AFRICA — Respondent

SUPPORTING AFFIDAVIT

I, Anthony Robin Brink, affirm:

1. I am an adult male, 55, an advocate of the High Court of South Africa of three decades standing, currently resident at 1 Boast Street, Eshowe, KwaZulu-Natal, where I'm based as an acting magistrate on short-term renewable contracts pending the correct decision of this most important case; and I am your petitioner. This affidavit sets out my case for your leave to appeal, and present further new evidence on appeal, in the form prescribed by LAC rule 4(1). To comply with the stricture imposed by rule 4(3), I've limited it to just 50 paragraphs, so it can't be and isn't exhaustive. For concision, I'll refer to the respondent as 'LASA'; to my main heads of argument as 'my heads'; to the judgment in the case as 'the judgment'; to my application for leave to appeal as 'my application'; and to the judgment refusing it as 'the refusal'. These documents will be bundled with this petition. My considered specific approach in preparing this affidavit has been dictated by the wider public dimensions of the case to be mentioned.

2. As I'll show, this is an extraordinarily serious matter with colossal implications extending way beyond my personal interest in its just resolution. It concerns the personal and professional integrity of a sitting judge president, formerly of this court, and that of the most senior management executives of a major public entity. I speak of the perversion of separate Ministerial and Parliamentary enquiries by dint of multiple, objectively demonstrable lies, and different lies told variously to me, to the LASA Board, to the SAHRC, and to court (different lies told in the pleadings and interlocutory affidavits, and

then at trial), and of the gross breakdown of proper corporate governance and the rule of law at LASA, all of which the trial judge looked past in his seemingly clear and definitive, but in fact deplorably inattentive, glib, crude, and perfunctory judgment, riddled with the most basic legal and factual misdirections, omissions and non-sequiturs, and characterised by his failures over and over again to consider the radical contradictions and the ludicrously improbable, manifestly untruthful, and objectively contradicted evidence of LASA's single witness at trial, National Operations Executive Brian Nair.

3. I'll advert later in this affidavit to the capital misconduct and massive and pervasive corruption to which I allude here, as well as to the judge's own gravely prejudicial misconduct in the case that thwarted a full and proper ventilation of the issues that I looked to him and trusted him to try.

4. In his refusal the judge didn't treat the clear-cut new evidence surfaced after trial showing unequivocally that Nair had lied to him on oath in two respects.[1] To the judge, Nair's categorically proven repeated mendacity in court made no difference to his assessment of the credibility of his evidence. Your lordships can hardly agree.

5. The judge elliptically conceded[2] his fundamental legal misdirection, identified in my application,[3] that in deciding the case he'd misallocated the final onus of proof, which he'd placed on me[4] instead of on LASA. He then sought to avoid the fatal ramifications of this radical error by two means:

6. First by stating that the Employment Equity Amendment Act, which reversed the onus of proof in unfair discrimination claims by legislation, was only proclaimed in August 2014, after the trial and argument of the case, and didn't have retrospective effect – failing to note that the amendment merely codified the international jurisprudence on the point, supported by the International Labour Organisation and therefore prescriptive and binding on him.[5] That is, the onus was reversed and lay on LASA, even before the amendment of the Employment Equity Act. I treated this crucial, foundational aspect

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[1] Application for leave to lead further evidence (Part One of the application). I'm confident that several pending PAIA requests that I filed after the case, testing novel, surprising claims Nair made at trial – unanticipated by the correspondence, reports, pleadings and interlocutory affidavits, and at odds with them – will yield further cold print evidence of Nair's prolific perjuries at trial, and of his successful fraud on the judge. I'll seek leave to lead this new evidence on appeal, once it's to hand.

[2] Refusal, paragraph 5.

[3] Application, paragraphs 191–211.

[4] Judgment, paragraphs 65 and 67.

[5] EEA, section 3, law and case bundle, pages 16–17.

extensively in my application, quoting the authorities chapter and verse.[6] The judge's response was to silently look away.

7. And second by asserting that even if I was right about the incidence of onus, irrespective of where it lay his decision wouldn't have been any different – notwithstanding that LASA relied entirely on the mere say-so of its single witness Nair, unsupported by any records, and indeed contradicted by them, a witness the judge acknowledged I'd shown to have been 'not generous with the truth'[7] on numerous scores.[8] Instead of considering the implications of this for Nair's credibility as a witness, he took him at his word,[9] mechanically reciting his evidence as gospel, without any endeavour to assay its veracity. It seems to have been inconceivable to the judge that such a high public officer could be a practised, confident, spontaneously inventive, unctuous, bare-faced, abject liar.

8. In his refusal, the judge failed utterly to address and deal with the rest of my attack on his judgment in my application, in which I demonstrated all his basic errors, too many to recite here, including the huge prejudice he caused me by refusing to allow me to cross-examine LASA's officers I'd subpoenaed for the purpose,[10] thus depriving me of some major artillery I'd lined up; and he swept the whole thing – all 59 pages and 323 paragraphs – off the table in a single dismissive paragraph.[11]

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[6] Application, paragraphs 204–11.

[7] Judgment, paragraph 67. I'm currently preparing perjury charges for the criminal prosecution of Nair and other officers for their numerous lies told under oath in this matter to date, and collecting further evidence for this purpose using PAIA. Predictably, nearly all my first three PAIA requests filed after trial were illegally refused on legally spurious grounds, and three applications I've brought to compel are currently pending. I'm awaiting responses to four subsequently filed further requests. I've just discovered from the SAHRC that LASA has once again failed to report its refusals in its 2013/14 report as required by section 32 of the Act, and has concealed its reliance on entirely irrelevant and incompetent sections of it. Despite having been previously censured by the SARHC and taken to task by the Portfolio Committee for this (record, page 472, lines 4–25 to page 477, lines 1–7), it's now the third time that LASA has falsely and deceptively reported to the SAHRC for the misinformation of the National Assembly in turn, to conceal its illegal refusal of my PAIA requests to suppress documentary evidence of corruption in executive management.

[8] Ibid.

[9] Judgment, paragraph 69, last sentence for instance. (By the way, contrary to the judge's misdirected and irrelevant finding here, it was not my case that Nair knew of my background other than from my CV, and later my letter to Vedalankar in July 2010 detailing it further – the first he pretended not to have read until more than a year after receiving it (record, page 416, lines 19–25 to page 417 lines 1–2), and the second he pretended to have stopped reading at precisely the point it began dilating on my political background (record, page 460, lines 3–25 to page 461, lines 1–5); but this latter lie is exposed by his different story to the Minister and to Parliament in the reports to them that he wrote for Mlambo JP to sign and submit to them, which he later repeated even more precisely on affidavit: heads, paragraphs 153–7.)

[10] Application, paragraphs 317–322.

[11] Refusal, paragraph 5.

9. My contentions on the law of costs in unsuccessful constitutional litigation brought to vindicate a fundamental right likewise went completely ignored. That matter alone is eminently fit for appeal, particularly because the judge gave no reasons for condemning me in costs.[12] Which is to say to penury for the rest of my life.

10. Notwithstanding the mountain of papers[13] and the duration of the trial,[14] the case was really quite simple to anyone paying attention.[15] Pared to the bone, here it is:

11. In November 2009 I was interviewed for LASA's top professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg (there's a twin post at Durban) – repeatedly advertised, and twice in the year that I applied for it. Five strangely silent and glaringly unprofessional months later, I telephoned LASA's national Human Resources Executive Amanda Clark to ask the result. (Nair was out of head office the day I phoned.) She replied she knew nothing about me or the recruitment, helpfully undertook to expedite it, and cheerfully encouraged me to contact the provincial HR manager for updates. I did, but on later finding him no wiser, I reverted to Clark. (Nair was now back.) This time she avoided and didn't return my repeated calls made over several days, with messages left for her. So at last I emailed her, pleading for information about the upshot of the interviews one way or the other, as I needed to settle my plans. She answered stunningly rudely[16] and with studied disingenuity and opacity, and in as many words told me to get lost and not to contact LASA again. Her insolent proposal that I withdraw my application for the post back-handedly confirmed to me that I'd been selected for it, but announced

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[12] In view of his criticism of Morris and Fourie in their case against LASA he'd recently decided (law and case bundle, pages 94–7), in which he'd deprived them of part of their damages, I pertinently enquired of the judge during oral argument whether there was anything about my conduct in the litigation that he thought remiss, so that I might address it and defend myself before he made any possible adverse finding about it. There was nothing. In awarding costs against me, seemingly in line with the general rule that costs ordinarily follow the result, the judge parroted the language of the costs order made in the Germishuys case (Case 10 in LASA's List of Authorities, and cited in footnote 15 of the judgment) – a very different case from mine, in which some disgruntled white woman thinking herself better than a black candidate selected for a post complained of unfair race discrimination without any evidence of it at all. In contradistinction, the judge extensively enumerated (his paragraphs 30–41) all the objective indiciae pointing to unfair discrimination in my case – in the absence of a convincing non-discriminatory reason proved by LASA for aborting my appointment. He accepted I'd made out a prima facie case for such a finding, which is why he dismissed LASA's application for absolution after my evidence. See further, record: page 480, lines 1–25 to page 482, lines 1–22 (Nair clearly dissembling in reply).

[13] Heads, paragraph 6: all the papers in the case are described and catalogued here.

[14] Nine days, 23 July to 2 August 2013.

[15] See paragraph 47 below.

[16] The redacted excerpts quoted in the judgment don't fully convey her snarling tone. The full email is included in my trial document bundle, at page 256.

that I wasn't wanted – especially in light of the exceedingly unpleasant tone of her email, a total reversal of her initial open, impeccably professional, friendly one. Plainly, something seriously improper was afoot.

12. After three further strangely silent months I wrote to CEO Vedalankar, pressing for the finalization of my appointment. Nair answered on her behalf, baldly alleging that it had been decided not to fill LASA's Senior Litigator posts. Now naturally, had LASA duly taken this decision – not to fill one third, 3/9, of LASA's most senior specialist professional positions – there'd have been a record of this, for as Cachalia JA has pithily observed:

> 'Surely there's a letter of appointment, there's a note, there's a minute. Government does not operate like a glorified spaza shop ... In the absence of any paper trail must we just accept that [officials in the Presidency] are people of standing and they will never mislead, just like [then US Secretary of State] Colin Powell never misled the Security Council [over Iraq's alleged possession of "Weapons of Mass Destruction"]?' – 'State grilled over "secret" Zimbabwe report', *Mail & Guardian*, 26 November 2010.

13. So I tested Nair's claim with a comprehensive request for records under PAIA. It was refused in toto, under cover of a fake misquotation from a reported judgment claimed to justify this, and another bogus ground, later abandoned. And here we reach the point:

14. In her letter illegally refusing my request, Vedalankar justified the cancellation of my recruitment on the basis that:

> '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. ... Therefore the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.'

15. Advanced to me nearly a year after my interview, as I was closing in with PAIA, this was LASA's forced justification for aborting my appointment: budgetary insufficiency, affecting not just mine, but two other equivalent posts.

16. It was an audaciously grand, impressively detailed and ostensibly convincing story. And uttered by none other than the CEO, who would disbelieve it? Again I tested it with another searching PAIA request. Again it was illegally refused; Vedalankar even rejected

my prescribed request fee. But annexed to her letter refusing my second request, she put up some documents claimed 'to demonstrate' her story, and intended to put me off for keeps. Only, they didn't. They flatly contradicted it. This is what they revealed:

17. In January 2010 the Department of Justice and Constitutional Development (as it was then called) had confirmed to LASA that funding for phase 1 of the OSD scheme for professional staff salary increases would be included in its baseline budget for 2010/11. The Treasury confirmed it too. But on 10 March LASA learned that it hadn't been. So Vedalankar wrote to the Department a week later, raising LASA's concern about this and noting that since it had already commenced implementing OSD phase 1, LASA would be running an unbalanced budget without this funding: R23.8 million in the red – prohibited by the PFMA. She sent a reminder the following month, warning that unless the money was paid, LASA would have to reduce court coverage, causing backlogs and delays.

18. Vedalankar was referring to LASA's public defender posts serving the lower criminal courts at the bottom of LASA's professional staff establishment – not any other higher professional posts and certainly not Senior Litigator posts at the very top of it – and she and other management executives, Nair included, were explicit about this later on. (She meant reduce in the sense of not fill all the budgeted lower court posts; it's common cause no posts were ever cut.)

19. To interpose: LASA's annual and performance reports to Parliament which I independently sourced and analysed showed that its concern about when its OSD phase 1 funding for the year would be paid made zero difference to its recruitment of legal and other staff. Quite the contrary, this spiked in the April to June 2010 first quarter,[17] and masses of new posts were created.[18] And the reason this boom in new staff recruitment and new post creation occurred in the implementation of the Strategic Plan was because, contrary to Nair's lie in court about it[19] – he later reversed himself[20] and then again[21] (the judge didn't notice) – there was never any question that LASA's OSD phase 1 funding would be paid; the only question was *when* – because it had been paid in the previous financial year, also separately from the main budget transfer, and

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[17] Record, page 423, lines 3 – 25 to page 425, lines 1–9. Nair waffles uselessly trying to evade the sharp point.

[18] Record, page 370, lines 17–18 and page 371, lines 6–8. Lying stupidly in the teeth of LASA's own statistics, confirmed and admitted by LASA before trial, which showed that in the first quarter alone almost as many new posts were created as in the whole of the previous year, Nair repeatedly denied that LASA's staff establishment had increased during the year, and claimed it hadn't changed.

[19] Record, page 344, lines 14–16.

[20] Record, page 420, lines 23–5 to page 421, lines1–3.

[21] Record, page 464, lines 17–20.

afterwards. And the Minister had assured LASA that it would be provided for in the mid-term national budget later in the year, as indeed it was. That is, the money was on its way, and no doubt about it.

20. The OSD uncertainty arising on 10 March 2010 made zero difference to Senior Litigator recruitment specifically: I later found out that two weeks later, while my appointment lay in the deep-freeze, Nair and his Legal Services Technical Committee (LASA's operational engine-room)[22] resolved to recruit a Senior Litigator for Mthatha, and ordered that the budget for it be transferred from Kimberly and that the new post be advertised immediately. As it was:[23] the post was advertised in April, and a recommendation was made in late May – six months after my recommendation the year before and nothing done to finalise my appointment.

21. As the records Vedalankar supplied me show, by July 2010 the OSD phase 1 money wasn't yet in, so Nair suggested to her, the COO, CFO and HRE that recruitment to 56 lower criminal court public defender posts be frozen, more of them if necessary and some even lighter paralegal and administration posts if still necessary after that to meet the shortfall. Not any senior posts. They agreed, and proposed to the Board via the COO[24] that public defender coverage of the lower criminal courts be temporarily limited, in other words that recruitment to some of these vacant posts be frozen – but not any other posts, and certainly not any critical ones. Quite the opposite: they specifically proposed to the Board that as a cost-saving measure the filling of critical posts be prioritized.[25]

22. To interpose again: Contrary to the judge's flat wrong finding that I hadn't shown Senior Litigator posts were critical,[26] this was common cause on the pleadings.[27] Nonetheless, in view of Nair's unbelievably foolish dissimulation at trial – he was a pathetic liar[28] – contradicted by the documentary record and by LASA's pleaded case, that LASA's entry-level lower criminal court public defender posts were critical, and not its top

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[22] Record, page 334, lines 5–16.

[23] Record, page 456, lines 4–6.

[24] Record, page 383, line 19.

[25] Record, page 375, lines 1–4.

[26] Judgment, paragraph 74. C.f: record, page 481

[27] Pleadings bundle, original response, page 170, paragraph 48.9 and pre-trial conference bundle, answer to agenda, page 57, paragraph 43.1, and page 58, paragraph 52.1. (The respondent then contradicts itself in the same pleading: page 63, paragraph 79.1.)

[28] The judge, formerly a criminal court magistrate, didn't remark generally on Nair's repeated immaterial and redundant loquacity as a device to avoid answering my questions, and his constant evasiveness throughout my cross-examination of him.

professional echelon specialist Senior Litigator posts,[29] I showed at trial[30] and called the judge's attention in my heads to all the manifold evidence that Senior Litigator posts are indeed critical, and that the bottom-rung lower criminal court posts can't possibly be and aren't.[31] The judge evidently didn't read that far.

23. At its meeting at the end of July 2010, the Board approved national executive management's proposal to temporarily freeze recruitment to some lower criminal court practitioner posts until the end of the year, and to make up the balance of the deficit at that time (arising from the delayed transfer of LASA's OSD phase 1 funding) from unspent savings. I later discovered that recruitment to other posts continued normally in the second quarter July to September 2010; and that the effect of the approved freeze was to dampen the overall increase in staff recruitment, as compared with the preceding and succeeding operating quarters.

24. All this is fully and comprehensively documented in the records Vedalankar supplied me in January 2011. And what they unequivocally show is that she lied to me in October 2010 about the reason my appointment was aborted. That is, to camouflage the true reason, she'd fed me a false cover-story, as very smooth and convincing as it sounded. But as I probed and tested it relentlessly, it came undone in light of the extant documentary record and the non-existence of records that would have existed had the budgetary story given me been true. The lies then multiplied chaotically in all directions in the classic dynamic of a disintegrating cover-up.[32]

25. At trial I mentioned my conclusions from the evidence I'd just found of this[33] that Nair had ghost-written Vedalankar's letters,[34] and Board chairperson Mlambo JP's subsequent false reports to the Minister and to Parliament to pervert their enquiries into my

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[29] Record, page 373, lines 21–5 to page 374, line 1; page 375, lines 10–11; and page 480, lines 19–24.

[30] Record, page 481, lines 2–22.

[31] Heads, paragraphs 229 and 160. A pending PAIA request I've filed for a list of all LASA's critical posts, both filled and vacant, the sum of which (there are only about two hundred or so) LASA reports annually to the Minister and to Parliament, will further clinch the issue and expose yet another of Nair's obvious lies on oath at trial, which the judge accepted and believed.

[32] Heads, paragraphs 142 and paragraphs 205–6; and record, page 502, lines 11–24. After trial, Nair's confirmatory affidavit surfaced, in which he'd confirmed the lie told by Corporate Services Executive Thembile Mtati on his instructions: application, paragraph 227; and record, page 393, lines 18–25 to 394, lines 1–22.

[33] Heads, paragraphs 233–4.

[34] After trial, I noticed the evidence that junior counsel drafted Vedalankar's second letter, having been briefed to deal with my PAIA requests (per Mtati on affidavit, confirmed by Nair). I've PAIA'd his fee-notes and expect they'll confirm it. But there's little doubt on the evidence that Nair ghostwrote Vedalankar's first letter, and lied to the judge in denying it, just as he eventually admitted (initially disputed) ghostwriting Mlambo JP's reports to the Minister and to Parliament.

complaints, and that for this reason I held them both clear. But in his evidence, Nair denied any hand in Vedalankar's letters to me;[35] and although in evidence he ultimately admitted[36] writing Mlambo JP's reports, he could 'only assume the Judge personally wrote that'[37] (having first insinuated it might have been Vedalankar[38] and then again)[39] i.e. that Mlambo JP had amplified the report for the Minister before sending it to Parliament, with its further lies added about LASA's compliance with my three PAIA requests, and the nature and scale of my claim I'd just referred to the CCMA for conciliation.[40] (It's quite clear that Nair lied to the judge about this, and that he, not Mlambo JP, amplified the report with these additional lies.)[41] This is to say, after I'd told the judge that I held them clear (more about this below), Nair went on to directly implicate Vedalankar and Mlambo JP in lying to me, to the Minister and to Parliament.

26. True to the Minister's assurance, the OSD money was indeed included in the mid-term budget in October 2010, as Vedalankar informed the Portfolio Committee on the 12th – but not me, from whom she concealed this hotly material fact in her letter to me six days later, the better to maintain her pretence that LASA was still too skint to hire me.

27. Recruitment to the limited number of temporarily frozen lower criminal court posts then resumed in the third quarter October to December 2010, and all 100% of the posts were filled; and the increase in new staff recruitment generally then peaked for the year. But my appointment remained permanently frozen off the record, as well as the two other vacant Senior Litigator posts at Durban and Mthatha – although the irregular circumstances in which the appointments to these posts were aborted, also off the record, were quite different.[42]

28. LASA received its OSD money on 15 December 2010. In her second letter to me in January 2011, illegally refusing my second PAIA request testing her financial alibi for the abortion of my appointment, not only did Vedalankar conceal this payment from me, she positively lied to me, again and again, that LASA was still in a financial jam.[43] In fact, with

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[35] Record, page 442, lines 5–25 to page 445, lines 1–24.

[36] Cross-examining me, LASA's counsel persistently disputed Nair's authorship of the false reports signed and submitted by Mlambo JP. I don't yet have the complete record to refer to herein, only a photocopy of Nair's evidence made for me as a favour by the registrar. I've now applied for a copy of it under PAIA.

[37] Record, page 355, line 1.

[38] Record, page 354, lines 1–3.

[39] Record page 482, lines 18 – 25 to page 483, lines 1–21.

[40] Heads, paragraph 234.

[41] Heads, paragraph 235.

[42] Heads, paragraphs 178–9 and 188–204.

[43] Heads, paragraph 29.

the payment of its OSD allocation, LASA enjoyed a very substantial budgetary surplus that year.[44] (And Vedalankar, Nair and other national management executives took home magnificent, unprecedented bonuses.)

29. In March 2011, responding to my third PAIA application, Vedalankar, Nair and Clark all confirmed the lying budgetary excuse on affidavit. That is, LASA's CEO, NOE and HRE all swore the lie was true.

30. Even though it was already obviously false, the financial alibi was inadequate to cover and explain Nair's inaction in finalising my appointment in the initial three-and-a-half month period between the date he received my recommendation on 26 November 2009 and when the OSD uncertainty arose on 10 March 2010. So to patch the gap he concocted another story – later twice retracted by him on affidavit[45] as an obvious error, and consequently nowhere pleaded or alleged in any interlocutory affidavit,[46] then revived by him in court on the basis that his sworn retraction had been a mistake,[47] then contradicted with a different story he told the judge.[48] Who didn't think to note any of this dismal shambles in his judgment.

31. Repeatedly pleading for the Board's intervention in Vedalankar's persistent illegal refusal to comply with my PAIA requests, and the then already clear indications that my appointment had been aborted irregularly, I copied my third petition to the Board in February 2011 to the Minister and to Parliament. Both the Minister and the chairperson of the Portfolio Committee demanded explanations from chairperson Mlambo JP. He referred the matter to Vedalankar, who passed it to Nair. In his reports written for Mlambo JP to sign and submit to pervert the ministerial and parliamentary enquiries I'd initiated, Nair now claimed that what initially held up the alleged next step in my recruitment – a so-called second round interview – was difficulty encountered in coordinating a date suitable for all members of this panel to meet. Another smooth and ostensibly convincing story. After I exposed and refuted it as an outright lie in my original statement of claim, Nair retracted it on oath as 'an error ... palpably an error' that

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[44] Heads, paragraph 30.

[45] By way of a confirmatory affidavit supporting Mtati's affidavit claiming this on his instructions.

[46] LASA's several interlocutory affidavits all essayed into the merits of the main case.

[47] Record, page 477, lines 23–5 to page 478, lines 1–6.

[48] Record, page 339, lines 18–25 to page 341 lines 1–25.

Mlambo JP had made.[49] Except that Nair himself was the author of this brazen lie to the Minister and to Parliament; it was not Mlambo JP's 'error'.[50]

32. But Mlambo JP knew full well that this new story was false, because as a member of this so-called second round interview panel he'd never been contacted for a date. At trial Nair claimed, quite absurdly, that he never opened the recommendation and CV email attachments that he'd specially telephoned for, not until more than a year later, when he did so out of simple curiosity. (The judge found this perfectly credible, even though Nair had told a different story on affidavit before trial, which destructive contradiction I pressed in my heads.[51] The judge didn't note this, and accepted and believed[52] Nair's childishly obvious, self-contradicted new lie told in court, which had featured nowhere in any correspondence, report, pleading or affidavit before trial, all justifying LASA's failure to proceed with my appointment. This was one of the fundamental failures of the judgment.)

33. Fact is, Nair took no steps to set up the so-called second round interview. So, contrary to his lie told to the Minister and Parliament in Mlambo JP's name about this, there was no difficulty fixing a date for it because no attempt was ever made to do so. As said, when I telephoned Clark, also a member of the so-called second round interview panel, in April 2010, five months after my successful interview, she still knew nothing of me and my recommendation or of the KZN Senior Litigator recruitment process. Which means, like Mlambo JP, Nair hadn't approached her for a date either. So Mlambo JP knew full well that the report, which Nair had written for him to sign and to give the Minister and the chairperson of the Portfolio Committee to put down my complaints and pervert their independent enquiries contained a flagrant lie about why no steps were taken to finalise my recruitment in the first few months before the OSD uncertainty arose several months after my selection.

34. Mlambo JP also knew full well that the budgetary justification Vedalankar had fed me to cover the true reason my appointment had been aborted, which Nair repeated in the reports he drew for him, was another lie, because he'd chaired the meeting of the Board in July 2010 at which it approved executive management's proposal to trim costs by temporarily freezing recruitment to some lower criminal court posts only. Not abort three substantially concluded Senior Litigator recruitments and permanently freeze the

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[49] See footnote 37, and the footnote below for particulars.

[50] Heads, paragraphs 143–4.

[51] Heads, paragraphs 153–7.

[52] Judgment, paragraphs 67 and 70–2.

budgeted, funded posts. Mlambo JP knew full well that the Approval Framework required Board approval for any change to the Business Plan, which is why Board approval had been sought to temporarily freeze recruitment to some lower criminal court posts. He knew full well that no lawful decision had been taken to permanently freeze three Senior Litigator posts for budgetary reasons, because the Board he chaired would have had to approve this. It's common cause on the pleadings that it never did, and that the Board has never even been informed that LASA's three remaining vacant Senior Litigator posts, for whose budgeted salaries LASA applies to the Department and is granted funding every year, have been frozen by Vedalankar and Nair for alleged financial reasons. It's common cause that there's no record of this major alleged decision by executive management whatsoever.[53] Deceptively silent about it, Vedalankar repeatedly falsely reported LASA's Strategic Plan 2009/12 to have been implemented and completed as regards the employment of Senior Litigators in her CEO report for 2011/12 to the Minister and the National Assembly.[54]

35. My discovery on the eve of trial of the evidence that Nair had ghost-written Vedalankar's October 2010 letter to me and Mlambo JP's reports to the Minister and to Parliament[55] felt like a condemned man's reprieve: having to implicate Mlambo JP in my evidence at trial was a mortifying prospect.[56] My discoveries about Nair's authorship led me to inform the judge on the first day that I held them clear, and that I held Nair solely responsible for the lies these documents contained.[57]

36. In his chambers on the second day, when I told the judge I still had a lot more evidence to lead, having already blown the fake budgetary pretext to pieces on the facts set out in my Timeline, he warned me: 'I don't want to tell you how to run your case, but don't make the mistake of throwing your net so far out that you catch more than you can bring in.' These were his exact words, spoken off the record, but contemporaneously recorded that evening in emailed reports of the court day to my family and friends. I understood the judge was giving me an indication, as we lawyers say, and a severe indication at that, namely to limit the spray of my case, and keep it fixed on Nair alone, as I'd indicated I intended doing at commencement, and not present any further evidence implicating the big fish; for if I dared make the dangerous mistake of doing so, this would be too much, and it would doom my prospects of succeeding in his court with my claim. It seemed clear

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[53] Record, page 427, lines 6–14; page 433, lines 2–9; and page 433, lines 2–25 to page 434, lines 1–2.
[54] Heads, paragraph 84.
[55] Application, paragraph 229; heads, paragraphs 223–4.
[56] See paragraph 48.
[57] Application, paragraph 230.

to me that the judge wanted the evidence contained. He did not want me to lead more evidence pointing beyond the smaller fry. But as said, Nair himself went on to directly implicate his bosses. He dropped them right in the middle of it.

37. Besides the false claim that LASA didn't have the budget to employ me, Vedalankar, Nair and LASA's Corporate Services Executive and lead in-house attorney Mtati (on instructions) told a colourful variety of other different stories about why my appointment wasn't proceeded with.[58] Among these:

38. After I'd discredited the budgetary pretext fed me for not appointing me, and then the initial delay pretext fed the Minister and Parliament for not immediately proceeding with my appointment, Nair cooked up and fed the Board two brand-new, totally different stories to justify his failure to finalise my appointment at Pietermaritzburg, an internal candidate's promotion at Durban, and another internal candidate's transfer to Mthatha, namely 'recruitment challenges' encountered in filling the posts, and alleged uncertainty that the six incumbent Senior Litigators were up to professional scratch.[59] Both lies.[60] Waffling feebly,[61] Nair was unable to support his first new story[62] and radically changed his second,[63] before which it was repeatedly exposed as a lie by LASA's records.[64]

39. The judge didn't see any significance in all the chopping and changing stories advanced for not finalizing my appointment, to which I called his attention in my heads, for he didn't note them in his judgment. The Labour Appeal Court is sure to.

40. Unlike the judge who didn't note this either, the LAC is likewise certain to point up the destructive implications for LASA's pleaded defence of Nair's abandonment of a major leg of the story initially fed me; confirmed in his, Vedalankar's, and Clark's PAIA affidavits; and repeated in the pleadings and interlocutory affidavits in the case, namely that for budgetary reasons the Mthatha Senior Litigator post was frozen simultaneously with the

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[58] Heads, paragraphs 142, 205 and 206; and record, page 502, lines 11–24. But in his confirmatory affidavit surfaced after trial, Nair had confirmed the lie.

[59] Record, page 359, lines 17–25.

[60] Heads, paragraphs 213–15 and 224–5.

[61] Record, page 360, lines 1–15.

[62] Record, page 398, lines 11–25 to page 399, lines 1–22. And there's never been any suggestion anywhere at any time that the internal candidate selected for promotion to the Durban post wasn't qualified and a good fit for it. As for my qualifications for the post (not a pleaded issue for trial), Nair first dishonestly pretended I'm under-qualified, then dishonestly pretended I'm over-qualified: heads, paragraphs 99–101 and 221; record, page 360, lines 16–25 to 361, lines 1–22. The judge didn't note this.

[63] Record, page 435, lines 9–19. Changing it to pretending that he and the ROEs were concerned that 'we are achieving out purpose with that position' – but being untrue, naturally 'No ... record of this'.

[64] Record, page

Pietermaritzburg one.[65] In court Nair told a completely different story, namely that despite his repeated attempts to persuade her, Vedalankar refused to approve the creation of the post at Mthatha,[66] where it was reportedly sorely needed,[67] after the entire LSTC had unanimously resolved to create it and to transfer the budget from Kimberly, where there was reportedly no need for it,[68] and after the new Mthatha post had been advertised, interviewed for, and a candidate selected for it. It was a risible new lie, sharply contradicting LASA's pleaded and sworn version before trial, unsupported by any record,[69] not alleged in any affidavit or pleading,[70] and contradicted by LASA's recruitment/vacancy statistics for June 2010.[71] But Nair's new lie in evidence made no impression on the judge; as said, he didn't mention it.

41. The LAC is also certain to treat an important aspect of the case, entirely disregarded by the judge[72] (notwithstanding his fine grasp of the specifics of public service appointment procedure displayed in his Baxter judgment),[73] namely Nair's incompetent and illegal so-called second round interview scheme for Senior Litigator candidates – unauthorised by the Board's Recruitment code and inconsistent with its Approval Framework.[74] Unlike the judge, the LAC is certain to remark on the disgraceful breakdown of lawful recruitment procedure at LASA, in blatant disregard of the Board's said regulatory instruments which precisely govern this, and on Mlambo JP's participation in a grossly irregular, prejudicial, and unlawful recruitment practice.[75]

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[65] Heads, paragraphs 188–193.

[66] Record, page 365, lines 10–25 to page 366, lines 1–9.

[67] Record, page 401, lines 7–12.

[68] Record, page 363, lines 8–25 to page 364, lines 1–9 and page 402, lines 3–9.

[69] Record, page 436, lines 8–19 and page 490, lines 6–24.

[70] Record, page 490, line 25 to page 491, lines 1–8.

[71] Record, page 399, lines 9–21.

[72] Judgment, paragraphs 73–4.

[73] Law and case bundle, pages 94–7.

[74] Heads, paragraphs 90–8.

[75] The LAC is also likely to remark on the shocking irregularity of Mlambo JP allowing Vedalankar, the very subject of my complaint to him and the Board about her illegal refusal to comply with my first PAIA request and the indications that her budgetary pretext was false, to fake a letter from him on her own computer while he was abroad, dismissing my 59-page petition in a single sentence, with an scanned image of his signature pasted below it (with his consent, LASA pleaded). Looking the other way as I protested and showed my fundamental rights were being violated. Then, when I petitioned the Board again, insultingly showing me the road and telling the rest of the Board to ignore my further communications. Then defaming me to the chairperson of the Portfolio Committee, in his letter covering his lying report, when I petitioned the Board for the third time, now copying the Minister and Parliament.

42. His lies proliferating in court as he was trying to shore up his collapsing story about why he never signed his approval (or disapproval) of my recommendation by the selection panel as the Approval Framework required of him, and as provided at the foot of the document (with its legal nonsense, at his instance, about a further interview), Nair claimed in court that he didn't have to – a lie repeatedly and squarely contradicted by LASA's pleadings and interlocutory affidavits.[76] The judge didn't note this; again the LAC is sure to.

43. Unlike the judge who accepted and believed it, the LAC is also sure to find stupidly ridiculous and manifestly false Nair's evidence, building on his just-mentioned lie, but again explicitly contradicted by LASA's pleadings and interlocutory affidavits,[77] that all candidates interviewed by the selection panel were eligible for interviews by his so-called second round interview panel, including those rejected and eliminated by the selection panel, and that a candidate rejected by the selection panel could properly have been appointed instead of me[78] – stultifying the whole purpose of the selection process by the selection panel comprised of LASA's most senior lawyers in the region: to identify the most suitable candidate for appointment, as the Recruitment code puts it.[79]

44. The LAC is certain to find Nair's evidence to have been obviously untruthful just about whenever he opened his mouth. On a proper allocation of the final burden of persuasion to LASA, therefore, the LAC is certain to find that LASA failed to justify its abortion of my appointment to the Pietermaritzburg Senior Litigator post for which I'd been unanimously recommended. It failed to do so, because its various explanations given were obviously untrue. So what?

45. Pioneered by the U.S. Supreme Court, there's a finely developed body of international labour jurisprudence, supported by the ILO, and therefore binding on our labour tribunals, regarding what inference may properly be drawn where it's been shown that an employer has lied (or its explanation is not worthy of credence) about its reason given for not hiring a job applicant belonging to a constitutionally protected class (racial, political, etc). Copying and pasting from my heads, the judge very ably set this law out in his

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[76] Record, page 502, line 25 to page 503, lines 1–25; heads, paragraphs 146–7.

[77] Heads, paragraph 148.

[78] My manuscript note of Nair's evidence on which I relied for the above-mentioned paragraph of my heads was off; Nair alleged that all candidates were eligible for his so-called second round interviews, not that all would necessarily be interviewed again: record, page 349, lines 7–15 and 21–3; page 350, lines 10–11; page 407, lines 13–17; page 408, line 25 to page 409, lines 1–25 to page 410, lines 1–2 and 10–12; and page 450, lines 7–10.

[79] Heads, paragraphs 90–8.

judgment.[80] Doing the same, he also accurately set out the facts I presented placing me in such a class.[81] He didn't demur at my evidence that in applying for the post I'd been vulnerable to unfair political discrimination.

46. But instead of applying the law that he'd enunciated, and proceeding to draw the due inference indicated by the evidence – the known facts and the exposed and obvious lies – the judge dismissed my claim to have been unfairly discriminated against on political grounds as 'mere speculation'.[82] As if I'd not set up a plausible, prima facie case for it – all I was required to do under international and local unfair discrimination law – answered with one lie after another. Yet during oral argument, the judge took my point and taxed LASA's counsel with it: that an employer's mental prejudice against a job applicant is rarely announced, precisely because it's unconstitutional and therefore gravely illegal, and must therefore invariably be inferred from a conspectus of all the available evidence, weighed with the probabilities.[83] Besides the pivotal evidence I presented that the various justifications advanced for not appointing me were false and pretextual, the judge entirely failed to consider all the other evidence indicating unfair discrimination reviewed in my heads.[84]

47. To conclude: In bringing my claim against LASA I was aware I was breaking three basic rules: never sue a corporation, never represent yourself, and never sue from principle. But I thought the principle extremely important in our post-apartheid order – that a job applicant should not be prejudiced by his political activism, driven by his moral and social conscience, no matter how opprobrious his cause is generally perceived to be – and that my case was so clear that any attentive judge would grasp it. I did not expect the judge to

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[80] Judgment, paragraph 66.

[81] Judgment, paragraphs 30–41.

[82] Refusal, paragraph 5.

[83] I should disclose that documents that came to hand after the trial, considered with others I already had, point at possible corruption in the selection process; in that although I'd been formally, unanimously 'identified' in the recommendation as 'the most suitable candidate for appointment', as the Recruitment code puts it, it may have been intended to appoint a rejected candidate instead: a former Labour Court judge. And this is why my appointment was quietly iced, until I walked away, making way for his appointment in my place. (Recruitment corruption at LASA is commonplace: the previous recruitment for the same post had also been irregularly aborted off the record after the due selection of a suitable candidate by the selection panel; and I've uncovered corruption in other recruitments I've looked at, including the Mthatha Senior Litigator one, a sham for the books.) I'm investigating this possibility with a pending PAIA request, but I'm not optimistic that the records it will elicit will be decisive. So I'm not charging that the selection process was corrupt, and that my appointment wasn't proceeded with for the reason that the said rejected candidate had been favoured for appointment behind the scenes instead of me, because the evidence I have suggesting this is currently too light. If this changes, the LAC will certainly be told.

[84] Heads, paragraphs 246–7.

be nodding off during the afternoon sessions,[85] and finally claiming perversely, but revealingly as to his negative animus, that I ought rather to have taken LASA's abortion of my appointment 'on review'.[86] As if I shouldn't have come bothering him to deliver the justice I craved, and had laboured bitterly year after year before trial to achieve, in the face of every obstacle corruptly placed in my way,[87] viciously defamed all the while, contemptuously redoubled when I complained of it.[88] In a matter of such enormous importance, and with so much on the line extending far beyond my personal interest in the case, and with so much fact to traverse and complex argument to present, including relevant, applicable international labour jurisprudence mentioned in my opening address, I did not expect the judge to prescribe that our heads shouldn't exceed a manifestly insufficient 'fifteen to twenty pages',[89] suggesting that he'd already made up his mind to toss my case. I did not expect that five months after I filed my replying argument,[90] the judge hadn't even troubled himself to read our heads,[91] and was hearing our oral

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[85] I have an audio recording of the trial on DVD, capturing my repeated unnatural pauses as I waited, horrified, for the judge to reopen his eyes and come to. He was literally half-asleep at times. I dared not risk offending him by asking him to take a coffee break to wake up.

[86] Judgment, paragraph 74. I had no cause of action for any review, and duly referred my complaint to the CCMA and then the Labour Court in compliance with the procedural prescripts of the EEA.

[87] Heads, paragraph 256.

[88] Heads, paragraphs 260–5; record, page 485, lines 4–23. Reckless of their professional obligations as officers of court, LASA's counsel themselves put the boot in, wantonly lying to the judge in their answering heads that my precisely accurate CV was 'grossly inflated', which is to say I'm a liar guilty of CV fraud. (Mokoena SC, who argued the case in court, came into the matter after all heads had been filed, and did not draw the answering heads; and he's consequently innocent of this final defamation of me by LASA's counsel, calculated to defeat the ends of justice by prejudicing the judge against me with more lies to make me appear dishonest and therefore an unreliable witness.)

[89] At the end of the trial, the judge asked for heads of argument comprising four sections, 'background, evidence, analysis and conclusion', i.e. in the form of a draft judgment, so he could 'copy and paste from them', 'to expedite judgment production': a fine idea. But he stipulated not more than 15–20 pages: a hopelessly inadequate, improper and prejudicial limitation imposed on me after such a long and important trial with so much oral and documentary evidence and local and international unfair discrimination jurisprudence to canvass and discuss. Unpicking and refuting LASA's many outright lies and tricky half-truths and cataloguing all the contradictions was an immense job, as will be apparent from a look at my heads. After drawing them, as finely detailed as necessary, comprehensively and meticulously referenced to the documentary record, pleadings, affidavits, to the evidence (my notes), and to my law and case bundle, I prepared an unreferenced summary of 20-pages as directed; but I emphasized both in its head-note and at the oral argument that it was no substitute for my heads. From his several mistakes in the judgment identified in my application in regard to several simple facts dealt with in my heads, it seems the judge didn't read them through.

[90] On or about 6 December 2013 (date of signature).

[91] In his chambers before oral argument on 28 May 2014, the judge said jocosely: 'I think you can assume I'm literate and will read your heads.' The oral argument was set down for three days, 28–30 May, but on the basis just quoted the judge asked us to merely outline our main points; and in the result the oral argument wasn't

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argument without having prepared for it[92] ten months after the evidence, and relying only on his fading and defective memory of it[93] presented in the course of a nine-day trial concluded the best part of a year earlier. In giving judgment, I did not expect the judge to misstate my case, omitting critical facts and including irrelevant matter, [94] and portray as maladroit and whimsical my precisely considered tactical and strategic decisions taken,[95] wrongly forced by him on the record[96] and improperly pressed by him off it.[97] I did not expect the judge to sugar Nair's lies for his judgment, by stretching and exaggerating them to help them go down.[98] And that besides getting the final onus wrong, he should also have placed on me an impossible, pivotal, evidential onus I very obviously didn't bear and couldn't possibly have discharged.[99] And finally after the trial trucking with LASA without my knowledge in unfavourably disposing of my plea for his directive that it hand over the extra copy of the trial record transcript it had printed for me.[100]

48. As said in the beginning, the stakes in this case are massive, and the implications vast. Professional and personal networks and loyalties being what they are in the real world, I appreciated from the outset that I was up against very long odds, and that notwithstanding his oath of office it would be no easy thing for a judge to impeach the conduct of his own (then) court president, and now president of the biggest, most

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long. I repeatedly emphasized during argument that my case was made in my heads, drawn in the form of a draft judgment, as he'd unambiguously implied after the trial he'd wanted. And that my barest sketch of it in oral argument was no substitute. Besides proof of pretext, the further evidence I relied to generate the inference that I was unfairly discriminated against, canvassed in paragraphs 246 –7 of my heads, wasn't recited in the judgment. Its paragraph 46 sets out a wrong, crude mishmash instead.

[92] At the end of the trial, the judge asked us to file written argument, saying that once it was in, he would want to ask us questions. I understood him to mean he'd read our heads, and question us on them. This didn't happen at all.

[93] As evidenced by the judge's many basic factual mistakes, identified in my application.

[94] Judgment, paragraph 46. Besides proof of pretext, the further evidence I relied to generate the inference that I was unfairly discriminated against, canvassed in paragraphs 246 –7 of my heads, wasn't recited in the judgment; its paragraph 46 sets out a wrong, crude mishmash instead.

[95] Judgment, paragraphs 29 and 68.

[96] His refusal to allow me to cross-examine Vedalankar, Clark and Board member du Rand, stated during the debate of LASA's failed applications on the first day to quash my subpoenas of them. On why I ultimately elected not to call Vedalankar, Clark and du Rand, and settled for affidavits by the latter two in lieu of their oral evidence, see heads, paragraphs 103–4.

[97] His veiled warning in chambers not to go after the big fish (paragraph 36 above).

[98] Application, paragraphs 269–72 and 262–7.

[99] Application, paragraphs 273–82; judgment, paragraph 67.

[100] Per Mtati's wrongly dated letter in October 2014, received on the 13th: 'Cele J, through his office, suggested that the Respondent accommodate the Applicant by providing him with the electronic copy of the record which the Respondent did.'

important high court in the country, and thereby trigger a gargantuan scandal. But the truth must out, and justice needs doing fearlessly.

49. The Judicial Services Commission's response to my complaint about Mlambo JP's perversion of Ministerial and Parliamentary enquiries into my complaints was that it was no concern of theirs, on the technical basis that it didn't involve judicial misconduct per se. My complaints to the Public Service Commission were passed on to the Public Protector, but in view of the then approaching trial my file was closed; and with the dismissal of my claim, there's small chance of it being reopened. These official doors having closed on me for setting matters to rights, your lordships' correct decision of this petition is tremendously important for the ventilation of the truth, and for law and justice in our country. An unattended[101] splinter, so easily removed,[102] has led to widespread gangrene at the top of a major public entity, generally perceived to be the jewel in the crown of the Justice cluster, and a model of good governance. The matter has reached a pivotal moment.

50. Having regard to the profusion of contradictory lies that have spewed out of LASA, including to the highest authorities, in the cover-up following the illegal abortion of my appointment, to get away with and escape accountability for it – successfully so far, like Nixon nearly did after Watergate – your lordships can expect absolutely any lie from LASA in its answering papers, any subterfuge to persuade you to shut down further enquiry into this matter by refusing this petition. Since in-house attorney Mtati acting on instructions[103] can offer you no more than hearsay about the case,[104] and hasn't stinted at committing the most grotesque, poisonous perjury on affidavit on Nair's instructions to prejudice me in the court's eyes before trial;[105] and since the judge found Nair to have

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[101] I petitioned the Board five times in all, plus individual members, plus the Board secretary, all to no avail.

[102] I repeatedly pleaded for a timely, conciliatory resolution before the thing escalated unnecessarily.

[103] Record, page 390, lines 16–21; heads, paragraph 135. When conversing amicably at court before the delivery of judgment, I urged Mtati to seek a personal exit strategy in view of the several false interlocutory affidavits he'd made on Nair's instructions, replete with lies, he shrugged: 'I'm only an agent.'

[104] Record, page 390, lines 6–11. Mtati was appointed Corporate Services Executive in LASA's national office as from 1 July 2010. It's common cause he wasn't party to any decision-making about the abortion of my appointment, and has no direct knowledge of it.

[105] Heads, paragraph 268. Mtati: 'The most disturbing, reprehensible, unprofessional and brazen act of disrespect came recently when the Applicant left the KZN province and attended unannounced and without warning at the office of [Mlambo JP] at the South Gauteng High Court. [He] did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is represented this amounts to professional misconduct.' This lying defamation of me was the pure invention of a deeply cunning criminal mind, contrived to poison the court against me, in a bid to defeat the ends of justice (see further: application, paragraph 312). Which foul lie Nair supported with a confirmatory affidavit, surfaced after trial, only to meekly retreat from it

been untruthful under oath on any number of scores,[106] I respectfully entreat your lordships to require CEO Vedalankar, and not the former discreditable and unreliable persons, to depose to any answering affidavit under LAC rule 4(6) in regard to why I should be denied leave to argue my case before three senior, experienced, and attentive judges of appeal. At the centre of the case is the truth or otherwise of the budgetary insufficiency justification[107] for the abortion of my appointment to LASA's most senior professional position in KwaZulu-Natal, and it was Vedalankar who twice advanced it to me in her letters.[108] The prospect of being jailed for perjury may chill any inclination she might have to repeat under oath to your lordships the lies she told me. Like a helicopter, the unwelcome truth must eventually land, somewhere; and if you'll allow it, the proper place for it will be the Labour Appeal Court.

Dated at Eshowe on 7 December 2014.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on 7 December 2014 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he affirms its contents to be true to the best of his knowledge and belief.

SOUTH AFRICAN POLICE SERVICE
STATION COMMISSIONER
2014 -12- 07
ESHOWE
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATHS

Name: Jabulani Dlamini

Address: Eshowe SAPS

Capacity: Policeman Lt 0613427-1

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in court when I disputed it, pointing out that I'd never seen or met Mlambo JP, had never set foot in the South Gauteng High Court, and didn't even know where it was: record, page 485, lines 20–25 to page 486, lines 1–17.

[106] Judgment, paragraph 67.

[107] Heads, paragraph 5.

[108] In her letters of 18 October 2010 and 28 January 2011 (trial document bundle, pages 101–7 and 210–58). Vedalankar is also well placed to deal with Nair's new story in evidence blaming her for aborting the Mthatha Senior Litigator recruitment, diametrically contradicting the reason she gave me in her letters and later confirmed on affidavit. She can also deal with Nair's denial in court that he was responsible for authoring her letters to me (writing or instructing), and his claim that he had no hand in them, despite all indications to the contrary. And that she or Mlambo JP, not him (Nair), added the further new lies inserted into the report to the Minister before it was submitted in 'updated' form to the chairperson of the Portfolio Committee some months later. The look of it is that Nair used Vedalankar in his cover-up. The time's arrived for a division, and the isolation of the rogue(s).

REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Reportable

Case no: D529/11

In the matter between

ANTHONY ROBIN BRINK **Applicant**

and

LEGAL AID SOUTH AFRICA **Respondent**

Heard: 28 May 2014

Delivered: 18 September 2014

Summary: Claim based on unfair discrimination under section 6 (1) of the Employment Equity Act ('EEA') - the applicant sought an order that failure to appoint him to the post of Senior Litigator was unfair discrimination on prohibited grounds namely his conscience, belief or political opinion - applicant said he was an acutely unpopular and widely reviled leading dissident activist in the most politically inflamed AIDS treatment controversy – circumstantial evidence – principles of equality- in discrimination cases creating an inference that the employer lied can give rise to the extremely important inference that lying was for a particular reason such as to cover up a discriminatory purpose – act of discrimination not proved.

JUDGMENT

CELE J

LABOUR COURT

Introduction

[1] This is a claim based on unfair discrimination brought under section 6 (1) of the Employment Equity Act[1] ('EEA'). The applicant sought an order declaring that in aborting his appointment to the post of Senior Litigator, Pietermaritzburg, following his recommendation by a duly constituted selection panel, the respondent unfairly discriminated against him on grounds prohibited by section 6 (1) of the EEA, namely on grounds of his conscience, belief or political opinion. Upon such a declaration he then sought an order in the following terms:

1. to direct the respondent to appoint him to the post, retrospective to 1 January 2010;

2. to pay him damages for lost income in a sum equivalent to the salary he would have earned had he been appointed to the post on that date;

3. to compensate him for *iniuria* in the sum of R1 million;

4. to pay him *mora* interest at the prescribed rate on his damages for lost income, computed month to month from this commencement date to date of payment, and on his compensation award from date of judgment to date of payment;

5. to publish the order made in the case once in the *Sunday Times* newspaper and for a period of one year on the respondent's website in the 'About us' tab; and

6. to pay his costs on the scale as between attorney and client.

[2] The respondent denied having discriminated against the applicant. It pleaded in its amended response to the applicant's amended statement of claim that budgetary insufficiency caused it to simultaneously abort its recruitment of Senior Litigators for its Pietermaritzburg, Durban and Mthatha Justice Centres.

[1] Act Number 55 of 1998

LABOUR COURT

Factual Background

[3] While there are contradictory versions in the evidence led by the parties, there are many respects where their evidence was not in dispute. I shall accordingly allow myself to be guided by the parties' approach in briefly outlining the evidence of what turned out to be a lengthy trial. To them, I am indebted. The respondent created a number of posts which were then approved by the its Board of Directors on 24 November 2006 at the instance of the respondent's Management Executive Committee to remedy the respondent's lack of professional staff that were senior enough to take on cases of a highly complex nature.It was proposed that the respondent would 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 other High Court staff. In KwaZulu-Natal, the respondent issued an advertisement for two of such posts for Durban and Pietermaritzburg. After the simultaneous advertisement of the nine new Senior Litigator posts in October 2007, six were filled. A Kimberley post was re-advertised in May 2009 while the Pietermaritzburg and Durban Senior Litigator posts were re-advertised in June and again in August 2009. The applicant, an advocate, was one the applicants. He was successful in securing an interview in the recruitment for the Pietermaritzburg post.

[4] On 12 November 2009, the applicant was interviewed with other shortlisted candidates for the respondent's Senior Litigator post at Pietermaritzburg. Duly constituted under the respondent's Policies and Procedures on Recruitment, Induction, Probation and Relocation ('Recruitment code'), the selection panel comprised the respondent's senior lawyers in the region. In November 2009, the selection panel unanimously recorded its recommendations of the applicant and Durban High Court Unit Manager Mr Bongani Mngadi. The recommendation report does not specify who was recommended for which post, but the respondent admits that the applicant was selected for Pietermaritzburg and by implication Mr Mngadi for Durban. The selection was cast as a 'Recommendation for Next Round Interviews'. Provision was made at the foot of the recommendation for the National Operations Executive (the

LABOUR COURT

NOE) Mr Nair to approve or reject the selections, by signing in either the 'Recommendation accepted' or 'Recommendation not accepted' box.

[5] On the same day that the panel signed the recommendation, KwaZulu-Natal Regional Human Resources Manager (the HRM) Mr Baboo Brijlal emailed it as a scanned attachment to the KwaZulu-Natal Regional Operations Executive (the ROE) Mr Vela Mdaka for transmission to Mr Nair and to the National Human Resources Executive (the HRE) Ms Clark, along with the CVs attached of all interviewed shortlisted candidates, including the CVs of the two persons who were not recommended in that selection process for the second round of interviews. The reason why Mr Brijlal also sent Mr Mdaka for transmission to Mr Nair the CVs of the candidates not recommended was because he had received telephone instructions so to do.

[6] On 26 November 2009, Mr Mdaka forwarded the recommendation and CVs to Mr Nair, but not to Ms Clark. On receiving the recommendation Mr Nair neither recorded his approval nor his disapproval of the applicant and Mr Mngadi by signing the recommendation either way. His reason for not doing so forms the central issue of the case. On 3 December 2009, the applicant telephoned Mr Brijlal to ask for the interview results. Having chaired the interview, taken the minutes, and co-signed the recommendation of the applicant, Mr Brijlal knew the results but his response was that he was not free to disclose them and instructed the applicant to wait.

[7] On 14 April 2010, now five silent months since his interview, the applicant telephoned Ms Clark for information about the state of affairs. She responded that she had not heard of him before and knew nothing of the pending recruitment process but undertook to enquire further, and within a couple of hours of the applicant's call, reverted by email:

> 'I have looked into this matter and can confirm it is still in progress and has not been concluded. I will endeavour to expedite the process in which I am not directly involved at this stage. … Thanks for your keen interest. We hope to conclude the matter soon.'

LABOUR COURT

[8] Ms Clark invited the applicant to contact Mr Brijlal for updates. Mr Brijlal was the probable source of her information, because Mr Nair and the Chief Executive Officer (the CEO) Ms Vidhu Vedalankar were out of the Braamfontein National office, having just briefed the Parliamentary Portfolio Committee in Cape Town on the respondent's Strategic Plan 2009–2012. On about 19 April 2010 the applicant telephoned Mr Brijlal for updates, but he had none to give. Over the next few days thereafter and following Mr Nair's and Ms Vedalankar's return to office, the applicant repeatedly tried reaching Ms Clark by telephone again, but was unable to get through, and despite his messages left requesting that she return his calls she did not do so.

[9] On 22 April 2010, the applicant emailed Ms Clark, stating his pressing practical reason for needing to know the upshot of the recruitment process one way or the other. Ms Clark's response on 30 April 2010 was, inter alia, that:

> '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 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.'

[10] On 12 July 2010, which was eight months since his interview, the applicant wrote to Ms Vedalankar enquiring when his appointment might be finalised, mentioning his conclusion from Ms Clark's invitation that he 'withdraws' from 'the process' that he had indeed been selected and recommended by the selection panel, and not eliminated. On or about 27 July 2010, Ms Vedalankar read the applicant's letter and emailed Mr Nair about it on 29 July 2010 saying:

> 'I am not sure what is happening with these senior litigator appointment [sic] but we need to finalise the process and advise the persons interviewed of the

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outcome. Please will you look into this and discuss with Mandi [Clark] and then discuss with me.'

[11] On 3 August 2010, having been asked by Ms Vedalankar to provide a response to the applicant's letter to her, Mr Nair wrote to the applicant saying that the recruitment process to finalize the appointments for all vacant Senior Litigator posts was put on hold due to various reasons. He said that he could then confirm that they would not be proceeding with the filling of any of those posts. He was to request the HR department to send out regret letters to all persons who were interviewed during the first round of interviews. Indeed, on 16 August 2010, Mr Nair instructed Mr Mdaka to inform his HR section to regret all persons who attended senior litigator interviews for both Pietermaritzburg and Durban. On 23 August 2010, Mdaka sent such letters in identical terms to the applicant and to Mr Mngadi, and to one of the unsuccessful applicants, Mr van Wyk, but not to the other, Mr Ngcamu. There was an apology for the delay in informing candidates of the outcome of the interview process.

[12] On 30 August 2010, the applicant delivered a request to Ms Vedalankar qua the respondent's information officer under section 11 (1) of the Promotion of Access to Information Act 2 of 2000 ('PAIA') for 51 specified records concerning the Pietermaritzburg Senior Litigator recruitment and its cancellation, or sworn certification under section 23 (1). By the end of September 2010, Vedalankar had not responded within the 30-calendar-day timeframe prescribed by section 25, read with section 4 of the Interpretation Act 33 of 1957, which the applicant took to be amounting to a deemed refusal under section 27. At the applicant's request the PAIA Unit of the South African Human Rights Commission ('SAHRC') came in and elicited an undertaking to do so.

[13] On 18 October 2010, Ms Vedalankar expressly refused the applicant's entire request for records pertaining to the abortion of his recruitment, alleging a budgetary justification for freezing the appointment by averring, inter alia, that:

'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

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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. Therefore the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.'

[14] On 11 October 2010, Ms Vedalankar had informed the Justice Portfolio Committee that the respondent's budgetary uncertainty had already been resolved in principle saying that:

'the Minister did get involved and he had assisted .['the OSD money'] was in the mid-term adjustment ,we are on track on all components of our Business Plan and we are confident that we will deliver this Business Plan in this financial year also. So we don't have any problem areas that we would like to report on. We do have challenges in terms of some of the funding issues like OSD but at the moment we are in the process of fixing it. In fact the Minister has been involved in that which relates to OSD Phase 1 and Phase 2 funding.'

[15] In her second letter to the applicant of 28 January 2011, refusing his first PAIA request again, as well as his second in December 2010 for further records to test the veracity of her budgetary justification for cancelling his appointment, even refusing and returning his compulsory request fee prescribed by section 22 – Ms Vedalankar reiterated her budgetary explanation for aborting the applicant's appointment saying that:

'the explanation furnished by me to you on 18 October remains valid and will be clarified and added to where possible. I, and the Legal Aid SA under my watch, have never sought to make any decisions regarding the Senior Litigator posts on any ground other than the budget constraints which you have rejected.'

Occupational Specific dispensation (OSD) and Respondent's financial standing

[16] Effective from July 2007, the Department of Justice and Constitutional Development (DoJ&CD) introduced the Occupational Specific Dispensation

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(OSD), a salary incentive scheme aiming to assist, recruit and retain specialists in the legal profession who had gained at least 10 years active legal court experience and who were still actively involved in litigation or court work. The OSD was subsequently extended to the respondent. In November 2009, the respondent had already commenced implementing OSD phase 1, and it received funding for this during the 2009/10 financial year as per its annual report for 2009/10 which recorded that the OSD phase 1 shortfall of R23million in the 2009/10 financial year was received from the DoJ&CD. The 'shortfall' had arisen because funding for the implementation of OSD phase 1 in 2009/10 had not been included in the respondent's baseline budget for 2009/10 as expected, having regard to a written assurance by the Director General of the DoJ&CD given on 5 February 2009 in which he had committed himself to adjust the baseline of the respondent in the Adjustment Budget with R69, 6million, inter alia, to cover the implementation of the OSD. As the annual report recorded, funding for OSD phase 1 for 2009/10 was paid by the Department later in the year.

[17] On 25 February 2010, the respondent's Legal Services Technical Committee (LSTC), chaired by Mr Nair, resolved to invite motivations from interested regions for the reallocation of the redundant Senior Litigator budget for Kimberley to another Justice Centre. The Legal Aid Guide ratified by both houses of Parliament explains the LSTC's function within the respondent:

> 'The Board delegates authority to the CEO, the Management Exco, LSTC, other committees and officials through its Approval Framework. The LSTC's collective responsibility is managing the legal services delivery programme, the execution of all Board strategy, policies, programmes and plans relating to the legal services delivery programme of the Legal Aid South Africa'.

[18] According to the respondent's Annual Report 2009/10, the budget for 2010/11 was approved by the Board on 27 February 2010. It included provision for salaries for nine Senior Litigator posts. On 15 March 2010, responding to the LSTC's invitation, the Eastern Cape management region applied for the creation of a new Senior Litigator post at Mthatha. On 24 March 2010, two weeks after a realization by of the budgetary issues that

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suddenly confronted the Respondent on 10 March 2010, the LSTC resolved to abolish the Kimberley Senior Litigator post, to create a new Senior Litigator post at Mthatha, to transfer the budget, and to immediately commence recruitment for it. The LSTC took this decision on the strength of the Eastern Cape ROE Mr Thembile Mtati's pressing motivation for the transfer of the post to Mthatha, where he urged it was sorely needed, for the reason inter alia that they were then having one Senior Litigator who was stationed at Port Elizabeth. He said that it was a huge challenge for one person to provide support to the whole Region. Two weeks earlier on 10 March 2010, on learning that its OSD funding allocation had not been included in its baseline budget, the priority for transferring the budget and recruiting for a Senior Litigator at Mthatha was designated 'Immediate'. The same consideration was not accorded to the finalisation of the Pietermaritzburg and Durban Senior Litigator appointments. The budget for the new post was transferred from the vacant, 'redundant', equivalent post at Kimberley; and, as mandated by the LSTC, the new Mthatha Senior Litigator post was immediately advertised in April.

[19] On 13 April 2010, in a follow-up query to the Director General, Vedalankar now raised the prospect that unless the respondent received its outstanding OSD phase 1 allocation, staff cuts would be unavoidable, saying that:

> 'we will be forced to effect the necessary adjustments to our 2010/11 Budget so as to accommodate the R23 million budget shortfall of OSD phase 1. The primary impact of that will unfortunately have to be on service delivery at courts including increased delays and backlogs as a result of us reducing the number of practitioners that we can make available at courts'.

[20] Quite irrespective of the 'budgetary issues that suddenly confronted the Respondent' on 10 March 2010, the respondent's First Quarter Report for April to June 2010, presented to the Portfolio Committee on 11 October 2010, shows that it created 82 new budgeted posts 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. On 13 October 2010, the day after the

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respondent's presentation of its First Quarter Report, the Government Communication and Information System news agency Bua News quoted Board Chairperson Mlambo JP stating:

> 'The organisation was also on track to achieve its objectives for the period under review by completing the expansion of its national footprint. This included the establishment of six new Justice Centres and 27 satellite offices in the past three years, as well as the launch of a client call centre in June 2010.'

[21] In the first quarter April to June 2010, the respondent appeared to have increased its total number of budgeted establishment posts by 3.3% (2513 to 2595) – almost as many as the 3.9% increase (2419 to 2513) for the whole of 2009/10. Following a nil net 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 appeared to have spiked in the first quarter April to June 2010, increasing by 2.3% (1147 to 1173). In the first quarter April to June 2010, total staff recruitment appeared to have increased by 3.5% (2352 to 2434) – greater than the increase of 3.1% (2281 to 2352) for the whole of 2009/10.

[22] On or about 24 May 2010, Mahikeng Senior Litigator Mr Nzame Skibi was selected and recommended for lateral transfer. However, according to the respondent Mr Skibi was shortlisted for a second round of interviews in Johannesburg. There was no mention of any second round interview for him in the recommendation, nor was any such shortlist drawn.

[23] A report to Board on 16 July 2010 recorded that

> 'On the 14 July 2010 Legal Aid COO [Makokoane] met with both Doj DDG [Deputy Director General of the Department of Justice and Constitutional Development], Mr Vuso Shabalala, as well as Adv Pieter du Rand, Legal Aid SA board member in order to clarify the position of DoJ regarding the outstanding OSD funding of R53.8 million for the 2010/11 budget period, as well as the MTEF baseline. DoJ has indicated that they do not have funds to cover for the R53.8 million OSD shortfall. The Executive Authority [i.e. the

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> Minister] has however in a meeting with the Legal Aid SA Board Chairperson expressed his wish to have Legal Aid SA service delivery maintained and that DoJ should make funds available to cover the OSD shortfall through the mid-year budget adjustments in September/October 2010.'

[24] On 14 or 15 July 2010, Mr Makokoane asked Mr Nair to identify some vacant posts that might be frozen to save on salary costs with a view to mitigating the budgetary deficit that the respondent anticipated as a result. It had budgeted in the expectation of receiving its OSD phase 1 allocation and was paying OSD phase 1 salary increases to its staff, so the Department's failure to transfer this allocation threatened a budgetary deficit. Then on 15 July 2010 and under the subject heading 'Budget cuts – Reduction in Criminal Court Coverage – July 2010.xlsx', Mr Nair emailed Mr Makokoane a spreadsheet, copied to Ms Vedalankar, Ms Clark and Chief Financial Officer Ms Rebecca Hlabatau, in which he identified and motivated thus:

> ' my first cut of 56 practitioner posts at JCs [Justice Centres]. I have not looked for paralegal and admin positions at JCs yet. This amounts to a potential savings of R16m which is much lower than what is required. In terms of this cut, I have ensured that DC will not be lower than 80% coverage whilst RCs will not be lower than 90% coverage. If we need to find more savings from practitioner positions, then we will need to agree lower coverage levels for District and Regional courts.'

[25] On 16 July 2010, Makokoane submitted a 'Report to Board' in which he recommended Nair's proposal to freeze recruitment to 56 vacant practitioner posts serving the lower criminal courts, but not more of them, nor of any lighter 'paralegal and admin positions' which Nair had mooted if needs be. Specifically, 'To provide for the anticipated OSD shortfall funding of R23.8 million', Makokoane recommended in his Report to Board that:

I. Savings from the 2010/11 financial year be used to fund the OSD shortfall;

II. District Court coverage be approximately no lower than 80% coverage, while Regional Court coverage is reduced to no lower than 90%

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coverage, for the remaining part of the 2010/11 budget period. This will derive a saving of about R16 million to cover the shortfall.

[26] Among the measures to mitigate the probable deficit proposed in his 'Report to Board', Mr Makokoane advised that the recruitment process would be reviewed, centralizing the decision of the filling of posts at Executive level, with due regard to the need to prioritise critical positions. Mentioned generically in the 'Report to Board', the Pietermaritzburg Senior Litigator post was 'a critical position'. Since the temporary freeze on recruitment to some public defender posts amounted to a potential savings of R16m which was much lower than what was required i.e. R23.8 million. Mr Makokoane proposed making up the difference with unspent budget savings. On 31 July 2010, the Board agreed with the executives and resolved to approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of the 'Report to Board', namely to temporarily hold recruitment to 56 vacant practitioner posts serving the lower criminal courts, but only until the end of the financial year, and to use savings from the 2010/11 financial year to fund the OSD shortfall. The reason the Management Executive Committee sought the Board's approval was that its proposal to temporarily freeze recruitment to a limited number of public defender posts was a deviation from its Business Plan, also referred to as the 'Annual Performance Plan', based on the Board's Strategic Plan, and section 1.2 of the Approval Framework required that the Board must be consulted before any such change.

[27] Besides the temporary freezing of a number of practitioner posts serving the lower criminal courts, legal staff recruitment otherwise continued in the following quarter July to September 2010, and increased by 1.7% that is 1173 to 1193. For instance, the respondent advertised in August 2010 to recruit a 'Supervisory Professional Assistant' for its Pinetown Justice Centre, and a 'High Court Unit Professional Assistant' for its King William's Town Justice Centre. On 9 July 2011 Ms Vedalankar informed the Access to Justice Conference in her presentation that the respondent had recruited 2489 staff including 1932 lawyers, whereas the First Quarter Report, that is 1 April–30 June 2010, showed 2434 staff including 1855 lawyers, which is a difference of

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77 more. The same figures appear in the respondent's Annual Report for 2010/11. That is, in the nine months following its decision in July 2010 to temporarily freeze recruitment to some practitioner posts serving the lower criminal courts the respondent recruited 77 more lawyers.

[28] Being mindful of the respondent's version that Mr Nair decided on 16 August 2010 to communicate the respondent's decision that the recruitment process to finalize the appointments for all vacant Senior Litigator posts was put on hold due to various reasons, the events of the respondent relating to the recruitment process followed in the subsequent months will not be outlined any further. The only exception is to point out that the financial assisstance that had been promised by the Minister of the DoJ&CD in October 2010 was finally paid over to the respondent on 15 December 2010, some months after the applicant was appraised of the outcome of the recruitement process.

The Applicant's version

[29] The applicant was the only witness for his case. While he initially indicated that there were employees of the respondent whom he wanted to call as his witnesses, he changed track and dispense with them.

[30] The applicant testified that when applying for the post he was mindful of two handicaps, one quite legal, and the other gravely illegal. As a white male he faced the constitutional imperatives of employment equity and affirmative action; but in the result the selection panel duly certified upon a proper demographic analysis of the Pietermaritzburg and Durban Justice Centres that his and Mr Mngadi's appointments to the respective posts would conform to the respondent's employment equity targets. Although he had not been able to eliminate race prejudice as a possible reason for the abortion of his appointment by the respondent's national office, he said that it looked unlikely to him in light of its confirmation of the appointment of a White male as High Court Unit Manager at the Cape Town Justice Centre in the face of protests by other staff of colour that this went against the respondent's employment equity policies, and in light further of the fact that that White male was subsequently promoted to Senior Litigator there. That suggested to the applicant that there

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was not any culture of racism in the respondent's national office; and picking up on this, the respondent's counsel, Mr du Toit made the point in cross-examination that race prejudice as a possibility had been eliminated from the case. That then stood as a common cause ground.

[31] Concerning his second handicap, the applicant testified that he was an acutely unpopular and widely reviled leading dissident activist in the most politically inflamed and morally polarised domestic policy dispute in the democratic era, the AIDS treatment controversy. He testified that he had ignited this with the draft of a book he had written, *Debating AZT*, later published under the subtitle *Mbeki and the AIDS drug controversy* (Exhibit 2A), which he had sent up to government in manuscript in 1999, and which, former President Thabo Mbeki confirmed directly to the authors of two books exhibited by the applicant,[2] had 'sparked' (Mbeki's word) his enquiry into the safety of the drug, announced in the National Council of Provinces on 28 October 1999, and his wider enquiry into the integrity of the American HIV-AIDS paradigm generally.

[32] The applicant quoted some of what he called the many effusively positive commendations of his critique of the drug by high-ranking scientists, most significantly by Professor Richard Beltz PhD, Emeritus Professor of Biochemistry, Loma Linda University School of Medicine, California, US, who first synthesized it in 1961 (and not, the applicant said, Horvitz in 1964, as generally credited), saying:

> 'you are justified in sounding a warning against the long-term therapeutic use of AZT, or its use in pregnant women, because of its demonstrated toxicity and side effects. Unfortunately, the devastating effects of AZT emerged only after the final level of experiments was well underway. Your effort is a worthy one. I hope you succeed in convincing your government not to make AZT available.'

[2] Allister Sparks, *Beyond the Miracle: Inside the New South Africa*, Cape Town: Jonathan Ball, 2003, page 286; and Mark Gevisser, *Thabo Mbeki: The Dream Deferred*, Cape Town: Jonathan Ball, 2007, page 729.

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[33] In court the applicant exhibited a bottle containing a minute quantity of AZT supplied for research use and read from its label: 'TOXIC Toxic by inhalation, in contact with skin and if swallowed. Target organs: Blood Bone marrow. In case of accident or if you feel unwell seek medical advice immediately (show the label where possible). Wear suitable protective clothing.' He also exhibited a bottle of AZT capsules marketed by the pharmaceutical corporation GlaxoSmithKline for deliberate human ingestion, bearing no such warning. The deadly toxic hazard label and Beltz's support for the applicant in his campaign against the drug are quoted on the cover of the applicant's book, *Poisoning our Children: AZT in Pregnancy* (Exhibit 2C).

[34] On the other hand, the applicant cited a collection of vituperative attacks on him in the media and elsewhere over the years, with the *Sunday Times*, for instance, having referred to 'such loathed personalities as Anthony Brink' for 'supporting [Mbeki] at the outset of the AIDS-denial debate'. The London *Guardian* damned 'Anthony Brink the man who is credited with introducing Mbeki to HIV denialism, who has helped cost the lives of tens of thousands of people needlessly deprived of effective treatments.' He cited an article in *Time* magazine repeating the conventional western wisdom that for 'denying citizens life-saving anti-HIV drugs' he 'may have cost 365,000 South African lives, according to a study by Harvard researchers.' Aggressively intolerant general opinion and sentiment against critics and opponents of these drugs was epitomised, the applicant suggested, by a reference in the context of the controversy by a judge of the High Court (before her appointment) to then Health Minister Dr Manto Tshabalala-Msimang as a 'criminal'. Illustrating the intense antagonism against him for opposing AZT, the applicant quoted from a 'Public Health Warning' issued by the Democratic Alliance in October 2005, naming him, he said, like someone named in the Government Gazette as a Communist by the apartheid Minister of Justice, as the 'No.1. Ranking' AIDS dissident in the country, 'so dangerous' that such 'Aids denialists' with their 'false and dangerous views' and natural criminal propensity should be both politically and professionally neutralised:

> 'The DA calls on the media, the public, and professional organisations to, for example, wherever possible exclude these individuals from positions of

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> authority; deny their dissident views publicity; and take vigorous steps to pursue official action in respect of any infringements of the law.'

[35] He said that the public enemies list, headed by him, was reproduced on the Nelson Mandela Centre for Memory website, host of the 'Heart of Hope' archive. The applicant testified that his main political opponents, the Treatment Action Campaign ('TAC'), a political action group promoting ARV drugs, had got him banned by the Advertising Standards Authority from publishing his case against AZT in the print media, and that under the ban no printing-works may reproduce it either.

[36] The applicant pointed out that the extraordinarily heated tenor of the controversy was a fact notorious to the judiciary, and he cited several references to this in judgments of the High and Constitutional Courts: 'In our country the issue of HIV/AIDS has for some time been fraught with an unusual degree of political, ideological and emotional contention.' There is 'deep anxiety and considerable hysteria' about it. There has been much 'discord' in the 'boisterous and, at times, unseemly debate with regard to the efficacy or otherwise of antiretroviral treatment'. To sum it up, as the applicant put it, 'Politically, I stink.'

[37] The applicant referred to an interview with the respondent's Ms Vedalankar on 10 November 2009, two days before his own, in which she held up as the respondent's 'most significant accomplishment' the fact that the respondent had:

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

[38] The applicant said that in her introduction to the respondent's 'Impact Litigation' booklet in March 2011, Ms Vedalankar again singled out for special mention the respondent's financial support for the TAC in the case, and frankly

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underscored its propaganda value to put down the dissenters in the epistemological and political contest between the believers and the recusants:

> 'Not many people are aware that the Impact Litigation Unit funded, amongst others, the challenge brought by the Treatment Action Campaign in the Constitutional Court to make treatment available to those suffering from HIV/AIDS at a time when many were still questioning the link between HIV and AIDS.'

[39] The applicant testified that he had opposed the TAC in the case by way of an urgent amicus curiae application to the Constitutional Court which he drew for the late Professor Sam Mhlongo, bringing to the court's attention the fact that the single clinical study on which the TAC's entire case was based had just been rejected as a worthless shambles by the US Food and Drug Administration; but that, although described by the then Chief Justice Chaskalson in the debate as a 'compelling argument', his application had been dismissed as out of time. The applicant opined that the Constitutional Court's judgment had been 'a disaster'. He produced a copy of his book about the case, *The trouble with nevirapine*, and quoted commendations on its back cover (Exhibit 2B) by Dr Jonathan Fishbein MD, formerly Director of the Office for Policy in Clinical Research Operations, Division of AIDS, National Institute of Allergy and Infectious Diseases, US National Institutes of Health: 'an expertly written piece about this very dangerous drug'; and by Professor Andrew Herxheimer MB, FRCP, Emeritus Fellow of the UK Cochrane Centre, Oxford; tutor in clinical pharmacology and therapeutics at Charing Cross and Westminster Medical School, London University (ret.); advisor to the WHO; founder of *Drug Therapeutics Bulletin*; co-founder of the International Society of Drug Bulletins; and co-founder of DIPEx.org saying:

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

[40] The applicant pointed out that the respondent spent R200 000 a year, and previously twice and thrice as much, on its 'HIV/AIDS Strategy and Roll Out

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Plan' which it prioritised as a 'KEY' operating policy, and that accordingly, it was institutionally aligned with and invested in the conventional HIV-ARV-AIDS paradigm to which he was opposed and which he worked for many years to debunk as a 'profoundly harmful, fundamentally racist error in our time'. He referred to a mailing list he had discovered of some of the world's leading ARV-promoting activists, of which Ms Vedalankar and Mr Nair were members.

[41] The applicant testified that, he was certain that his deeply unpopular minority political engagement in the controversy would be found out with a simple Google search on his name, he disclosed it in his CV submitted in support of his application for the post, and in a Personal and Political History handed in at the interview; and the selection panel's recommendation of the applicant referenced it: 'Candidate demonstrated his capability to undertake high level research. Candidate is a prolific writer/author with many commendations cited on his CV.'

Concern on the justification for aborting the applicant's appointment

[42] In relation to the respondent's budgetary justification for aborting the applicant's appointment, the applicant gave evidence with reference to the respondent's records about some transient budgetary uncertainty for a few months in 2010, seeking to demonstrate that this never had any bearing on Senior Litigator recruitment and the abortion of his recruitment. Most of the evidence, which was statistical in nature, forms part of the factual background as it came across as common cause.

[43] When the applicant was interviewed and recommended for the Pietermaritzburg Senior Litigator post in November 2009, the respondent had already commenced implementing OSD phase 1, and it received funding for this during the 2009/10 financial year. As regards the respondent's settled expectation of receiving the OSD funding which the DoJ&CD had committed to pay, the applicant said that Ms Vedalankar later confirmed to him on 28 January 2011 that in conducting those recruitment processes parallel with the fundraising drive, the respondent acted under the impression that the

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DoJ&CD would honour its promise to extend OSD funding to it which it did in December 2010. He said that on 10 March 2010, however, the respondent learned from a copy of the OSD letter of DoJ&CD to National Treasury received on that day that contrary to confirmed reports by the DoJ&CD, the Department did not recommend a budget baseline adjustment for MTEF 2010/13 for the respondent. That situation was to result in a budget deficit for the respondent in its 2010/11 MTEF cycle, as Ms Vedalankar put it in her query to the Director General a week later on 18 March 2010. That was because the respondent had already budgeted for 2010/11 on the basis of the DG's commitment[3]. He said that the respondent later put it in the pleadings that it was on 10 March 2010 that budgetary issues suddenly confronted it.

[44] He testified that in April or May 2010, and to his exclusion, Mr Mngadi was informally told verbally that the Senior Litigator recruitment was off. He said that on or about 24 May 2010 and following the advertisement and interviews of the shortlisted candidates of the Mthatha Senior Litigator post in April, Mahikeng Senior Litigator Mr Nzame Skibi was selected and recommended for a lateral transfer and he was appointment to it. He said that contrary to the respondent's false denial in the pleadings that the Mthatha candidate was recommended for appointment, the selection panel indeed recorded that he was recommended for that position on the basis that he came across as the strongest candidate, with substantiating reasons duly noted. He again said that contrary to the respondent's false allegation, confirmed by Mr Nair on affidavit, that Mr Skibi was shortlisted for a second round of interviews in Johannesburg, he was not, and there was no mention of any second round interview for him in the recommendation, nor was any such shortlist drawn.

[45] In relation to the 'Budget cuts – Reduction in Criminal Court Coverage – July 2010' he averred that by 'cut' Mr Nair meant freezing recruitment to the vacant lower criminal court posts in question, not abolishing the posts, and that indeed no posts were cut. Contrary to the respondent's allegation in its original response that 'Nair's email to the COO had not been specific about other posts or measures to be recommended for the cost cutting process', the

[3] as Vedalankar recorded in her follow-up letter to the DG on 13 April 2010

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applicant contended that the record both of the contents of Mr Nair's email and its heading 'Reduction of Criminal Court Coverage' showed that Mr Nair had indeed been specific. According to him, Mr Nair did not propose to Mr Makokoane and other management executives that cancelling the Senior Litigator recruitments and freezing the three remaining vacant Senior Litigator posts could achieve further cost savings and that the recruitment process to finalize the appointments for all vacant Senior Litigator posts' had already been put on hold due to various reasons, as Mr Nair alleged to the applicant a couple of weeks later.

[46] The applicant contradicted the version of the respondent that budgetary constraints constituted the reason for aborting the recruitment process. In essence his reasons were, inter alia, that:

- Mr Nair had in November 2009 decided to reject his application after he had read applicant's CV in which the applicant had disclosed his work and literary contributions on the debate around the alleged effect of AZT and or Nevirapine (anti-retrovirals) on HIV positive pregnant women, which he said was his life's work;

- Mr Nair did not agree with applicant's medical opinion on anti-retrovirals and that Mr Nair's name and that of the CEO appeared on an email list of people who promoted Western medicines to treat AIDS in South Africa;

- In any event, the budgetary constraints were resolved in October 2010 by a ministerial promise. In December 2010, the respondent received the additional funds that had been withheld. The freezing of the Durban and Mthatha Senior Litigator posts was a camouflage in order to justify terminating the Pietermaritzburg process and that such budget constrains were an afterthought;

- There had been a marked increase in recruitment of staff by the respondent in 2010 and the respondent's December 2010 recruitment/vacancy/budget statistics reflected that the Pietermaritzburg and Durban Senior Litigator posts remain budgeted

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vacant posts, and not frozen, as Ms Vedalankar falsely alleged to the applicant on 18 October 2010;

- The "next round" of interviews for Senior Litigator was unlawfully instituted in 2008 because Mr Nair had no power to do this.

- Ms Vedalankar's and Mr Nair's claims to have aborted the Senior Litigator recruitments and to have frozen the posts were *ultra vires* and legally incompetent even on their own version. The engagement of Senior Litigators was an integral part of the respondent's Board's Strategic Plan to develop and increase the respondent's capacity to deliver expert litigation services to indigent litigants by creating a pool of specialist professionals to attend to complex matters in specialist and High Courts, including the Supreme Court of Appeal and Constitutional Court. The Strategic Plan was key to respondent's operations and it complied with the National Treasury Regulations.

- The respondent's annual Business Plan for implementation by the LSTC was based on the Strategic Plan; and section 1.2 of the Approval Framework permitted the Business Plan to be changed by the LSTC, provided that (a) the Board was consulted before any such change, and (b) the full Management Executive Committee gave its final approval. The LSTC Terms of Reference prescribed likewise saying that any decision taken by LSTC that was of a policy nature which impacted on the Business Plan was to be referred to management or to the executive body for approval;

- A decision to 'terminate' three substantially completed Senior Litigator recruitments and to indefinitely freeze recruitment to one third (3/9) of the respondent's critical, top-echelon specialist legal professional Senior Litigator posts was a decision to change the Business Plan.

- Where Board approval was required to temporarily hold recruitment to some lower court practitioner posts, as indeed it was, Board approval was all the more required to abort the substantially complete

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recruitments of three Senior Litigators and to indefinitely freeze recruitment to the three critical posts;

- No record existed to show that the Board was consulted before such alleged decision was taken, as it had to be. To the contrary, Mr Nair confirmed on affidavit on 8 April 2011 that the Board was not informed of the decision. No record existed to show that the full Management Executive Committee gave its final approval of any such decision to abort the recruitments and to freeze the posts.

- No record existed to show that Mr Nair duly originated the freezing of recruitment to one third of the respondent's top echelon of critical vacant professional staff posts. No record existed to show that Ms Vedalankar agreed to that, as she had to. No record existed to show that all Committees were informed thereafter, as it had to be done.

- No record existed to show that Mr Nair ever motivated to Ms Vedalankar a change in the organizational structure by dint of the freezing of' Senior Litigator positions, for discussion and finalisation with her, as Ms Vedalankar alleged to the applicant in her October 2010 letter.

- In short, notwithstanding her delegation by the Board for all the responsibilities of the Accounting Officer as provided for in the Public Finance Management Act and her unrestricted authority in managing the respondent, Ms Vedalankar did not have the power under the Approval Framework to deviate from the Board's Strategic Plan. She had no power to change the Management Executive Committee's Business Plan based on it to recruit Senior Litigators, and to decide with Mr Nair off the record without:

- First consulting the Board;

- A supporting resolution of the LSTC;

- obtaining the full Management Executive Committee's agreement; and

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- thereafter informing all committees to abort three substantially completed Senior Litigator recruitments and to indefinitely, and practically permanently, freeze recruitment to one third of the respondent's vacant budgeted critical Senior Litigator establishment.

2 Respondent's version

[47] The Respondent called Mr Nair to testify on its behalf. He testified that applicant's claim of discrimination on the basis alleged whether it be political opinion or race was totally untrue. He confirmed that on or about 23 November 2009, he received an email from Mr Mdaka, together with attachments which contained the recommendation of the regional select committee on the recruitment of two Senior Litigator posts for Durban and Pietermaritzburg. Because it was close to the end of the year for the respondent, he knew immediately that the earliest period at which the second round of interviews could be held was in mid-February of 2010. He read Mr Mdaka's covering email on 26 November 2009 but did not open and read the attached recommendation and CVs because this would have been premature. He merely placed the bundle of documents he had received in his drawer without reading and scrutinising the recommendation. It was in July 2010 that he received an email query from the CEO regarding the recruitment process of Senior Litigator posts by the Applicant. It was thereafter that he first opened and read the recommendation with its attachments to find out who the applicant was. By then it was the end of the following year, 2010, or early in 2011. At the time he received the recommendation from Mr Mdaka, the respondent had no budgetary issues preventing the applicant's appointment. The reason the applicant's and Mr Mngadi's recruitment was not proceeded with was because he knew about the two-and-a-half month delay.

[48] He testified that on receiving the recommendation and CVs he did not do anything. There was nothing for him to sign, because he had to pass all the CVs of all the candidates interviewed by the selection panel to the second round interview panel. The regional office mistakenly included provision in the recommendation report for him to sign his approval or disapproval of the selection panel's recommendation. He testified as to the origin, the

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composition and the importance of the next round of interviews. He stated that the second panel, the National panel, was not a rubber-stamp of the first panel in that it also had to satisfy itself from all the applicants who were interviewed, that is, including those who may have not been recommended for further interviews, who it wanted to interview.

[49] He intended setting up the second round interviews the following year. These could not be held before mid-February 2010, because Mlambo JP was on recess and January was the executives' busiest period at the beginning of the last quarter of the financial year when they took stock of coverage under the Business Plan, held their Management Executive Committee meeting at the end of the month, and prepared for the Board meeting in February.

[50] He first heard the applicant's name when his complaint was received in July 2010, but did not know his political views. He had no views of his own on ARVs besides what he read in the media, which was that the roll-out seems to have contained the pandemic facing the country. The applicant's political views played no part in the matter. Neither he nor Ms Vedalankar were aware of these because he did not open the email attachments. The reason the posts were frozen had nothing to do with the applicant's position on ARVs and he was not discriminated against on this basis. He did not immediately abort the applicant's recruitment on receiving the CVs and recommendation.

[51] At the end of 2009 when the Treasury released its budget allocation letter, the respondent learned that expected funding for OSD phase 1 was not included in its budget, despite promises. At its meeting with the respondent in January 2010 the Department confirmed it would provide this funding. Ms Vedalankar's letters to the Department in March and April 2010 showed that at about that time the executives began to deliberate intensively on the possibility that the Department would not fulfil its financial commitments. They immediately realised that the over R23 million shortfall could not be accommodated with minor cuts and that it would impact on staffing and limit coverage at courts, as Ms Vedalankar's April letter mentioned.

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[52] To his mind recruitment of Senior Litigators was not an urgent consideration. There was a real possibility that the respondent would not get the money. He did not think filling the posts appropriate so he decided to delay this until clarity around the funding issues was obtained. There was no need for him to inform anyone. The reason he did not inform the Justice Centre Executives that Senior Litigator posts might be cut was that he did not want to create panic. He had an informal discussion with Mr Mdaka in March or April 2010 and told him of the delay, saying they needed to wait to see how the financials turn out. Mr Mdaka did not tell him then that two candidates had been recommended.

[53] On 29 July 2010, Ms Vedalankar enquired about the applicant's letter to her. He informed her and Ms Clark that he had delayed the recruitment in view of the financial uncertainty, because he did not think it prudent to fill the post while the respondent faced a funding shortfall. Ms Vedalankar then advised that they rather take the decision to freeze the posts so that the recruitment process did not hang in the air. She felt it appropriate to freeze the posts. He concurred. Ms Clark agreed. He then informed the applicant and instructed Mr Mdaka to send regret letters to all applicants. Since Senior Litigator posts are at grade LP10, section 8.2.2 (b) of the Approval Framework empowers him and Ms Vedalankar to abolish such posts between them. He must agree and she has final approval. Mr Mngadi was definitely not told in April or May 2010 that the Senior Litigator recruitment had been cancelled, because the posts were not frozen until July. If such a statement was made to Mr Mngadi, it did not come from him.

[54] Nothing in the Recruitment code prevents the holding of second round interviews. All CVs had to be sent to the second round panel. It would look at all four CVs and consider whether anyone besides a recommended candidate would be interviewed again. It was free to interview whoever it wanted. Previously the second round interview panel did not support a recommendation. It often came to a contrary recommendation. All Senior Litigators had been interviewed twice. The second panel had sat three times. It had interviewed all candidates interviewed by the selection panels again.

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After the second round interview panel makes its recommendation, the ROE decides on the appointment with the NOE and CEO.

[55] He said that he wrote the 'Report to Board' of November 2011. The reason he told the Board that recruitment challenges prevented the filling of the Senior Litigator posts, and not budgetary constraints as alleged to the applicant and to court, was because when he wrote this he was aware that three posts had been vacant for a long period since end of 2007 until frozen in July 2010. They had failed to attract suitable candidates. There was no guarantee that the second panel would have accepted the applicant. Had the second panel sat, he would have had serious problems with the recommendation of the applicant for four reasons. He did not meet the minimum requirements; he had not actively represented clients in the High Court in the previous three to four years; he didn't see any mention in his CV that his Supreme Court of Appeal and Constitutional Court cases had been reported, so assumed he had not practised in those courts; and the weight of his experience was civil whereas the major part of the respondent's services were criminal defences and it wanted Senior Litigators to handle criminal appeals. He could only speculate why the applicant had been shortlisted in the first place.

[56] There had been no demand for a Senior Litigator in the Northern Cape, so they had invited other regions to motivate why they needed such a post. The LSTC approved the transfer of the Kimberley post to Mthatha. He was aware that in giving the Eastern Cape permission to proceed with the recruitment, they were still under financial constraints. He knew that while the Eastern Cape could continue, it would still have to come to his desk, and if funding was not resolved he would delay the process until certainty was obtained. He saw the recruitment as facilitative, so that once the funding issue was resolved they would not have to start again. After the LSTC resolved to recommend transferring the Kimberley post to Mthatha, Ms Vedalankar's approval was needed. They met and she said she would think about it. He supported it, but she did not. They discussed it again. He was unable to persuade her. She finally decided she was not happy. She did not agree. So the transfer was aborted in early July 2010. He knew of no record of Ms

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Vedalankar's rejection of its decision to transfer the Kimberley Senior Litigator budget to Mthatha. The decision to cancel the Mthatha Senior Litigator recruitment had nothing to do with budget considerations. He verbally instructed the Eastern Cape ROE that the Mthatha Senior Litigator recruitment process had to stop. The Eastern Cape selection panel never signed the recommendation and that is why it was never received by the national office.

[57] His email to COO Mr Makokoane on 15 July 2010 was never supposed to be an exhaustive list of posts to be frozen. The cuts he proposed did not result in the respondent acquiring the budget needed to cater for the shortfall. All he did was slow down the recruitment process. His intention was to convey to the Board and stakeholders that the impact of cutting lower court posts would be very significant, because these practitioners take the majority of cases, so the cuts would seriously affect delivery. The lower criminal court practitioner posts are critical posts. No posts are more important than they are. The reason these lower court positions, not High Court positions, are critical posts, is that they are at the coalface, and High Court is a minor part of the workload. Senior Litigator posts are more to assist other practitioners. They are nice to have but can be done without in tough times. Regarding Parliament's concern that all critical posts be filled, this did not apply to the respondent, but only to the Department of Justice and Constitutional Development.

[58] He said that when the government launched the South African National AIDS Council, Ms Vedalankar had been appointed to it. She then delegated the position to him. They later discontinued with it. That is how he thinks his name had got onto the email group. The test for legal aid funding was not based on ideologies but whether a substantial injustice would result. The respondent's funding of the Boeremag defence was evidence of this. The respondent could not be expected to employ the applicant in view of his charges that its officers had lied about the circumstances in which his recruitment had been aborted.

Evaluation

[59] The applicant has brought his claim under section 6 (1) of the EEA. It provides:

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

[60] Section 6 (1) of the EEA has a resemblence to section 9 (3) of the Constitution Act which proves that:

'The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth'.

[61] When paraphrased, the applicant's complaint is that he was not accorded equal treatment which he would ordinarily be entitled to[4] in the processing of his application for a Senior Litigator's post. He said that he was unfairly discriminated against by the respondent. Discrimination or differentiation, to employ a neutral descriptive term, lies at the very heart of equality jurisprudence in general and of the section 9[5] right or rights in particular[6]. In the case of South African Police Service v Solidarity obo Barnard [7] Court sketched out the applicable legal framework within which the principles of equality apply in South Africa and had the following, inter alia, to say:

'[28] Our constitutional democracy is founded on explicit values. Chief of these, for present purposes, are human dignity and the achievement of equality in a non-racial, non-sexist society under the rule of law. The foremost provision in our equality guarantee is that everyone is equal before the law and is entitled to equal protection and benefit of the law. But, unlike other constitutions, ours was designed to do more than record or confer formal equality.

[29] At the point of transition, two decades ago, our society was divided and unequal along the adamant lines of race, gender and class. Beyond these

[4] In terms of section 9 (1) of the Constitution of the Republic of South Africa Act, 1996, (the Constitution Act).
[55] Of the Constitution Act.
[6] See paragraph 23 in the case of *Prinsloo v Van der Linde and Another* 1997 (3) SA 1012 at 1024.
[7] [2014] ZACC 23 handed down on 2 September 2014.

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plain strictures there were indeed other markers of exclusion and oppression, some of which our Constitution lists[8]. So, plainly, it has a transformative mission. It hopes to have us re-imagine power relations within society. In so many words, it enjoins us to take active steps to achieve substantive equality, particularly for those who were disadvantaged by past unfair discrimination. This was and continues to be necessary because, whilst our society has done well to equalise opportunities for social progress, past disadvantage still abounds.

[30] Our quest to achieve equality must occur within the discipline of our Constitution. Measures that are directed at remedying past discrimination must be formulated with due care not to invade unduly the dignity of all concerned. We must remain vigilant that remedial measures under the Constitution are not an end in themselves. They are not meant to be punitive nor retaliatory[9]. Their ultimate goal is to urge us on towards a more equal and fair society that hopefully is non-racial, non-sexist and socially inclusive.

[31] We must be careful that the steps taken to promote substantive equality do not unwittingly infringe the dignity of other individuals – especially those who were themselves previously disadvantaged. The scope of this "visionary and inclusive constitutional structure"[10] was stated in *Fourie*:

> '[T]he founders committed themselves to a conception of our nationhood that was both very wide and very inclusive. It was because the majority of South Africans had experienced the humiliating legal effect of repressive colonial conceptions of race and gender that they determined that henceforth the role of the law would be different for all South Africans. Having themselves experienced the indignity and pain of legally regulated subordination, and the injustice of exclusion and humiliation through law, the majority committed this country to particularly generous constitutional protections for all South Africans'.[11]'

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[8] *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others* 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) at para 76.
[9] *Minister of Finance and Another v Van Heerden* 2004 (6) SA 121 (CC); 2004 (11) BCLR 1125 (CC) (*Van Heerden*) at para 43.
[10] *Fourie and Another v Minister of Home Affairs and Others* 2005 (3) SA 429 (SCA); 2005 (3) BCLR 241 (SCA) at para 25.
[11] Id at para 9.

[62] Commenting on the steps taken to promote substantive equality, the Court proceeded to say that remedial measures must be implemented in a way that advances the position of people who have suffered past discrimination. Equally, such measures must not unduly invade the human dignity of those affected by them, if we are truly to achieve a non-racial, non-sexist and socially inclusive society. It pointed out that restitution measures, important as they are, cannot do all the work to advance social equity. A socially inclusive society idealised by the Constitution is a function of a good democratic state, for the one part, and the individual and collective agency of its citizenry, for the other. Our state must direct reasonable public resources to achieve substantive equality for full and equal enjoyment of all rights and freedoms.[12]

[63] In respect of the Employment Equity Act, which the applicant relies on, the Court said that the mission of the Act is diverse. For now, its important objects are to give effect to the constitutional guarantees of equality; to eliminate unfair discrimination at the workplace; and to ensure implementation of employment equity to redress the effects of past discrimination in order to achieve a diverse workforce representative of our people. The Act expressly prohibits unfair discrimination.

[64] As a point of diparture the present case is not one where there was evidence of remedial measures that had to be implemented so as to promote substantive equality to advance the position of people who suffered past discrimination. Therefore, the concessions which were made at the Constitutional Court on behalf of Ms Barnard[13] which then shaped the nature of the enquiry do not, in my view, find application in the present matter. If my understanding of the Barnard decision of the Concourt is correct, then the determination of the issue at hand as well as the controlling law should still be the one outlined in *Harksen v Lane and Others*[14]which the Supreme Court of Appeal in the Barnard decision paraphrased in the following terms:

[12] See paras 32 and 33.
[13] See para 52 of the judgment.
[14] 1997 (11) BCLR 1489 (CC)

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'The starting point for enquiries of the kind under consideration is to determine whether the conduct complained of constitutes discrimination and, if so, to proceed to determine whether it is unfair.'

[65] The applicant accordingly carried the burden to prove the existence of the discrimination he complained of[15]. Should he be successful, the discrimination is then presumed to be unfair and the respondent has then to rebut the presumption. For purposes of this matter, conscience, belief and political opinion are the grounds on which the case of the applicant can possibly be premised. The applicant testified that he was an acutely unpopular and widely reviled leading dissident activist in the most politically inflamed and morally polarised domestic policy dispute in the democratic era, the AIDS treatment controversy. He said that he had ignited this with the draft of a book he had written, *Debating AZT*, later published under the subtitle *Mbeki and the AIDS drug controversy.* The applicant testified that he was certain that his deeply unpopular minority political engagement in the controversy would be found out with a simple Google search on his name, he disclosed it in his CV submitted in support of his application for the post, and in a Personal and Political History handed in at the interview.

[66] It must now be ascertained whether a failure by the respondent to appoint the applicant to a Senior Litigator position was due to him being an acutely unpopular and widely reviled leading dissident activist on the AIDS treatment controversy. The respondent's denials of the alleged discriminatory practice were described by the applicant as nothing short of a pretext for prohibited discrimination. In some employment discrimination cases in which an issue of pretext arises the respondent often provides all sorts of seemingly legitimate reasons to justify its behaviour. The applicant may fight to discredit these justifications and may prove that the employer acted based on discriminatory and impermissible motive. However, the applicant will rarely, if ever, ferret out any sort of 'smoking gun' or affirmative evidence demonstrating discrimination

[15] See Kadiaka v Amalgamated Beverage Industries (1999) 20 *ILJ* 373 (LC) para 34 and Germishuys v Upington Municipality [2001] 3 BLLR 345 (LC) at para 77.

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by the employer.[16] The question facing triers of facts in discrimination cases is often both sensitive and difficult to discern. Thus, creating an inference that the employer lied can give rise to the extremely important inference that the employer lied for a particular reason such as to cover up a discriminatory purpose.[17] Such are the contentions that have been made by the applicant in this matter.

[67] In this matter the applicant had to surmount an arduous task of discharging the onus resting on him through circumstantial evidence. Circumstantial evidence, it must however, be noted, does not always carry less evidential weight than direct evidence.[18] The applicant could not produce any direct evidence that Mr Nair knew that he was an acutely unpopular and widely reviled leading dissident activist on the AIDS treatment controversy. Relying on circumstantial evidence the applicant submitted that the Court should find that Mr Nair read not only the email accompanying the recommendation but also his CV as forming part of the bundle of documents submitted to him by Mr Mdaka. The applicant pointed out a number of facts and circumstances in the case of the respondent to suggest that Mr Nair was not generous with the truth and therefore that the respondent's version was a pretext which was given by an employer who acted based on discriminatory and impermissible motive.

[68] In his pleaded case and in his initial approach at trial in court, the applicant attributed discriminatory acts against him, on the part of Mr Nair, Ms Clark, Ms Vedalankar and Mlambo JP, the Chairman of the Board. He later exonerated all but Mr Nair, blaming the respondent for not supplying him timeously with the information he had sought from it.

[69] On 14 April 2010, the applicant telephoned Ms Clark for information about the state of affairs of his application. He would have introduced himself to her during that telephone call. He accepted her response that she had not heard of him before and knew nothing of the pending recruitment process as she

[16] See *Reeves v Sanderson Plumbing Products Inc*, 530 US 133, 140 (2000) which relied on *U. S. Postal Serv. Bd of Governors v Aikens*, 460 U. S. 711, 716 (1983).
[17] *Reeves* supra.
[18] See in this regard *Cloete v Birch* 1993 (2) PH F17 (E).

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undertook to enquire further. On 12 July 2010, the applicant wrote to Ms Vedalankar enquiring when his appointment might be finalised and on or about 29 July 2010 Ms Vedalankar emailed Mr Nair about it saying that she was not sure what was happening with the senior litigator appointments but that they needed to finalise the process and advise the persons interviewed of the outcome. From those discussions and correspondence it could be concluded as a probability that neither Ms Clark nor Ms Vedalankar knew of the applicant, at that stage, his belief that he was an acutely unpopular and widely reviled leading dissident activist notwithstanding. Other than from reading his CV, the applicant has also not suggested that Mr Nair knew of him. I conclude therefore, based on Mr Nair's evidence that, with the exception of possibly having read the CV of the applicant, Mr Nair did not know of the applicant.

[70] Mr Nair denied having read the CVs which came with the e mail from Mr Mdaka. While this evidence was challenged by cross examination, it was left intact as Mr Nair was not shaken but remained adamant on it.

[71] He said that because it was close to the end of the year, he knew immediately that the earliest period at which the second round of interviews could be held was in mid-February of 2010. Reading the attached recommendation and CVs would be premature. He merely placed the bundle of documents he had received in his drawer without reading and scrutinising the recommendation. Mr Nair's version must be seen against the nature of the work done by him. He was based at the National office. He would receive recruitment documents from all nine provinces in South Africa for processing and further transmission. He did not just deal with recruitment documents only. He received and worked with various reports and he generated some reports. Essentially and because of his position, he dealt with numerous documents at different times. He received the email from Mr Mdaka as part of the routine correspondence that would come to his office. There is no suggestion at all that there was something unusual or out of the ordinary which would attract his curiosity to the bundle with the email, such that I should find that he probably read the applicant's CV. Upon receipt of these documents he knew what was to be

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done with them at a particular period. From February to July 2010 Mr Nair was then pre-occupied with a deficient budget of the respondent until he received an email of 29 July 2010 from Ms Vedalankar enquiring about the applicant. I hold therefore that the applicant has not succeeded in showing that Mr Nair probably read his CV at around the time of its receipt.

[72] Without reading the CV of the applicant and without having prior knowledge of him, Mr Nair could not possibly have aborted the recruitment of the applicant by discriminating him on the basis of the applicant being an acutely unpopular and widely reviled leading dissident activist on the AIDS treatment controversy. It must follow that the applicant has not shown that he was meted with any different treatment than was given to the recommended candidates for Durban and Mthatha. In my view, the defence raised by the respondent is not a pretext for a discriminatory and impermissible motive. Accordingly the presumption of unfair discrimination does not arise. On this basis alone the claim of the applicant must fail.

[73] There was also the issue of Mr Nair having to sign in support of or at variance with the recommendation. The applicant made a big issue of this matter. I see no reason why. Mr Nair was still to sit as a panellist in the second level interview. It made nonsense of the process if he had to prejudge the issues by confirming or disagreeing with the recommendation. If he signed, he would have to recuse himself from the next step. The provision for signing made sense where there was to be no further interviews and was probably designed for the single interview processes.

[74] While the applicant attacked the second stage interview, he did not suggest that it was a violation of Section 6 (1) of the EEA. The applicant also attacked the various acts of Mr Nair, Ms Clark and Ms Vedalankar in failing to have him appointed. The basis of that attack was never laid as it was never suggested that it also fell within the purview of section 6 (1) of the EEA. It was the choice of the applicant not to seek to review the decision of the respondent in not appointing him. The applicant contended that the senior litigator position was a critical position. How critical these posts were must have depended on different circumstances in various regions of the respondent. In Kimberly for

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instance the post was made redundant. There would have to be evidence to demonstrate in a particular area the extent of a high need for a senior litigator and no such evidence was adduced in this case.

[75] In the circumstances, and having reflected on the law and justice of this matter on the issue of costs, the following order will issue:

1. The application is dismissed.

2. The applicant is to pay the costs thereof.

_____

Cele J

Judge of the Labour Court of South Africa.

LABOUR COURT

APPEARANCES:

1. For the applicant: In person

2. For the respondent: Adv.P.Mokoena SC and Adv. T.Machaba

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2. The applicant is to pay the costs thereof.

LABOUR COURT

Cele J

Judge of the Labour Court of South Africa.

APPEARANCES:

1. For the applicant: In person

2. For the respondent: Adv.P.Mokoena SC and Adv. T.Machaba

REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Not Reportable

CASE NO: D529/11

In the matter between

ANTHONY ROBIN BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

Heard: In chambers

Delivered: 27 November 2014

Summary: Application for leave to appeal – matter concerns a claim based on unfair discrimination under section 6 (1) of the Employment Equity Act – was a failure to appoint him to the post of Senior Litigator unfair discrimination on prohibited grounds namely, his conscience, belief or political opinion – whether applicant has shown reasonable prospects of another court reaching a conclusion materially different from one reached by this court – no prospects - application dismissed.

JUDGMENT

CELE J

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Introduction

[1] Twelve grounds of appeal have been outlined and expatiated upon by the applicant in his application for leave to appeal against a final decision of this court dated 18 September 2014. The applicant further seeks to be granted leave to lead further evidence. The respondent did not oppose this application.

[2] In his introductory note to the application the applicant articulates a difficulty he experienced in obtaining a transcript of the trial. This court had no reason to order one of the litigants before it, the respondent, to supply the applicant with a copy of the trial record free of charge.

[3] In summary, the pleaded case of the applicant when seen against his final version was that, on learning of applicant's identity, Mr Nair exercised his prerogative not to agree with the applicant's appointment by aborting his recruitment by camouflaging the true reason for such refusal as lack of funding.

[4] Through circumstantial evidence the applicant had to prove the allegation that he was unfairly discriminated upon by the respondent[1]. The amendment to section 11 which the applicant refers to in the application for leave to appeal came into effect after all evidence had been led, closing submissions had been made and the judgment was reserved for consideration. The amendment is clearly not retrospective.

[5] The applicant has not succeeded in showing that the Labour Appeal Court is likely to reach a conclusion materially different from the one this court reached in this matter, with particular reference to paragraphs 68 to 72 of the judgment sought to appeal against. In my view, these findings constitute the critical and decisive findings on which the allegations of unfair discrimination depended. To the extent that the onus of proof might be said to have lied on the respondent as contended by the applicant, evidence showed on a balance of probabilities that the respondent discharged the same and such evidence on alleged

[1] In terms of section 11 of the Employment Equity Act number 55 of 1998, the Act.

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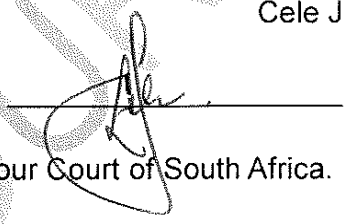
discrimination evinced that the applicant's version was a mere speculation. I consider that the further elaborate submissions of the applicant do not take the matter any further.

[6] The result is that:

1. The application for leave to appeal and to lead further evidence is dismissed.
2. This application was unopposed and so no costs order is made.

Cele J



Judge of the Labour Court of South Africa.

Appearances

For the applicant: in person

For the respondent: Adv. P.Mokoena SC and Adv. T.Machaba

LABOUR COURT

HELD IN
GEHOU IN (DURBAN

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ANTHONY ROBIN BRINK

APPEL
APPEL

versus/teen

LEGAL AID SOUTH AFRICA

RESPON

ATTORNEYS/PROKUREURS:

APPELLANT
APPELLANT ..... RESPONDENT .....

ADVOCATE/ADVOKAAT:

APPELLANT
APPELLANT ..... RESPONDENT .....

NATURE OF THE APPLICATION
AARD VAN DIE AANSOEK ..... PETITION

SET DOWN FOR HEARING ON
TE ROLLE GEPLAAS VIR VERHOOR 18/2/2015

Coram: Wallis JP, Davis and Sutherland JJA

Order: 1. The petition for leave to appeal is dismissed with no order as to costs.

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Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

Enquiry

3 messages

[redacted]@iafrica.com> 30 April 2021 at 10:11
To: anthonybrink.sa@gmail.com
Cc: [redacted]@mweb.co.za>

Dear Sir,

Case No. 9408/2011, Pietermaritzburg: Andre Grundler v Body Corporate of Lot 2371 et al, was handled by you instructed by Premrajh & Associates.

Do you have contact with Premrajh. We have a similar case. Or are you able to handle with another attorney. Advise.

[redacted]
Professional Accountants
[redacted]

[redacted]
ACIS FCIBM
Managing Director

Tel: 011 [redacted]; 011 [redacted]
Cell: 081 [redacted] / 079 [redacted]
Email: [redacted]@iafrica.com
Web: www.[redacted].co.za
[redacted] Street, Sandown, 2196
P.O. Box [redacted] Braamfontein, 2017

CHARTERED SECRETARIES AND CHARTERED ACCOUNTANTS

Anthony Brink <anthonybrink.sa@gmail.com> 30 April 2021 at 11:51
To: [redacted]@iafrica.com>
Cc: [redacted]@mweb.co.za>

Dear [redacted]
Thanks a lot for contacting me, but for a number of reasons I'm just not placed to take the case on.
I've no contact with that attorney; it was a single brief from him a decade ago.
Since the principles applicable were covered in the judgment, any capable and motivated legal team should be able to handle the matter.
All the best
Anthony Brink
[Quoted text hidden]

R1

KwaZulu-Natal Law Society

Regulatory Affairs Department

200 Hoosen Haffejee Street
P.O. BOX 1454
PIETERMARITZBURG 3200
DX 25
FAX: (033) 345 3028
TELEPHONE: (033) 345 1304
E-mail: complaints@lawsoc.co.za
Website: http://www.lawsoc.co.za

YOUR REF:

OUR REF : NH/SH/C4/412017

15 March 2017

Mr [redacted]
[redacted]
[redacted]
[redacted]
PIETERMARITZBURG
3201

Dear Sir

COMPLAINT AGAINST [redacted] & ASSOCIATES

Your complaint affidavit refers.

I enclose a copy of [redacted] & Associates' letter dated 24 February 2017 to which is attached his affidavit being the reply to your complaint. In order for the Complaints Committee to consider the matter properly as to whether there has been any unprofessional conduct will you please, by 3 April 2017, let me have any written comments **on affidavit** which you may wish to make on any aspect of the reply which you dispute.

Yours faithfully

MRS N HARRIPERSAD
DEPUTY MANAGER REGULATORY AFFAIRS

Please ensure that all correspondence addressed to our offices reflects our reference number. Failure to do so may result in your correspondence not being attended to timeously.

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Legal Aid South Africa

Your voice. For justice.

Independent and within reach.

Our Ref: P Hundermark/complaint/KZN

29 De Beer Street
Braamfontein
Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

30 November 2020

Mrs N Harripersad

Senior Legal Official

Disciplinary Department

Legal Practice Council

1st Floor,

200 Hoosen Haffejee Street

Pietermaritzburg

3201

Per e-mail: nadirah@lpc.org.za

COMPLAINT BY LEGAL AID SOUTH AFRICA (MR T V MTATI) AGAINST ADVOCATE A BRINK

Introduction

1. We acknowledge receipt of the letter dated 25 August 2020, which according to our records, only came to our attention on 28 September 2020.
2. We further acknowledge the email communication on the same date which gave a timeline to respond to the said letter by not later than 2 October 2020 as well as your further letter advising that you will assume that we no longer intend to pursue the complaint unless we respond by 19 November 2020.

Background

3. This matter has a long history and we were taken aback by the contents of the letter and the timelines given to respond and we find the contents thereof very concerning considering the delays from both the Society of Advocates of KwaZulu Natal and LPC.

4. Firstly, it is important to state the following-

   4.1. The complaint was lodged on 24 November 2015. This is more than 4 years and eight months before the date of your letter.

   4.2. The former CEO, Ms Vedalankar, in her capacity as the accounting officer authorised the lodging of the complaint.

   4.3. Thembile Mtati was authorised by the former CEO to lodge the complaint against Brink. Mr Mtati was acting in his official capacity as the duly authorised Executive responsible for corporate legal services at the time. He was competent to lodge the complaint at the time and thus the confirmation of his resignation is irrelevant.

   4.4. As the current CEO, having considered the original complaint, I have ratified the decision to proceed with the complaint as the accounting officer of Legal Aid South Africa for which I have the necessary authority in terms of Section 16 of the Legal Aid SA Act 39 of 2014 read with the Delegation of Authority. I also hereby delegate to our current Chief Legal Executive, Patrick Robert Hundermark, to attend to this complaint and any further issues that may arise.

5. Secondly, since lodging the complaint, various follows up were made with no positive outcomes. We have on record more than 15 calls and more than 19 emails which were dispatched to the Disciplinary Committee of the Society of Advocates Kwazulu Natal. We do not attach same to prevent unnecessary prolix but will provide the necessary records, if and when required.

6. Thirdly, section 116(1) of the Legal Practice Act 28 of 2014 requires that the Council takes over all obligations of its predecessor, and states

" Any enquiry in terms of any law repealed by this Act into the alleged unprofessional or dishonourable or unworthy conduct of a legal practitioner which has not been concluded at the date referred to in section 120(4), must be referred to the Council which must treat the matter as it deems appropriate"

7. We note for the record that the LPC took over this matter in September 2018 ? Feb 2020 in terms of the above provision but this was only communicated to Legal Aid SA when your letter was received on 28 September 2020, some 2 years later. It was imperative that both parties should have been informed of the referral in September 2018 and the decision taken in January 2020 that all investigations would commence *de novo*. Only Adv Brink was advised of this decision to the exclusion of Legal Aid SA.

Response to your request for Information

8. ***Ad Confirmation of Mr Mtati's resignation***: I confirm that Mr Mtati has resigned and is no longer in our employment since 31 March 2019.

9. ***Ad Does the current CEO of Legal Aid South Africa want to continue with the complaint. If yes, then who will be the complainant on behalf of Legal Aid SA:*** I confirm that Legal Aid SA is continuing with the complaint and as advised previously I have duly authorised the current Chief Legal Executive, Mr Patrick Hundermark, to act on behalf of the organisation.

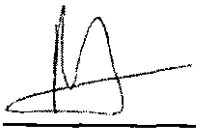
10. ***If the current Legal South Africa CEO wants to continue with the complaint, a copy of the resolution by the Legal Aid South Africa Board authorising the new CEO to resubmit the complaint to the Legal Practice Council***: As the CEO of Legal Aid SA, I do not require a resolution of the Board and this power falls within my authority as the accounting officer of the organisation. However, to remove any doubt, this matter and the response was referred to the Board for noting at its meeting held on 28 November 2020. The Board re-iterated my authority to deal with the matter and supported my decision to continue with this complaint.

Conclusion

11. I, as the CEO of Legal Aid SA confirm that the complaint must proceed to finality and request that same is attended to expeditiously.

12. In the 5 years since the complaint has been lodged, Adv Brink has, apart from what appears from the Labour Court record submitted with the original complaint continued to make incontrovertibly egregious and scandalous attacks against the Judiciary and Officials of Legal Aid SA in various matters before the Courts. The context in which these ongoing statements are made manifestly impugn the integrity of the judiciary as an institution and thus this matter requires the urgent attention of the LPC.

Yours Faithfully



Mantiti Kola

Chief Executive Officer

Legal Aid SA

Advocate A Brink
E-mail: anthonybrink.sa@gmail.com

YOUR REF:

OUR REF : NH/mg

Please Quote Our Reference

18 February 2021

Dear Advocate Brink

RE: COMPLAINT BY MR T V MTATI obo LEGAL AID SOUTH AFRICA

We refer to your letter dated 12 January 2021 and respond herewith as follows to your request for further information in so far as it relates to the Legal Practice Council: -

1. Ad paragraph 1 (page 2)

   We enclose herewith a copy of Ms Kola's letter dated 30 November 2020 and advise that the copy received is clear and legible.

2. Ad paragraph 2 (page 3)

   We confirm having received from the Society of Advocates your eight (8) complaints against the erstwhile LASA Board Chairperson, Mlambo J.P.

   We further confirm that we have copies of your following letters in our possession: -

   a) A copy of your letter addressed to Mossop SC dated 3 July 2017; and

   b) A copy of your e-mail addressed to Mossop SC dated 26 July 2017.

   We confirm that we are not in possession of your complaint to the JSC against Waglay J.P.

3. Ad paragraph 2 (page 7)

   1) As requested, please find attached a copy of the complaint by Mr T V Mtati obo the Legal Aid Board.

2) We enclose herewith a copy of Ms Kola's letter referred to above in para 1 in which she has supplemented the original complaint.

3) Attached herewith our correspondence between LASA and the LPC, relating to the revival of the complaint.

4) A copy of the report to the Bar Council by Advocate R G Mossop SC dated 17 February 2017 and 14 September 2017.

5) & 7) We enclose a copy of the LPC's minutes dated 7 March 2020.

6) The following items were considered by the LPC at its meeting held on 7 March 2020: -

i) The complaint by T V Mtati obo LASA dated 24 November 2015.

ii) Your letter dated 3 July 2017.

iii) The Society of Advocate's report – September 2019.

iv) Reports to the Bar Council by Advocate R G Mossop SC dated 17 February 2017 and 14 September 2017.

8) Please find attached a copy of our minutes from the LPC KZN Provincial Council stating that "all matter referred by the Society of Advocates must be investigated afresh as the latter ceased to have *locus standi* from 1 November 2018".

Yours faithfully

MRS N HARRIPERSAD
SENIOR LEGAL OFFICER - DISCIPLINARY DEPARTMENT

Encl.

R3

Legal Aid South Africa

Your voice. For justice.

Independent and within reach.

Our Ref: P Hundermark/complaint/KZN

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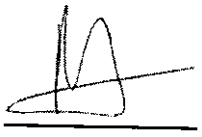

Mantiti Kola

Chief Executive Officer

Legal Aid SA

R3

24 November 2015

29 De Beer Street
Braamfontein
Johannesburg 2017
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Braamfontein 2017
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R B G Choudree SC

The Society of Advocates of KwaZulu Natal

3rd Floor, Durban Club Place

Durban,

KwaZulu-Natal, 4001

Email: kznbar@law.co.za;

Dear Choudree SC,

RE: COMPLAINT ON THE UNPROFESSIONAL CONDUCT OF ADVOCATE ANTHONY ROBIN BRINK

Please find the complaint which is self-explanatory.

Yours Faithfully,

Thembile Mtati

Attorney of Legal Aid South Africa

R3

THEMBILE VUYO MTATI

COMPLAINANT

AND

ANTHONY ROBIN BRINK

RESPONDENT

WRITTEN DECLARATION UNDER OATH INSTITUTING A COMPLAINT AGAINST ADVOCATE ANTHONY ROBIN BRINK

I, the undersigned

THEMBILE VUYO MTATI,

do hereby make oath and state as follows:-

1.

1.1 I am an adult male Attorney employed as the Corporate Services Executive by Legal Aid South Africa with its offices situated at Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg, and I am duly authorised to depose to this affidavit.

1.2 The facts contained herein fall within my personal knowledge and are both true and correct, except where it appears otherwise from the context.

2.

2.1. The purpose of this affidavit is to institute a complaint against Advocate Anthony Robin Brink, a major male Advocate of the High Court of South Africa currently employed in the capacity of an acting magistrate in Eshowe Magistrates Court.

1524

2.2. This complaint is brought in terms of section 7 (2) of the Admission of Advocates Act 74 of 1964 as amended.

2.3 The nature of the complaint deals with the manner in which Advocate Brink conducts his litigation, unwarranted, abusive and defamatory statements made against members of the bench including his colleagues and other officials.

2.4. The statements referred to above relate to, among others, Judge President Mlambo of North and South Gauteng Divisions of High Court, Judge President Waglay of the Labour Court Division and Judge Cele of the Labour Court.

2.5. I deal below with the specific causes of my complaint but deem it appropriate to start with the background of the matter.

3.

BCKGROUND

3.1 Advocate Brink applied for a vacant position of a Senior Litigator in our Pietermaritzburg Justice Centre. He was interviewed and recommended to proceed to the second round of interviews which was to be held at Johannesburg consisting of Senior Executives of Legal Aid SA including the Chairperson of the Board of Legal Aid SA, Judge President D. Mlambo.

3.2. The second round of interviews was not proceeded with as a result of budget uncertainties facing the organisation at the time. The budget uncertainties led to ultimate freezing of all recruitment of the Senior Litigators. All candidates recommended for the second round of interviews were duly informed of the position.

4.

ADVOCATE BRINK'S CASE

4.1. Advocate Brink wrote a number of letters through electronic mail enquiring of progress on his recruitment which were responded to. He then resorted to sending requests in terms of Promotion of Access to Information Act (PAIA) seeking certain information.

4.2. Every response given in terms of PAIA led to another until when Advocate Brink instituted action against Legal Aid SA in the Durban Labour Court. His case was briefly that he was not appointed to the position of Senior Litigator because of his stance against provision of anti-retrovirals and race. The statement of claim, which forms part of the complaint to which I will revert, is attached marked **"TVM1"**. All other annexures are separately binded and annexed to this affidavit.

4.3. Advocate Brink's claim was dismissed with costs at the Labour Court, Durban by Honourable Judge Cele. Application for Leave to Appeal was also dismissed. Advocate Brink filed a petition which was also dismissed.

4.4. Towards the end of September 2015, we received an urgent application from Advocate Brink seeking to interdict the Taxing Master from finalising taxation of the Labour Court case to enable us to get our *allocator.* In this urgent application, Advocate Brink made further unwarranted allegations against the Honourable Judge President Waglay.

4.5. The urgent application was dismissed with costs accompanied by concerns by Honourable Judge Pillay about the conduct of Advocate Brink.

4.6. Advocate Brink also sends his concerns about his non-appointment to the Office of the Public Protector, South African Human Rights Commission, Portfolio Committee on Justice and Constitutional Development (as it then was) and to every other person he thinks might agree with his view that he was discriminated against.

4.7. Without unnecessarily compounding this affidavit with all annexures, below we make reference to specific letters, record of the trial and pleadings and all these will be separately attached to this complaint. The annexures only are just over 2000 pages.

5.

COMPLAINT

5.1. It is my submission that the conduct of Advocate Brink is not befitting of an officer of the Court more so to act as a Magistrate. The language used is unprofessional, the manner he relates to colleagues and Judges requires sanction. Below is an extract of statements and language used against fellow Advocates, Judges, Attorneys and other professionals.

UNFOUNDED DEFAMATORY, DEMEANING AND INSULTING ALLEGATIONS MADE BY ADVOCATE BRINK IN HIS STATEMENT OF CASE AT THE LABOUR COURT UNDER CASE D529/11 AGAINST MLAMBO JP AND VEDALANKAR.

5.2. Advocate Brink, in his statement of case before the Labour Court, made several defamatory, derogatory, demeaning and insulting allegations including the following:

Paragraph Number	Excerpts
Par 4	*The applicant will show on a conspectus of the open facts weighed with the probabilities that following his selection and recommendation by the professional selection panel for appointment as Senior Litigator, Pietermaritzburg, the respondent's chairperson Dunstan Mlambo and Chief Executive*

	*Officer Vidhu Vedalankar, motivated by unlawful political(alternatively racial) prejudice aborted his appointment off the record and without announcing the fact; and that many months later, under pressure to account, Mlambo and Vedalankar attempted to camouflage their direct discrimination against the applicant on prohibited grounds by concocting and advancing a false cover story for it based on a fake financial justification- unsupported and contradicted by the respondent's business record; conflicting with Vedalankar's CEO report for 2009/10; conflicting with deliberately misleading statements Vedalankar made on two occasions to the Portfolio Committee on Justice and Constitutional Development (**as it then was**); and contradicting the express wishes of the Minister of Justice and Constitutional Development known to both Mlambo and Vedalankar.*
Par 5	*The Applicant will further show that in furtherance of Mlambo's and Vedalankar's scheme to cover up their unfair discrimination against the Applicant, Mlambo lied to the Minister on several scores in a "Confidential report to him Re: Adv Anthony Brink, which lies Mlambo repeated to the Chairperson of the Portfolio Committee and by so doing Mlambo deliberately misled the respondent's executive authority and Parliament in order to (a) allay their further enquiries into the complaints against the Respondent, which he had copied to the Minister and Committee Chairperson, of unfair discrimination against him and unlawful refusal to surrender material records duly requested under the Promotion of Access to Information Act and (b) to put them off discovering the falsity of the bogus financial justification for their abortion of the Applicant's recruitment dishonestly advanced by Vedalankar to the applicant and by Mlambo to the Minister and to the Committee chairperson."*
Par 31	*Because Vedalankar informed Nair that she did not agree with the applicant's recruitment as a political (or racial) undesirable, Nair never 'signed off' the Motivation to record 'RECOMMENDATION ACCEPTED' by him of the professional selection panel's selection and recommendation of the applicant for appointment, and the recruitment process to appoint the applicant was thus brought to an end.*
Par 33	*The first strategy adopted by Mlambo and Vedalankar to conceal from the applicant their unfair discrimination against him was deliberate inaction and silence.*
Par 34	*The reason Mlambo and Vedalankar opted for this initial simple strategy was because:*

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	(a) *it entailed the minimum possible risk that the applicant would discover their unfair discrimination against him; and,* (b) *they bargained that after being kept waiting in the dark for several months, the applicant would lose hope, conclude that he had been unsuccessful at his interview, give up pursuing the post for which he had applied, and withdraw himself from the recruitment process of his own accord, thus achieving Mlambo's and Vedalankar's objectives in shutting him out and concealing their decision to do so."*
Par 55	*Appreciating (a) that the applicant had not been put off by Mlambo's and Vedalankar's inaction and silence strategy, and that half a year after his interview he was still agitating for the finalisation of his appointment, and (b) that Mlambo's and Vedalankar's scheme to covertly discriminate against the applicant therefore needed elaboration, the complication posed by Mngadi's stalled internal promotion to the Durban Senior Litigator post was disposed of by Vedalankar's and Mlambo's decision to finally abort his appointment too; and in April/May 2010 Mngadi was notified seemingly by Brijlal by e-mail that the respondent had decided not to fill the post for which he had applied, alternatively that the respondent had decided not to fill its remaining vacant Senior Litigator posts, no reason given him (Mngadi assumed some 'internal restructuring' had taken place)."*

RECORD OF THE PROCEEDINGS UNDER CASE NUMBER: 529/11

5.3. It is worth mentioning that at the hearing of his case and under cross examination (**it is on record**), Advocate Brink withdrew all the defamatory, derogatory, demeaning, and insulting allegations against Mlambo JP and Vedalankar. His only explanation was that he was at all times under the impression that both Mlambo JP and V. Vedalankar were involved and had now (**in court**) realised that it was only Brian Nair(National Operations Executive).

5.4. For the purpose of convenience, I refer to the following relevant pages and paragraphs of the record:-

Page 133 Lines 2 to 5	***Mr Du Toit*** *"Then just by the way, Judge Mlambo you say is one of the top judges in the country is the person you called a liar about 30 times?"---* ***Mr Brink*** *"This is before I discovered that Nair was abusing his office, abusing his name to convey falsehoods to Parliament and to the Minister."*
Page 137 Lines 7 to 9	***Mr Du Toit*** *"What are you saying?"* ***Mr Brink*** *"I am saying that Judge Mlambo and I mean it with absolutely no disrespect and I really rule about my misconceptions about Judge Mlambo's role in this matter."*

Page 154 Lines 5 to 14	***Mr Du Toit*** *"Okay. By the way, Mr Brink, having called Mrs Vedalankar a liar and dishonest in concocting defenses, do you really think that you could possibly be appointed in an organisation where she continues to be the chief executive officer?"---* ***Mr Brink*** *"It is my conclusion from reading her two letters to me, that they were written by Brian Nair, consequently it is my relatively late conclusion, after the case began and consequently I believe that the CEO as Judge Mlambo was, the CEO's higher office and Gormy abused by Nair to convey lies to me. Sir I hold CEO Vedalankar clear in this matter."*
Page 158 Lines 3 to 8	***Mr Du Toit*** *"But you have said that it was the chief executive officer who was involved in this plot"---* ***Mr Brink*** *"But I thought so; I thought so, because of her letters to me. But later I discovered I faulted and I am sure it will be confirmed, but she did not write those letters, so I was misled."*
Page 159 Lines 1 to 24.	***Mr Brink*** *"In the early days for the better, before one discover that Judge Mlambo was innocent in this thing and I have since formed the conclusion that Vedalankar too. You see, I had her letters to me, full of lies. Judge Mlambo's report to the Minister, full of lies, what could I conclude, it was a nightmare, it was very shocking, so I had to draw what conclusion but that they are the authors, but now I know they are not the authors."---* ***Mr Du Toit*** *"Well let us clarify exactly what you are withdrawing now. You are saying firstly that Ms. Vedalankar not plot or struck your appointment, is that what you are saying?"---* ***Mr Brink*** *"This is my current conclusion in the fullness of the evidence."---* ***Mr Du Toit*** *"And you are saying that Judge Mlambo did not plot to obstruct your appointment"---* ***Mr Brink*** *"Correct"* ***Mr Du Toit*** *"That is right, okay. So she is out of the picture, she did not discriminate against you that is what you say now?"---* ***Mr Brink*** *"That is the look of it to me now, neither (**I think it meant Nair**) may well surprise us all and say, no, no, I neatly discussed it with Vedalankar and she agreed. He may tell us that, I do not know, but the look of it on the evidence before me, that I have assembled, the look of it now, that Vedalankar was not involved, not involved."*

Pages 172(Lines 1-25) Continue at Lines 1 to 2 page 173.	***Mr Du Toit*** *"But you now say this falls away?"---* ***Mr Brink*** *"It does. I hold her clear, unless Mr Nair implicates her, but we will have to see, but I have no knowledge here."---* ***Mr Du Toit*** *"And then in paragraph 17, you again say that the chairperson of the respondent's board, Dunstan Mlambo, supported and was partied to the decisions took, to abort the applicant's recruitment and thereafter to camouflage the true reason for doing so, under the cover of a lying alibi"---* ***Mr Brink*** *"That is right, and that conclusion was founded on my receipt from the chairperson, the portfolio of Judge Mlambo's updated report to parliament, a pack of lies, including the manifestly untruthful alibi."---* ***Mr Du Toit*** *"And this falls away as well?"---* ***Mr Brink*** *"Oh yes"---* *"Then"---(intervene)* *"Just about everything falls away in my first claim."* ***Mr Du Toit.*** *"I see---"* ***Mr Brink***- *"Ja"* ***Mr Du Toit*** *"Well, let's just get it clear, because I think it is necessary both for your sake and for the sake of Judge Mlambo at least to get this absolutely clear"---* ***Mr Brink*** *"Yes, yes"---* ***Mr Du Toit*** *"And then in paragraph 18, we refer to the grounds, Mlambo and Vedalankar rejected was because you were politically undesirable and well, if there was no plot, then this must fall away as well."---* ***Mr Brink*** *"Right. It falls away to the extent that they were not the actors, but Nair was."---* ***Mr Du Toit*** *"I see, okay. And then in 19 Mlambo's and Vedalankar's decision to reject the applicant's appointment on prohibited ground was taken, communicated to Nair behind the scenes and off the record and accordingly no record exists. Now if there was no decision by them, then it could not have been communicated."--* ***Mr Brink*** *"It is quite obvious."--*
Page 173 Lines 3 to 8	***Mr Du Toit*** *"Okay, so that falls away. I just want to make a note of these allegations that now are…Withdrawn?"---* ***Mr Brink*** *"Withdrawn, yes.* ***Mr Du Toit*** *"Then in paragraph 20 you have here at page 44, Mlambo neither consulted nor informed the rest of the board of his decision jointly, Ms. Vedalankar's discriminate, does that also fall away?"* ***Mr Brink*** *"Ja"*
Page 188 Lines 15 to 20	***Mr Du Toit*** *"Now why would Ms. Vedalankar who you have exonerated already from any participation and any unfair discrimination against you why would she tell you a lie?"--*

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	Mr Brink *"Because she did not write the letter; I am pretty sure she did not write the letter. I could be surprised by this, but I do not think she wrote the letter; I think it was Nair who wrote the letter"*
Pages 205-206 Lines 21 to line 11 on page 206.	***Mr Du Toit*** *"Then you go on in paragraph 32 at page 49, not only had you expand on this, you say, Nair having been instructed as it were by Vedalankar, informed by Vedalankar, he then deliberately does not do something, because he is now carrying out his CEO's instruction. He is astute not to note, because appreciating the decision to abort was unlawful, so in other words he is now part of the plot, construed by Ms. Vedalankar."---* ***Mr Brink*** *"This is my conclusion, because I am many miles away, I am on the other end of the world and I am peacefully developing about bits and pieces that the American Right is taller than these things, bits and pieces. And the accumulation evidence, someone required quite recently as profoundly shifted my understanding of what actually happened in this matter. Now, sir, you can hammer away that my early statement declare but I tell you it was based on numerous fundamental misconceptions to which I had been led by Nair."*
Page 213 Lines 14 to 16	***Mr Du Toit*** *"But she could not have joined Vedalankar's scheme, because you already accepted that there was no scheme by Vedalankar."---* ***Mr Brink*** *"Correct."---*
Page 214 Line 4 to 5	***Mr Du Toit*** *"Paragraph 48 stands, paragraph 49 stands, 50 stands, 51 stands, save that is no longer Mlambo and Vedalankar's scheme, but Nair's"*
Page 215 Lines 18 to 20	***Mr Du Toit*** *"And then the heading, page 57, the scheme, that is also wrong."---* ***Mr Brink*** *"Ja, it was wrong to the extent that Mlambo and Vedalankar are named the Nair scheme."*
Page 219 Lines 23 to 24	***Mr Du Toit*** *"Right, and in paragraph 90, or 89 you attribute lies to Ms. Vedalankar."---* ***Mr Brink*** *"Ja."*
Page 220 Lines 1 to 2	***Mr Du Toit*** *"That must fall away?---* ***Mr Brink*** *"No you must reallocate the blame to Nair."*
Page 221 Lines 5 to 8	***Mr Du Toit*** *"In paragraph 99 on page 68, you describe to Judge Mlambo a desire to obstruct your efforts under the Promotional Access to Information Act. Do you stand by those contentions?"---* ***Mr Brink*** *"You know I do not."* ----------
Page 221 Lines 22 to 24	***Mr Du Toit*** *"You really are challenging, I asked you, are you still attributing falsity against Judge Mlambo?"---*

HT

	Mr Brink *"I have said it a hundred times, that I am not doing so, I am not attributing."*
Page 223 Lines 8 to 10	***Mr Brink*** *"Really, I have no quarrel with Judge Mlambo, I think he was misled, he was given a bad picture and that is the start of this irritable e-mail on the…"*
Page 224 Lines 3 to 5	***Mr Du Toit*** *"Now, in paragraph 108, page 73, you have accused Judge Mlambo of a blatant lie."---* ***Mr Brink*** *"Ja, it is Nair's blatant lie, it is so easy to show and indeed it is going to be retracted."*
Page 227 Lines 11 to 13	***Mr Brink*** *"I do not, do you want me to repeat bluntly, I do not think Judge Mlambo is a liar, and that is it, I used to I mean what else was there to conclude from the secret report?"*
Page 228 Lines 22 to 24	***Mr Du Toit*** *"You slandered a senior judge in a most disgraceful way."---* ***Mr Brink*** *"I agree, I agree, M'Lord, I agree and I tell you it was inadvertent and I regret it."*
Page 231 Lines 10 to 14	***Mr Du Toit*** *"You make the allegation that Judge Mlambo made a false allegation concerning the knowledge of the executives; do you attribute falsity against Judge Mlambo?"* ***Mr Brink*** *"I do not. But the rest of the paragraph is absolutely sound, to the actual extent that it is Nair's false allegation via Judge Mlambo."*
Page 241 Lines 23 to 24	***Mr Brink*** *"Well, we got over and over, but you know I hold Judge Mlambo clear…"*
Page 242 Lines11 to 13	***Mr Brink*** *"No. The financial cover story and the report were fake, but Judge Mlambo is not the author of that lie."*
Page 264 Lines 10 to 11 and lines 19 to 22.	***Mr Du Toit*** *"Paragraph 265, 122 and I imagine you do not attribute falsity to Judge Mlambo."---* ***Mr Brink*** *"That is right"* --- ***Mr Du Toit*** *"Well, just to save us the agony of going through the rest, can we assume that for the rest you have assume I think, exonerated Judge Mlambo and Mrs Vedalankar from any accusation of dishonesty and discrimination?"---* ***Mr Brink*** *"Yes"*
Page 269 Lines 1 to 3	***Mr Du Toit*** *"And you have attributed delinquency to persons involved in this matter."---* ***Mr Brink*** *"Correct. My scope was broaden, it was broader then than it is now. Because I thought Vedalankar was involved and so on."*

UNFOUNDED DEFAMATORY, DEMEANING AND INSULTING ALLEGATIONS MADE BY ADVOCATE BRINK IN HIS PETITION FOR LEAVE TO APPEAL TO LABOUR APPEAL COURT UNDER CASE D529/11 AGAINST MLAMBO JP, CELE J, V. VEDALAKAR, AND B. NAIR.

Par 2	*"This is an extraordinarily serious matter with colossal implications extending way beyond my personal interest in its resolution. It concerns the personal and professional integrity of a sitting judge president, formerly of this court, and that of the most senior management executives of a major public entity. I speak of the perversion of separate Ministerial and Parliamentary enquiries by dint of multiple, objectively demonstrable lies, and different lies told to me, to the LASA Board, to the SAHRC, and to court(different lies told in the pleadings and interlocutory affidavits, and then at trial), and of the gross breakdown of proper corporate governance and the rule of law at LASA, all of which the trial judge looked past in his seemingly clear and definitive, but in fact deplorably inattentive, glib, crude and perfunctory judgement, riddled with the most basic legal and factual misdirection, omissions and non-sequiturs, and characterized by his failures over and over again to consider the radical contradictions and the ludicrously improbable, manifestly untruthful, and objectively contradicted evidence of LASA's single witness at trial, National Operations Executive Brian Nair"*
Par 3	*"I'll advert later in this affidavit to the capital misconduct and massive and pervasive corruption to which I allude here, as well as to the judge's own gravely prejudicial misconduct in the case that thwarted a full and proper ventilation of the issues that I looked to him and trusted him to try."*
Par 4	*"In his refusal the judge didn't treat the clear-cut new evidence surfaced after trial showing unequivocally that Nair had lied to him on oath in two respects. To the judge, Nair's categorically proven repeated mendacity in court made no difference to his assessment of the credibility of his evidence."*
Par 5	*"The judge elliptically conceded his fundamental legal misdirection, identified in my application, that in deciding the case he'd misallocated the final onus of proof, which he'd placed on me instead of on LASA. He then sought to avoid the fatal ramifications of the radical error by two means:"*
Par 6	*"The judge's response was to silently look away."*
Par 7	*"And second by asserting that even if I was right about the incidence of onus, irrespective of where it lay his decision wouldn't have been any different-notwithstanding that LASA relied on the mere say-so of its single witness Nair, unsupported by any records, and indeed contradicted by them, a witness the judge acknowledged I'd shown to have been 'not generous with the truth' on numerous scores. Instead of considering the implications of this for Nair's credibility as a witness, he took him at his word, mechanically reciting his evidence as gospel, without any endeavor to assay its veracity. It seems to have been*

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	inconceivable to the judge that such a high public officer could be a practiced, confident, spontaneously inventive, unctuous, bare-faced, abject liar."
Par 8	*"In his refusal, the judge failed utterly to address and deal with the rest of my attack on his judgment in my application, in which I demonstrated all his basic errors, too many to recite here, including the huge prejudice he caused me by refusing to allow me to cross-examine LASA's officers I'd subpoenaed for the purpose, thus depriving me of some major artillery I'd lined up; and he swept the whole thing-all 59 pages and 323 paragraphs-off the table in a single dismissive paragraph."*
Par 22	*"Nonetheless, in view of Nair's unbelievably foolish dissimulation at trial-he was a pathetic liar- contradicted by the documentary record and by LASA's pleaded case, that LASA's entry-level lower criminal court public defender posts were critical, and not its top professional echelon specialist Senior Litigator posts, I showed at trial and called the judge's attention in my heads to all the manifold evidence that Senior Litigator posts are indeed critical, and that the bottom-rung lower criminal court posts can't possibly be and aren't. The judge evidently didn't read that far."*
Par 24	*"And what they unequivocally show is that she* ***(Vedalankar)*** *lied to me in October 2010 about the reason my appointment was aborted. That is, to camouflage the true reason, she'd fed me a false cover-story, as very smooth and convincing as it sounded…The lies then multiplied chaotically in all directions in the classic dynamic of a disintegrating cover-up."*
Par 25	*"At trial I mentioned my conclusions from the evidence I'd found of this that Nair had ghost-written Vedalankar's letters, and Board chairperson Mlambo JP's subsequent false reports to the Minister and to Parliament to pervert their enquiries into my complaints, and for this reason I held them both clear.* ***(my underlining and this must be read with paragraph 13 above)****. But in his evidence, Nair denied any hand in Vedalankar's letters to me; and although in evidence he ultimately admitted writing Mlambo JP's reports, he could 'only assume the Judge personally wrote that' (having first insinuated it might have been Vedalankar and then again) i.e. that Mlambo JP had amplified the report for the Minister before sending it to Parliament, with its further lies added about LASA's compliance with my three PAIA requests, and the nature and scale of my claim I'd just referred to the CCMA for conciliation. (It's quite clear Nair lied to the judge about this, and that he, not Mlambo JP, amplified the report with these additional lies.) That is to say, after I'd told the Judge that I held them clear (more about this below), Nair went on to directly implicate Vedalankar and Mlambo JP in lying to me, to the Minister and to Parliament."*
Par 26	*"True to the Minister's assurance, the OSD money was indeed included in the mid-term budget in October 2010, as Vedalankar informed the Portfolio Committee on the 12th-but not me, from who she*

	concealed this hotly material fact in her letter to me six days later, the better to maintain her pretense that LASA was still too skint to hire me."
Par 28	*"In her second letter to me in January 2011, illegally refusing my second PAIA request testing her financial alibi for the abortion of my appointment, not only did Vedalankar conceal this payment from me, she positively lied to me, again and again, that LASA was still in a financial jam---------- (And Vedalankar, Nair and other national management executives took home magnificent, unprecedented bonuses.)*
Par 29	*"In March 2011, responding to my third PAIA application, Vedalankar, Nair and Clark all confirmed the lying budgetary excuse on affidavit. That is, LASA's CEO, NOE, and HRE all swore the lie was true."*
Par 30	*"Even though it was already obviously false, the financial alibi was inadequate to cover and explain Nair's inaction in finalizing my appointment in the initial three-and-a-half month period between the dates he received my recommendation on 26 November 2009 and when the OSD uncertainty arose on 10 March 2010. So to patch the gap he concocted another story-later twice retracted by him on affidavit as an obvious error, and consequently nowhere pleaded or alleged in any interlocutory affidavit, then contradicted with a different story he told the judge. Who didn't think to note any of this dismal shambles in his judgment"*
Par 31	*"In his reports written for Mlambo JP to sign and submit to pervert the ministerial and parliamentary enquiries I'd initiated, Nair now claimed that what initially held up the alleged next step in my recruitment-a so-called second round interview-was difficulty encountered in coordinating a date suitable for all members of this panel to meet. Another smooth and ostensibly convincing story. After I exposed and refuted it as an outright lie in my original statement of claim, Nair retracted it on oath as 'an error...palpably an error' that Mlambo JP had made. Except that Nair himself was the author of this brazen lie to the Minister and to Parliament; it was not Mlambo JP's 'error'.*
Par 32	*"But Mlambo JP knew full well that this new story was false, because as a member of this so-called second round interview panel he'd never been contacted for a date. At trial Nair claimed, quite absurdly, that he never opened the recommendation and CV email attachments that he'd specially telephoned for, not until more than a year later, when he did so out of simple curiosity. (The judge found this perfectly credible, even though Nair had told a different story on affidavit before trial, which destructive contradiction I pressed in my heads. The judge didn't note this, and accepted and believed Nair's childishly obvious, self-contradicted new lie told in court, which had featured nowhere in any correspondence, report, pleading or affidavit before trial, all justifying LASA's failure to proceed with my appointment. This was one of the fundamental failures of the judgment.)*
Par 33	*"So, contrary to his lie told to the Minister and Parliament in Mlambo JP's name about this, there was no difficulty fixing a date for it because*

	no attempt was ever made to do so…So Mlambo JP knew full well that the report, which Nair had written for him to sign and to give the Minister and the chairperson of the Portfolio Committee to put down my complaints and pervert their independent enquiries contained in a flagrant lie about why no steps were taken to finalise my recruitment in the first few months before the OSD uncertainty arose several months after my selection."
Par 34	*"Mlambo JP also knew full well that the budgetary justification Vedalankar had fed me to cover the true reason my appointment had been aborted, which Nair repeated in the reports he drew for him, was another lie, because he'd chaired the meeting of the Board in July 2010 at which it approved executive management's proposal to trim costs by temporarily freezing recruitment to some lower criminal court posts only…Deceptively silent about it, Vedalankar repeatedly falsely reported LASA's Strategic Plan 2009/12 to have been implemented and completed as regards the employment of Senior Litigators in her CEO report for 2011/12 to the Minister and the National Assembly."*
Par 35	*"My discoveries about Nair's authorship led me to inform the judge on the first day that I held them clear, and that I held Nair solely responsible for the lies these documents contained."(**my underlining and this statement must be read with paragraph 13 which he withdrew all allegations against Mlambo JP and Vedalankar**)*
Par 36	*"In his chambers on the second day, when I told the judge I still had a lot more evidence to lead, having already blown the fake budgetary pretext to pieces on the facts set out in my Timeline, he warned me: 'I don't want to tell you how to run your case, but don't make the mistake of throwing your net so far out that you catch more than you can bring in.' These were his exact words, spoken off the record, but contemporaneously recorded that evening in emailed reports of the court day to my family and friends. I understood the judge was giving me an indication, as we lawyers say, and a severe indication at that, namely to limit the spray of my case, and keep it fixed on Nair alone, as I'd indicated I intended doing at commencement, and not present any further evidence implicating the big fish; for if I dared make the dangerous mistake of doing so, this would be too much, and it would doom my prospects of succeeding in his court with my claim. It seemed clear to me that the judge wanted the evidence contained. He did not want me to lead more evidence beyond the smaller fry."*
Par 38	*"After I'd discredited the budgetary pretext fed me for not appointing me, and then the initial delay pretext fed to the Minister and Parliament for not immediately proceeding with my appointment, Nair cooked up and fed the Board two brand-new, totally different stories to justify his failure to finalise my appointment at Pietermaritzburg, an internal candidate's promotion at Durban, and another internal candidate's transfer to Mthatha, namely 'recruitment challenges' encountered in filling the posts, and alleged uncertainty that the six incumbent Senior Litigators were up to professional scratch. Both lies. Waffling feebly,*

	Nair was unable to support his first new story and radically changed his second, before which it was repeatedly exposed as a lie by LASA's records."
Par 40	*"It was a risible new lie, sharply contradicting LASA's pleaded and sworn version before trial, unsupported by any record, not alleged in any affidavit or pleading, and contradicted by LASA's recruitment/vacancy statistics for June 2010. But Nair's new lie in evidence made no impression on the judge, as said, he didn't mention it."*
Par 41	*"The LAC is also certain to treat an important aspect of the case, entirely disregarded by the judge (notwithstanding his fine grasp of the specifics of public service appointment procedure displayed in his Baxter judgment), namely Nair's incompetent and illegal so-called second round interview scheme for Senior Litigator candidates- unauthorised by the Board's Recruitment code and inconsistent with its Approval Framework. Unlike the judge, the LAC is certain to remark on the disgraceful breakdown of lawful recruitment procedure at LASA, in blatant disregard of the Board's said regulatory instruments which precisely govern this, and on Mlambo JP's participation in a grossly irregular, prejudicial, and unlawful recruitment practice."*
Par 42	*"His lies proliferating in court as he was trying to shore up his collapsing story about why he never signed his approval (or disapproval) of my recommendation by the selection panel as the Approval Framework required of him, and as provided at the foot of the document (with its legal nonsense, at his instance, about a further interview), Nair claimed in court that he didn't have to-a lie repeatedly and squarely contradicted by LASA's pleadings and interlocutory affidavits. The judge didn't note this; again the LAC is sure to."*
Par 43	*"Unlike the judge who accepted and believed it, the LAC is also sure to find stupidly ridiculous and manifestly false Nair's evidence, building on his just-mentioned lie, but again explicitly contradicted by LASA's pleadings and interlocutory affidavits…"*
Par 44	*"The LAC is certain to find Nair's evidence to have been obviously untruthful just about whenever he opened his mouth…It failed to do so, because its various explanations given were obviously untrue. So what?"*
Par 47	*"I did not expect the judge to be nodding off during the afternoon sessions, and finally claiming perversely, but revealing to his negative animus, that I ought rather to have taken LASA's abortion of my appointment on 'review'. As if I shouldn't have come bothering him to deliver the justice I craved, and had laboured bitterly year after year before trial to achieve, in the face of every obstacle corruptly placed in my way, viciously defamed all the while, contemptuously redoubled when I complained of it. In a matter of such enormous importance, and with so much on the line extending far beyond my personal interest in the case, and with so much fact to traverse and complex argument to present, including relevant, applicable international labour law*

	jurisprudence mentioned in my opening address, I did not expect the judge to prescribe that our heads shouldn't exceed a manifestly insufficient 'fifteen to twenty pages' suggesting that he'd already made up his mind to toss my case. I did not expect that five months after I filed my replying argument the judge hadn't troubled himself to read our heads, and was hearing our oral argument without having prepared for it ten months after the evidence, and relying only on his fading and defective memory of it presented in the course of a nine-day trial concluded the best part of a year earlier. In giving judgment, I did not expect the judge to misstate my case, omitting critical facts and including irrelevant matter, and portray as maladroit and whimsical my precisely considered tactical and strategic decisions taken, wrongly forced by him on the record and improperly pressed by him off it. I did not expect the judge to sugar Nair's lies for his judgment, by stretching and exaggerating them to help them go down. And that besides getting the final onus wrong, he should also have placed on me an impossible, pivotal, evidential onus I very obviously didn't bear and couldn't possibly have discharged."
Par 48	*"Professional and personal networks and loyalties being what they are in the real world, I appreciated from the outset that I was up against very long odds, and that notwithstanding his oath of office it would be no easy thing for a judge to impeach the conduct of his own (then) court president, and now president of the biggest, most important high court in the country, and thereby trigger a gargantuan scandal. But the truth must be out, and justice needs doing fearlessly."*
Par 49	*"An unattended splinter, so easily removed, has led to a widespread gangrene at the top of a major public entity, generally perceived to be the jewel in the crown of the Justice cluster, and a model of good governance."*
Par 50	*"Having regard to the profusion of contradictory lies that have spewed out of LASA, including to the highest authorities, in the cover-up following the illegal abortion of my appointment, to get away with and escape accountability for it-successfully so far, like Nixon nearly did after Watergate-your lordships can expect absolutely any lie from LASA in its answering papers, any subterfuge to persuade you to shut down further enquiry into this matter by refusing this petition. Since in-house attorney Mtati acting on instruction can offer you no more than hearsay about the case, and hasn't stinted at committing the most grotesque, poisonous perjury on affidavit on Nair's instructions to prejudice me in the court's eyes before trial, and since the judge found Nair to have been untruthful under oath on any number of scores, I respectfully entreat your lordships to require CEO Vedalankar, and not the former discreditable and unreliable persons, to depose to any answering affidavit under LAC rule 4(6) in regard to why I should be denied leave to argue my case before three senior, experienced, and attentive judges of appeal…The prospect of being jailed may chill any*

	inclination she might have to repeat under oath to your lordships the lies she told me."

UNFOUNDED DEFAMATORY, DEMEANING AND INSULTING ALLEGATIONS MADE BY ADVOCATE BRINK IN HIS SUPPORTING AFFIDAVIT TO URGENT APPLICATION AT PIETERMARITZBURG HIGH COURT UNDER CASE 12977/15 AGAINST WAGLAY JP,

Par 14	*"...(ii) my covering letters to Labour Appeal Court judges Davis and Sutherland JJA, falsely implicated by the order in the perversion of my petition..."*
Par 21	*"I've been busy with my draft complaint to the JSC for months- it's quite intricate, and includes similar fact evidence of the surreptitious perversion, by dint of multiple easily demonstrable lies, of separate Ministerial and Parliamentary enquiries I'd caused to be initiated; the subornation of perjury; and other grave corruption, all clearly shown..."*
Par 22	*"...(ii) that the order is a demonstrable fake..."*
ANNEXURE A: LETTER DATED 7 SEPTEMBER 2015 TO REGISTRAR OF THE LABOUR COURT, THULANI VILAKAZI WHICH FORMS PART OF ADVOCATE BRINK'S SUPPORTING AFFIDAVIT	
Par 32	*"The document is a forgery."*
Par 5- page 2	*"The registrar of the Labour Appeal Court in Johannesburg isn't your superior; and doesn't have the power to issue orders on judicial decisions made in your court. Had my petition been decided in Durban, as alleged in Phophi's order, it would have been signed and issued by you, and not by him in Johannesburg."*
Par 6, page 3	*"Davis and Sutherland JJA wouldn't have associated themselves with such a dull contradictory order. Nor with the pitifully defective logic in its second paragraph."*
Par 11- page 4	*"...according to the fake order..."*
Par 13, page 4	*"...phoney dismissal order..."*
Par 14- page 4	*"(Unlike Cele J, who shamelessly admitted in his chambers before the argument of my case a whole ten months after the two-week trial-set down for three days since my main heads alone were a phone-book thick bristling with 857 footnotes to the 1037 pages of bundled trial documents and to LASA's dense, lengthy pleadings (tactically elicited) and several interlocutory affidavits contradicted again and again by its single trial witness, but which argument he cut to a few hours, saying he just wanted our leading points-that he hadn't troubled to prepare himself in this manner; as might have been expected of a highly paid judge trying an exceptionally serious case involving fundamental rights*

	inclination she might have to repeat under oath to your lordships the lies she told me."

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	violations, millions of rand in damages, and serious maladministration, abuse of power and pervasive corruption in the top echelons of a major public entity headed by a Judge President. It explains his abysmal judgment whitewashing it a further three-and-a-half months later, disgracefully enabling the guilty to evade accountability and to walk away smirking.)
Par 20- page 6	*"Contrary to the false implication of the order that the dismissal of my petition was the unanimous decision of the three named judges-and Phophi later repeated this lie to me expressly in a letter ghost-written for him (Annexure 'L'), his second paragraph perfectly irrelevant, his third a flourish of dismally obtuse contradiction and illogic…You've got the file in your office; you can see for yourself."*
Par 21, page 6	*"To pre-empt any tampering with the real evidence of judicial corruption that the file closes…"*
Par 23, page 6	*"Contrary to the false information uttered in the forged order; calculated to defraud me into abandoning my pursuit of justice after years of struggle-with criminal prosecution and terrible sanctions in store for those who brazenly lied to the Justice Portfolio Committee in the National Assembly about my matter, and perjured themselves in the Labour Court and in the Labour Appeal Court-Davis and Sutherland JJA weren't involved in rejecting my petition, and their names were abused in the perpetration of the fraud on me without their knowledge. Ask them, they'll tell you."*
Par 25, page 7	*"He then covered up his malicious obstruction of my right to appeal (if, under LAC rule 4(8), at least two designated appeal judges thought I was in with a chance), firstly by ordering his registrar in Johannesburg to issue a counterfeit order he'd ghost-written, pretending that he, Davis and Sutherland JJA had considered and unanimously rejected my petition in Durban on 18 February 2015, and secondly by ghost-writing a letter for the said registrar to send to me, repeating this lie and basically telling me to push off and stop asking dangerous questions threatening to blow the lid on his impeachable misconduct."*
Par 26, page 7	*"It isn't any mystery why Waglay JP intentionally violated my fundamental right to due process guaranteed by section 34 of the Constitution by blocking my access to the Labour Appeal Court to appeal and remedy the complete hash that Cele J made of my case. In a magnificent stroke of good fortune, I landed the written evidence of the stunningly dishonest improper influence that caused him to do so."*
Par 28, page 7	*"I've substantially completed drawing such a complaint regarding the perversion of my petition, identifying the other corrupt judges responsible for it and his motives, and I'll be filing it imminently."*
Par 29, page 8	*"…as the bogus order falsely implies…"*
Par 30, page 8	*"…in full knowledge that the so-called order on which it relies is a fraud, and that contrary to false appearances my case is still very much alive*

	and has yet to be properly determined on petition and then on appeal, you'll be acting improperly, in bad faith and unlawfully."
Par 31, page 8	*"...and will put this letter up with my application to demonstrate that you turned a deliberate blind eye to the true facts that I brought to your attention, and proceeded to tax a bill you well knew is not yet due."*

Having set the excerpts above and in totality looking at the tone and language used by Brink, it is my submission that he has no respect to his office and other officers of Court. He is treading on the path of demeaning, insulting and defaming any person who holds a divergent view to his own. He is quick to make conclusions that are based on his delusionary theory and without any factual basis. It is my submission that, as an officer of the court, based on his conduct, the public can be susceptible to far reaching negative implications.

Deponent

THUS SWORN AND SIGNED BEFORE ME AT JOHANNESBURG ON THIS ___ DAY OF NOVEMBER 2015. THE DEPONENT HAVING ACKNOWLEDGED TO ME THAT SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, SHE CONSIDERS THE CONTENTS THEREIN TO BE BINDING ON HER CONSCIENCE AND SHE HAS NO OBJECTION TO THE TAKING OF THE PRESCRIBED OATH.

COMMISSIONER OF OATHS

FULL NAMES :

DESIGNTION :

ADDRESS

SUID-AFRIKAANSE POLISIE
STATION COMMANDER
SOUTH AFRICAN POLICE SERVICE

"TVM 1" R3

BRINK/LASA
STATEMENT OF CLAIM
LC D529/11

R3

Copies of this statement of claim and the applicant's document bundle are available in PDF at:

www.tig.org.za/LASA username: lasa password: LASA2010

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Particularly significant is the judge's rejection of the employer's attempt to hide HIV as the cause of the dismissal by claiming that the real reason was his allergy to penicillin which he was required to administer to horses as part of his job. Concocting lawful justifications appears to be a common practice by employers and one that must be fought.

SECTION 27 statement on the Labour Court judgment in Gary Shane Allpass v Mooikloof Estates (Pty) Ltd., 16 February 2011

Camouflaging discrimination under the cloak of misconduct is one of the most insidious forms of unfair labour practices. Quick to perceive the unfairness, employees struggle to prove it. As Eagle denied that the reason for dismissing the employee was his HIV positive status, it bore the onus of proving the true reason for dismissing the employee to justify its fairness. It failed to prove that misconduct was the real reason for dismissing the employee. Eagle's management created a pattern of conduct that leads to only one reasonable conclusion: Eagle dismissed the employee on account of his HIV status. As it denied that that was its reason for the dismissal, questions of rationality and justification do not arise. In the circumstances, Eagle failed to discharge the constitutional and statutory onus of proving that the dismissal was not discriminatory.

Pillay J in Bootes v Eagle Ink Systems KZ Natal (Pty) Limited (D781/05) [2007] ZALC 52

The fact of the Watergate cover-up is not nearly as interesting as the step into making the cover-up. And when you understand the step, you understand that Richard Nixon lied.

Bob Woodward

'Surely,' Cachalia told Moerane, 'there's a letter of appointment, there's a note, there's a minute. Government does not operate like a glorified spaza shop ... In the absence of any paper trail must we just accept that [officials in the President's office] are people of standing and they will never mislead, just like [then United States secretary of state] Colin Powell never misled the security council [over Saddam Hussein's possession of weapons of mass destruction]?'

'State grilled over "secret" Zimbabwe report', *Mail & Guardian*, 26 November 2010

People with HIV must not be condemned to 'economic death' by the denial of equal opportunity in employment.

Ngcobo J (as he then was) in Hoffman v SAA (CCT17/00) [2000] ZACC 17; 2001 (1) SA 1; 2000 (11) BCLR 1235 ; [2000] 12 BLLR 1365 (CC) (28 September 2000)

Thought is not free if the expression of certain views makes it impossible to earn a living.

Bertrand Russell

The determination of quantum in relation to general damages (compensation) is a difficult one in instances involving infringement of human dignity (Ntsabo v Real Security CC [2003] 4 ILJ 2341 (LC) at 2383E-F). I do not propose to repeat what I have alluded to already concerning the outrageous and unscrupulous treatment that the applicant was subjected to at the hands of the respondent's officials. I am satisfied that the circumstances of this case justify the award of compensation that reflects a punitive element.

Ndlovu AJ in Reynhardt v University of South Africa (JS 1061/02) [2007] ZALC 96; [2008] 4 BLLR 318 (LC) (17 September 2007)

It is suggested, for instance, that there are some scientists who are 'dangerous and discredited' with whom nobody, including ourselves, should communicate or interact.

In an earlier period in human history, these would be heretics that would be burnt at the stake!

Not long ago, in our own country, people were killed, tortured, imprisoned and prohibited from being quoted in private and in public because the established authority believed that their views were dangerous and discredited.

We are now being asked to do precisely the same thing that the racist apartheid tyranny we opposed did, because, it is said, there exists a scientific view that is supported by the majority, against which dissent is prohibited.

The scientists we are supposed to put into scientific quarantine include Nobel Prize Winners, Members of Academies of Science and Emeritus Professors of various disciplines of medicine!

Scientists, in the name of science, are demanding that we should cooperate with them to freeze scientific discourse on HIV-AIDS at the specific point this discourse had reached in the West in 1984.

People who otherwise would fight very hard to defend the critically important rights of freedom of thought and speech occupy, with regard to the HIV-AIDS issue, the frontline in the campaign of intellectual intimidation and terrorism which argues that the only freedom we have is to agree with what they decree to be established scientific truths.

Some agitate for these extraordinary propositions with a religious fervour born by a degree of fanaticism, which is truly frightening.

The day may not be far off when we will, once again, see books burnt and their authors immolated by fire by those who believe that they have a duty to conduct a holy crusade against the infidels.

It is most strange that all of us seem ready to serve the cause of the fanatics by deciding to stand and wait.

President Thabo Mbeki, letter to President Bill Clinton, Prime Minister Tony Blair, Chancellor Gerhard Schröder, and UN Secretary General Kofi Annan, 3 April 2000

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY ROBIN BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

APPLICANT'S STATEMENT OF CLAIM[1]

THE PARTIES

1. The applicant is Anthony Robin Brink, 52, an advocate of the High Court of South Africa, who resides at 25 Baker Road, Prestbury, Pietermaritzburg, KwaZulu-Natal.

2. The respondent is Legal Aid South Africa, a statutory body established by the Legal Aid Act 22 of 1969, whose registered office and principle place of business is at 29 De Beer Street, Braamfontein, Johannesburg, Gauteng.

3. The respondent was previously called the Legal Aid Board, and both its Approval Framework and Recruitment 'policy and procedure' protocol, inter alia, continue to use this former appellation and its acronym 'LAB', sometimes quoted hereunder.

[1] For convenient reference, the applicant's averments in his statement of claim are footnoted where possible to relevant passages in the documents included in the applicant's trial bundle, listed in the annexed schedule. The documents referred to are identifiable from their page numbers in the schedule and bundle.

Summary Introduction

4. The applicant will show on a conspectus of the open facts weighed with the probabilities that following his selection and recommendation by a professional selection panel for appointment as Senior Litigator, Pietermaritzburg, the respondent's chairperson Dunstan Mlambo and Chief Executive Officer Vidhu Vedalankar, motivated by unlawful political (alternatively racial) prejudice aborted his appointment off the record and without announcing the fact; and that many months later, under pressure to account, Mlambo and Vedalankar attempted to camouflage their direct discrimination against the applicant on prohibited grounds by concocting and advancing a false cover story for it based on a fake financial justification – unsupported and contradicted by the respondent's business records; conflicting with Vedalankar's CEO report for 2009/10; conflicting with deliberately misleading statements Vedalankar made on two occasions to the Portfolio Committee on Justice and Constitutional Development; and contradicting the express wishes of the Minister of Justice and Constitutional Development known to both Mlambo and Vedalankar.

5. The applicant will further show that in furtherance of Mlambo's and Vedalankar's scheme to cover up their unfair discrimination against the applicant, Mlambo lied to the Minister on several scores in a 'Confidential ... Report' to him 'Re: Adv Anthony Brink', which lies Mlambo repeated to the chairperson of the Portfolio Committee; and by so doing Mlambo deliberately misled the respondent's executive authority and Parliament in order (a) to allay their further enquiries into the applicant's complaints against the respondent, which he had copied to the Minister and Committee chairperson, of unfair discrimination against him and unlawful refusal to surrender material records duly requested under the Promotion of Access to Information Act, and (b) to put them off discovering the falsity of the bogus financial justification for their abortion of the applicant's recruitment dishonestly advanced by Vedalankar to the applicant and by Mlambo to the Minister and to the Committee chairperson.

STATEMENT OF THE FACTS ON WHICH THE APPLICANT RELIES

6. The respondent's principle officers referred to herein are:

Mlambo – Chairperson of the Board of Directors

Vedalankar – Chief Executive Officer

Makokoane – Chief Operations Officer

Nair – National Operations Executive

Clark – Human Resources Executive

Hlabatau – Chief Financial Officer

Mdaka – Regional Operations Executive, KwaZulu-Natal

Brijlal – Regional Human Resources Manager, KwaZulu-Natal

7. The material facts on which the applicant relies are pleaded chronologically, with sufficient particularity to enable the respondent to reply, under the following heads:

Part	Heads	Pages	Paragraphs
1	The selection and recommendation of the applicant for appointment to the post of Senior Litigator, Pietermaritzburg, and Mlambo's and Vedalankar's abortion of his recruitment	5–8	8–21
2	The political context	8–12	22–30
3	Mlambo's and Vedalankar's initial inaction and silence strategy to conceal from the applicant their unfair discrimination against him	12–14	31–6
4	The first attempt to put the applicant off with misinformation and discouragement	14–19	37–54

5	The disposal of the first complication impeding Mlambo's and Vedalankar's scheme to prevent the applicant's appointment and conceal their unfair discrimination against him	19–21	55–61
6	The disposal of the second complication that arose to impede Mlambo's and Vedalankar's scheme to prevent the applicant's appointment and conceal their unfair discrimination against him	21–3	62–71
7	The second attempt to put the applicant off with misinformation	24–7	72–85
8	The third attempt to put the applicant off with misinformation: Mlambo's and Vedalankar's fabrication and assertion of a fake budgetary justification for aborting the applicant's appointment to camouflage their unfair discrimination against him	28–30	86–92
9	Mlambo's response to the applicant's petition to him concerning Vedalankar's plainly unlawful refusal to comply with PAIA on dishonestly invented grounds and the indications that her claim to have aborted the applicant's recruitment for financial reasons was untrue	30–43	93–127
10	The facts and contradictions exposing and refuting Mlambo's and Vedalankar's fake budgetary justification for aborting the applicant's appointment	43–62	128–86
11	The alleged 'freezing' of Senior Litigator posts off the record	63–6	187–98

12	The respondent's 'second interview' and 'final approval' claims	66–71	199–211
13	The legal prohibition of unfair discrimination against the applicant as an 'applicant for employment'	71–2	212–5
14	The applicant's legitimate expectation of being appointed	72–4	216–25
15	The facts supporting an award of damages to the applicant for patrimonial loss	74–5	226–9
16	The facts, including aggravating factors, supporting an award of general compensation to the applicant	75–92	230–79
17	Referral to the CCMA within the prescribed time	92–3	280–5
18	Referral to the Labour Court within a reasonable time after the issue of a certificate of outcome by the CCMA	93–5	286–95

The selection and recommendation of the applicant for appointment to the post of Senior Litigator, Pietermaritzburg, and Mlambo's and Vedalankar's abortion of his recruitment

8. In August 2009, and repeatedly prior to this, the respondent advertised in South African law journals and newspapers inviting suitably qualified and experienced lawyers to apply for its vacant Senior Litigator posts at its Pietermaritzburg and Durban Justice Centres.[2]

9. The posts, along with other identical posts at Justice Centres at seats of the High Court, now nearly all filled, were created by the respondent in 2007 at the instance of the then Parliamentary Select Committee on Safety and Security at a meeting with the respondent's chairperson Dunstan Mlambo and CEO Vidhu Vedalankar on 30 May that

[2] Pages 43–5; page 133, paragraph 109; and page 537 of the applicant's document bundle.

year, at which several members of the Committee conveyed their concern about public perceptions of inadequate professional expertise among the respondent's legal staff.[3]

10. The applicant applied for the Pietermaritzburg Senior Litigator post; was shortlisted for it; was interviewed on 12 November 2009 along with other candidates by a duly delegated professional selection panel[4] of senior attorneys and advocates to assess his suitability for appointment; and was selected and recommended by the panel for appointment.[5]

11. Interviews for the vacant Senior Litigator post at the Durban Justice Centre were held on the same day, and an internal candidate from that office, High Court Unit head Bongani Mngadi, was selected for promotion to it.[6]

12. Following the applicant's successful interview for the Pietermaritzburg post, a Motivation[7] was drawn by KwaZulu-Natal Regional Operations Executive Vela Mdaka for the applicant's appointment (and for Mngadi's promotion to the Durban post); and as required by the respondent's Recruitment protocol,[8] the Motivation was duly 'signed off' by all members of the professional selection panel, including Mdaka as 'the line function executive before being forwarded to the HRE/COO/CEO/ delegated for approval'[9] – in casu, the respondent's National Operations Executive Brian Nair.[10]

13. Though a white man, the professional selection panel certified that its selection and recommendation of the applicant for appointment accorded with the respondent's Employment Equity targets.[11]

14. After the last of the professional selection panel 'signed off' the Motivation on 23 November 2009, Mdaka forwarded it to his direct superior Nair, 'the line

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[3] Pages 120–2, paragraphs 50–6.
[4] Pages 230–2, paragraph 1.2.2.
[5] Page 244, paragraph 1; and page 247, paragraph 6.
[6] Ibid.
[7] Pages 244–8. The Motivation is incorrectly dated 6 November 2009, before the interviews took place on the 12th ; and it further incorrectly states that the interviews were held on 5 November, a week earlier than they actually were.
[8] Page 234, note commencing, 'NB: Motivation has to be signed off'.
[9] Ibid.
[10] Page 217, paragraph 12; and pages 370 and 372, section 8.2.2(b).
[11] Page 248.

executive/manager responsible for the appointment of Senior Litigators',[12] for his approval in terms of the respondent's Approval Framework, subject to the agreement of CEO Vedalankar and Chief Operations Officer Jerry Makokoane.[13]

15. Notwithstanding his obligation under the Approval Framework to solicit his superior Makokoane's agreement or disagreement with the applicant's appointment, Nair did not consult him, and he was irregularly and unlawfully left out of the approval process.

16. On learning of the applicant's identity, Vedalankar exercised her prerogative not to agree with the applicant's appointment, thus aborting his recruitment.

17. Having regard to his subsequent recorded conduct in the matter, to be pleaded infra, it is probable that Vedalankar consulted the chairperson of the respondent's Board of Directors, Dunstan Mlambo, and that Mlambo supported and was party to 'the decisions we took' (his phrase in a related context) to abort the applicant's recruitment and thereafter to camouflage the true reason for doing so under cover of a lying alibi.

18. The grounds on which Mlambo and Vedalankar rejected the applicant's appointment were that in their view the applicant is a political undesirable, whose objectionable minority 'thought, belief and opinion'[14] in matters of contested public health policy, and his prominent political activity in this regard,[15] do not 'fit' with the respondent's 'organizational culture' and/or 'values' and/or 'brand' and/or one of its 'KEY' operating strategies and projects in this contested knowledge and policy arena.[16] (Or a racially undesirable white.)

19. Mlambo's and Vedalankar's decision to reject the applicant's appointment, on prohibited grounds, was taken and communicated to Nair behind the scenes and off the record and accordingly no record of it exists.[17]

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[12] Page 217, paragraph 12.
[13] Pages 370 and 372, section 8.2.2(b).
[14] Page 3, paragraphs 10–12.
[15] Ibid.
[16] Pages 453; 459–61; 462–74; and 525–36.
[17] Page 222, paragraph 35; and page 381, paragraph 14.

20. Mlambo neither consulted nor informed the rest of the Board of his decision taken jointly with Vedalankar to covertly discriminate against the applicant on prohibited grounds, to abort his recruitment, and to prevent his appointment to the respondent's critical vacant Senior Litigator post at its Pietermaritzburg Justice Centre.

21. The reason Mlambo did not inform, much less consult the Board of Directors before agreeing with Vedalankar to torpedo the applicant's successful application is because as the President of the Labour Court, and therefore fully cognizant of the basic principles of labour law in the democratic constitutional era, he well appreciated the dire unlawfulness of his and Vedalankar's violation of the applicant's rights to equality and to equal employment opportunity and of their unfair discrimination against him on prohibited grounds; and his intention in not consulting or even informing the rest of the Board was that they should not discover it.

The political context

22. At the time he applied and was interviewed, selected and recommended for the post, the applicant was engaged as a full-time researcher, writer and activist in Cape Town, working as the founder and leader of a national voluntary association and information clearing house, the Treatment Information Group, to bring government and public attention to the medical and scientific research literature demonstrating the exceptionally dangerous toxicity and clinical inefficacy of the chemical compounds AZT and nevirapine, marketed by the pharmaceutical industry as antiretroviral drugs ('ARVs'), and to dissentient minority medical and scientific opinion concerning the contemporary Western AIDS construct generally. In 1999 the applicant's comprehensive review of the medical and scientific research literature on the extreme toxicity of AZT moved then President Thabo Mbeki to order an enquiry into its safety[18] – for which drug a political action group, the Treatment Action Campaign ('TAC'), was lobbying to coerce the government to spend billions of rands on buying it from the world's then largest transnational pharmaceutical corporation GlaxoWellcome (now GlaxoSmithKline) to administer to pregnant African women and their newborn babies in public hospitals and clinics. In 2002 the applicant drew an amicus curiae application in

[18] Pages 13–4, paragraph 8; page 14, paragraph 10; pages 80–2; page 88; and pages 93–8.

support of the government's appeal to the Constitutional Court against an order won by the TAC that it provide nevirapine to women in labour and their newly born babies – in which application the applicant reported that the single clinical trial on which the TAC based its entire case had just been rejected as a worthless shambles by the US Food and Drug Administration; refuted the TAC's fervent allegations about the salvific marvels of a single baptismal dose of the drug given newborn African babies; pointed out its very high toxicity; and highlighted the high incidence of severe adverse effects reported among African babies in the said clinical drug trial, some fatal.[19]

23. For a complex of reasons, the purely medical and scientific controversy over the safety and therapeutic utility of ARVs since former President Mbeki's initial public ventilation of the issue in the National Council of Provinces on 28 October 1999 has been acutely polarized in public discourse in South Africa and has been freighted with an intense ideological, political, moral and emotive charge. And among those, predominantly of European and Asiatic ancestry but also some compliant Africans, who believe and propound with tremendous, widely shared moral enthusiasm,[20] that these drugs are modern, sophisticated, redemptive Western medicines[21] to rescue the otherwise doomed African majority from an early death caused by an explosive epidemic[22] of deadly, sexually transmitted plague among them (but not among whites, coloureds and Indians), due to their indisciplined, incontinent, violent and abusive sex lives,[23] the applicant is generally loathed for not conforming to and for scorning[24] these ludicrous, profoundly racist follies (which most whites, coloureds and Indians find very attractive) as South Africa's top AIDS denialist; ignorantly and perversely opposed to medical and scientific truth; a pernicious Lysenkoist influence on then President Thabo Mbeki, whose shared aversion to ARVs has consequently cost hundreds of thousands of African lives; a depraved moral and political reprobate; a social pariah; dishonest; mentally ill;

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[19] Pages 11–3, paragraphs 5.1–7.
[20] Pages 462–74, every page and pointedly at page 465–6, last paragraph.
[21] Page 468–9, last paragraph, sentences commencing, 'Treatment'; page 469, paragraph commencing, 'I've said'; page 472, third and fourth paragraphs commencing, 'Question: Eliza Slattery'; and page 473, penultimate and last paragraphs commencing, 'Question: I'm Michael Fleshman'.
[22] Page 465, first paragraph commencing, 'The sort of'; and page 470, first paragraph commencing, 'The third thing'.
[23] Page 466, last paragraph; page 467, first paragraph commencing, 'But there are', and last paragraph; page 468–9, last paragraph; and pages 471–2, penultimate and final paragraphs, commencing, 'Question: I work'.
[24] Page 15, paragraph 12.

evil; and even a public enemy who ought to be killed.[25] The TAC has got the applicant proscribed by the Advertising Standards Authority – banned from voicing his case against ARVs in the media, and from engaging printing works to publish his reviews and synopses of peer-reviewed research findings about them, published in the professional medical and scientific press. The Parliamentary Opposition, the Democratic Alliance, has similarly listed and anathematized the applicant as South Africa's Number One menace to the public, 'so dangerous' that the party enjoins 'the media ... to ... deny [his] dissident views publicity' and 'professional organizations to exclude [him] from positions of authority'[26] – precisely like a 'Communist' lawyer named in the Government Gazette by the apartheid regime: politically neutralized, gagged and barred from practising his profession in the courts.[27]

24. In short, for campaigning for the most unpopular cause in the democratic era, the applicant is, to his knowledge, currently the most violently detested, despised, reviled, marginalized, repressed, and isolated political dissident in South Africa.[28]

25. In contradistinction to the applicant's negative conclusions derived from his intensively researched knowledge and exhaustive published reviews[29] of the medical and scientific research literature showing AZT and nevirapine to be completely useless, gravely harmful cell poisons, especially for unborn and newly born children,[30] in South Africa nearly all African, Vedalankar subscribes to the almost universal Western consensus, established among the commercial media-consuming public by the pharmaceutical industry and its political and propaganda assets, that its said chemical merchandise is actually life-saving medicine; and she accordingly believes that 'Legal Aid SA's most significant accomplishment' (per the question put) has been that 'Legal Aid SA funded the constitutional litigation on behalf of the Treatment Action Campaign to get the government to roll out anti-retrovirals to pregnant mothers who are HIV positive to prevent the transmission of the virus from mother-to-child in all state hospitals. This case is arguably one of the most significant impact cases as it has resulted in preventing

[25] Pages 415–8; and 93–9.
[26] Page 415, part 1, first citation.
[27] Page 418, Part 3.
[28] Pages 14–5, paragraph 11; pages 93–9; and 194.
[29] Pages 80–2.
[30] Pages 11–4, paragraphs 5.1–10.

the loss of life of a large number of babies who would otherwise have contracted HIV Aids.'[31]

26. Although himself African, Mlambo uncritically subscribes to the American and European medical industrial complex's HIV-AIDS-ARV business model, promoted by the pharmaceutical industry[32] that Africans in South Africa (not whites, coloureds or Indians) are 'new[ly]'[33] riddled with deadly venereal disease and specifically that 'between the ages of 25 and 29, 40% of women are suffering from HIV and AIDS',[34] and that for this reason these Africans absolutely need to consume the extraordinarily toxic patented chemicals manufactured, marketed and sold by the Western transnational pharmaceutical industry as ARVs every day until they die. Or else they will die horrible early deaths.

27. Mlambo actually believes these things and is an active political promoter of this immensely lucrative politico-medical construct on the international stage under the mantle of human rights,[35] and he also serves 'on the Board of the policy-setting group that guides the work of the Legal Resources Centre' ('LRC')[36] – attorneys for its 'organizational client ... the Treatment Action Campaign' in the nevirapine case against the government in the High and Constitutional Courts,[37] funded by the respondent in alleged service of human rights,[38] even though the TAC is not an 'indigent person..'[39] but a multi-million rand corporation lavishly financed by foreign interests. Instructed by the TAC, the LRC acted against the applicant in the Cape High Court in 2005 in an abusive misjoinder to shut him down as the country's leading and most prominent critic of ARVs and of their professional advocates and political lobbyists. (On sight of the

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[31] Page 11, question 5 and reply.
[32] Page 471, first paragraph; and page 472, penultimate paragraph. 'BMS' is the pharmaceutical corporation Bristol-Myers Squibb. Both Merck and BMS are major producers of ARVs.
[33] Page 526.
[34] Page 469; and page 15, paragraph 14.
[35] Pages 462–74; and 526.
[36] Page 463, fifth paragraph commencing, 'And then in'.
[37] Page 464, fourth paragraph commencing, 'In 2002'.
[38] Page 11, paragraph 5.
[39] Page 379, paragraph 3.

applicant's heads of argument on the eve of trial in March 2008, the TAC and LRC immediately withdrew against him).[40]

28. Both Vedalankar and Nair are members of a network of many of the world's leading local and international activists, officials and journalists engaged in promoting Northern corporate pharmaceutical business with ARVs in South Africa and in the countries of the South generally.[41]

29. Mlambo, Vedalankar and Nair are thus partisans of pharmaceutical interests and the chemical merchandise they promote, and in this regard they are diametrically and radically opposed to the applicant in his opinion and beliefs and the heavily politicised, virulently contested cause for which he campaigns, driven by his moral, social and political conscience.

30. The respondent's entire Board and executive management structure actively promote and perpetuate the Western HIV-AIDS-ARV-paradigm in South Africa and the vast pharmaceutical and ancillary commercial and professional interests it supports, both within the respondent as an organization[42] and outside it;[43] and the respondent 'prioritis[es]' its 'HIV/AIDS Strategy and Roll Out Plan'[44] as a 'KEY'[45] operating policy,[46] with a current dedicated budget allocation of R200 000 a year[47] – and previously more than double[48] and treble[49] this sum – for disbursing to these interests.

<u>Mlambo's and Vedalankar's initial inaction and silence strategy to conceal from the applicant their unfair discrimination against him</u>

31. Because Vedalankar informed Nair that she did not agree with the applicant's recruitment as a political (or racial) undesirable, Nair never 'signed off' the Motivation to record 'RECOMMENDATION ACCEPTED' by him of the professional selection panel's

[40] Page 14, paragraph 9.
[41] Page 65, item 16.
[42] Pages 461; 527; 530–4; and 536.
[43] Pages 461; 529; 534; and 536.
[44] Page 534.
[45] Page 531.
[46] Pages 525–36; 459–61; and 462–74.
[47] Page 461, 'Budget HIV/AIDS'; and page 532, 'HIV/AIDS Budget'.
[48] Page 532.
[49] Page 535–6.

selection and recommendation of the applicant for appointment;[50] and the recruitment process to appoint the applicant was thus brought to an end.

32. Well appreciating that no good reason existed for him not to note 'RECOMMENDATION ACCEPTED' on the Motivation, and appreciating further that the decision to abort the applicant's appointment was unlawful, Nair was astute not to note 'RECOMMENDATION NOT ACCEPTED' either.[51] Nonetheless, the practical effect of Nair's deliberate omission to 'sign.. off' the Motivation either way was to terminate the recruitment process for the applicant's appointment.

33. The first strategy adopted by Mlambo and Vedalankar to conceal from the applicant their unfair discrimination against him was deliberate inaction and silence.

34. The reason Mlambo and Vedalankar opted for this initial simple strategy was because:

    (a) it entailed the minimum possible risk that the applicant would discover their unfair discrimination against him; and,

    (b) they bargained that after being kept waiting in the dark for several months, the applicant would lose hope, conclude that he had been unsuccessful at his interview, give up pursuing the post for which he had applied, and withdraw[52] himself from the recruitment process of his own accord, thus achieving Mlambo's and Vedalankar's objectives in shutting him out and concealing their decision to do so.

35. Notwithstanding the direct interests of the respondent's national Human Resources Executive Amanda Clark and KZN ROE Mdaka in Mlambo's and Vedalankar's abortion of the applicant's recruitment to the critical vacant senior professional post in KwaZulu-Natal for which he had been selected and recommended, Clark was only informed around five months[53] and Mdaka nine months[54] later.

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[50] Page 248.
[51] Ibid.
[52] Page 6, paragraph 25; and page 256. Apropos of Clark's false charge in the penultimate paragraph of her email at page 256, please note the reply on page 28, bulleted paragraph commencing, 'displaces'.
[53] Pages 5–6; paragraphs 18–24.
[54] Page 151, paragraph 192; and page 388.

36. Complicating Mlambo's and Vedalankar's scheme to prevent the applicant's appointment was the fact that the Pietermaritzburg Senior Litigator post had been advertised simultaneously with the Durban one,[55] interviews for both had been conducted on the same day, and selections and recommendations for both posts were made at the same time.[56] So, appreciating that it was not possible for the Durban appointment to be finalized and not the Pietermaritzburg one without alerting the applicant to the irregular handling of his application and leading to his possible discovery of Mlambo's and Vedalankar's direct covert unfair discrimination against him, they decided to shelve the process for the internal promotion of the Durban candidate pro tem, without informing him.

The first attempt to put the applicant off with misinformation and discouragement

37. When three weeks after his interview the applicant enquired from the respondent's KZN Regional Human Resources Manager Baboo Brijlal as to the outcome, Brijlal replied that he was not permitted to say and instructed the applicant to wait for information. (Brijlal had chaired and minuted the selection panel, and had co-signed the Motivation for the applicant's appointment.)[57]

38. The applicant then waited for five months, with no information from the respondent at all.

39. On 14 April 2010 the applicant telephoned Clark to enquire about progress in the appointment process. In a reassuringly professional and pleasant manner she responded that she was unaware of the applicant and of his pending application for the Pietermaritzburg Senior Litigator post, but would investigate, and in a friendly email a couple of hours later recorded that she had 'looked into this matter and can confirm it is still in progress and has not been concluded. I will endeavour to expedite the process in which I am not directly involved at this stage. ... Thanks for your keen interest. We

[55] Pages 43–4; and 45.
[56] Pages 244–8.
[57] Page 248.

hope to conclude the matter soon.' Clark advised the applicant to contact Brijlal 'for updates'.[58]

40. Clark's initial telephonic and emailed responses to the applicant's enquiry on 14 April 2010, in which she revealed her complete ignorance of the applicant and the status of the process to finalize his recruitment for the Pietermaritzburg Senior Litigator post, show that for five months after his successful interview for appointment and for about four months after Mlambo and Vedalankar decided to abort his recruitment and Nair was told of this, Vedalankar and Nair concealed this decision from her.

41. An hour or so prior to his call to Clark on 14 April 2010, the applicant enquired of Pietermaritzburg Justice Centre Executive Bertus Appel whether he had any information as to progress in the matter. Appel had none, and volunteered that whenever he enquired of Mdaka about the reason for the delay in getting his Senior Litigator, Mdaka had no idea.[59] (Both Mdaka and Appel served on the professional selection panel that unanimously selected and recommended the applicant for appointment.)[60]

42. Mdaka's ignorance as to the reason for the delay in the finalization of the applicant's appointment shows that five months after his successful interview, and about four months after Mlambo and Vedalankar decided to abort the applicant's recruitment, Vedalankar and Nair had concealed this decision from Mdaka as well.[61]

43. In sum, as at 14 April 2010, neither Clark nor Mdaka nor Brijlal had been given any information by Vedalankar and Nair about the reason for Mlambo's and Vedalankar's decision to abort the finalization of the applicant's recruitment, in the five-month period since his successful interview.

44. At the time Clark made her enquiries for the applicant, both Vedalankar and Nair were out of office attending a meeting with the Parliamentary Portfolio Committee on Justice and Constitutional Development in Cape Town.[62] Upon their return to their offices,

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[58] Page 5, paragraph 20; and page 258.
[59] Page 151, paragraph 192.
[60] Page 248.
[61] Page 151, paragraph 192.
[62] Pages 431–3.

Vedalankar and/or Nair briefed Clark about Vedalankar's and Mlambo's decision to prevent the applicant's appointment and the improper reason for it; and as will appear below, Clark joined Vedalankar's scheme to shut the applicant out and conceal from him their unfair discrimination against him.

45. A week after his telephone call to Clark and her emailed assurance that the recruitment process was still on the go, the applicant's second enquiry to Brijlal 'for updates' drew another blank, other than his information that the matter was now in the hands of the respondent's national executive managers and his claim that the professional selection panel's choice of candidate for appointment was subject to confirmation 'by the chairman, a Judge of Appeal' at 'a final interview'.[63]

46. The applicant's persistent, repeated further telephone calls to Clark for information as to the state of play were then avoided and not returned.[64]

47. On 22 April 2010 the applicant emailed Clark, requesting her to establish 'whether the administrative machinery in HQ involved in fixing a date with the judge for the final interviews is indeed turning – and not stalled at the clerical level'.[65]

48. A week later on 30 April, almost six months after the applicant's successful interview, Clark responded, with no explanation, no apology for the odd long and silent delay, her email now calculatedly unpleasant, uninformative and discouraging, as well as disingenuous and contradictory: '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 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.'[66]

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[63] Page 5, paragraph 21.
[64] Page 5, paragraph 22.
[65] Page 257.
[66] Page 256.

49. In a stingingly insultingly manner Clark also falsely accused the applicant of shady dealing: 'It is also not proper to obtain inside information from your brother and then to stand on whatever you have been told by him', concerning the applicant's (mistaken) belief, from what he'd heard, that his selection and recommendation by the regional professional selection panel was subject to Mlambo's approval following another interview by him.[67]

50. Secretly from the applicant, Clark blind-copied her deliberately offensive and degrading email to Mdaka and Brijlal.[68]

51. In her statements to the applicant in furtherance of Mlambo's and Vedalankar's scheme that she had joined to unfairly discriminate against the applicant by blocking his recruitment, and to put him off pursuing his appointment, Clark:

    (a) determinedly concealed from the applicant the fact that his interview had been successful and that he had been selected and recommended for appointment, as well as the status and progress of the process to finalize the process – in fact aborted by Mlambo and Vedalankar;

    (b) falsely insinuated that the applicant's interview had been unsuccessful along with the other shortlisted candidates 'called to [the] interview' – when in truth and in fact the Motivation[69] for the applicant's appointment, signed by all members of the professional selection panel, showed that much more than merely 'Being called to an interview' together with the other unsuccessful candidates, the applicant had been selected from among them and had unanimously been recommended for appointment to the post for which he had applied;

    (c) implicitly contradicted her false insinuation to the applicant that his interview had been unsuccessful by (i) stating that the recruitment 'process' still had to be 'complete[d]', and (ii) inviting the applicant to 'withdraw' from it – thereby implying and confirming that his interview had indeed been successful and that he had

[67] Page 256, penultimate sentence; and page 28, bulleted paragraph commencing, 'displaces'.
[68] Page 218, paragraph 18.
[69] Pages 244–8.

indeed been selected and recommended for appointment, and not rejected after his interview along with the other unsuccessful shortlisted candidates;

(d) falsely alleged that the outcome of the interview and selection process was unclear ('At this stage it is not even clear which applicants will be considered in the second round') – whereas in truth and in fact the applicant and Mngadi had clearly been selected and recommended as the sole suitable candidates for appointment to the Pietermaritzburg and Durban Senior Litigator posts for which they had respectively applied;

(e) falsely implied that legitimate operational considerations had arisen since the applicant's successful interview to put the completion of the recruitment process for his appointment in doubt – whereas in truth and in fact none had arisen to prevent it;

(f) falsely suggested that it was uncertain whether the process to finalize the applicant's recruitment would be completed – whereas in truth and in fact Mlambo and Vedalankar had already decided to abort it;

(g) made plain that the applicant could expect no information from the respondent in the future, even as she falsely implied that the process to appoint the applicant was still alive; and,

(h) whereas two weeks earlier she had encouraged the applicant to contact Brijlal 'for updates', Clark now contrived to discourage him from approaching the respondent again to 'follow up' and establish the upshot of his application and when it might be finalized, and from pursuing his appointment to the post for which she knew he had been duly selected and recommended.

52. Notably in light of subsequent allegations by Nair, Vedalankar and Mlambo pleaded infra, Clark did not claim in her palpably hostile email to the applicant at the end of April 2010, following her consultation with Vedalankar and/or Nair, that:

(a) in the almost half a year since the applicant's successful interview she or any other executive manager had encountered any 'initial' practical difficulties 'in coordinating' the finalization of the recruitment process, resulting in 'delays';[70]

(b) the Senior Litigator 'recruitment process' had thereafter been 'put on hold';[71] and,

(c) any good reason had arisen to 'put ... the finalis[ation] of the recruitment process ... on hold'.[72]

53. Although now finally 'directly involved at this stage', nearly six months after the Pietermaritzburg and Durban Senior Litigator interviews, Clark did not proceed to inform, or to instruct Brijlal to inform, the other candidates Ngcamu and van Wyk that their applications had been unsuccessful, and they were left to infer this from her glaringly unprofessional failure to communicate with them.

54. Clark's intention in not informing any of the interviewed candidates of the outcome of their interviews was to conceal the undesirable outcome, namely the fact that the applicant had been recommended and selected by the professional selection panel for appointment to the Pietermaritzburg post.

<u>The disposal of the first complication impeding Mlambo's and Vedalankar's scheme to prevent the applicant's appointment and conceal their unfair discrimination against him</u>

55. Appreciating (a) that the applicant had not been put off by Mlambo's and Vedalankar's inaction and silence strategy, and that half a year after his interview he was still agitating for the finalization of his appointment, and (b) that Mlambo's and Vedalankar's scheme to covertly discriminate against the applicant therefore needed elaboration, the complication posed by Mngadi's stalled internal promotion to the Durban Senior Litigator post was disposed of by Vedalankar's and Mlambo's decision to finally abort his appointment too; and 'in April/May'[73] 2010 Mngadi was notified

[70] Page 505, second paragraph.
[71] Page 19.
[72] Ibid.
[73] Pages 146–7, paragraphs 179–80.

seemingly by Brijlal[74] by email[75] that the respondent had decided not to fill the post for which he had applied, alternatively that the respondent had decided not to fill its remaining vacant Senior Litigator posts, no reason given him (Mngadi assumed some 'internal restructuring' had taken place).[76]

56. Other than the email notification of Mngadi 'in April/May' 2010, no record exists of Vedalankar's and Mlambo's decision to abort Mngadi's promotion to the Durban Senior Litigator post; and no record exists of the instruction given by Nair, as line function executive,[77] to Mdaka or to Brijlal to notify Mngadi that the appointment process had been terminated.[78]

57. The reason Vedalankar and Nair were astute not to leave any record of the decision to terminate Mngadi's promotion to the Durban Senior Litigator post is because they well appreciated that it was grossly irregular.

58. Unlike Mngadi, the applicant was not told by the respondent that his recruitment had been aborted, even though evidently anxious for information about his application many months after his interview. Instead, he was told by Clark that it was 'still in progress and has not been concluded'[79] and 'I think you should allow us to complete the process at the pace we have decided',[80] and the applicant was then kept further waiting in the dark in the deliberate expectation that he would lose hope and abandon his application of his own accord, thus achieving Mlambo's and Vedalankar's purposes

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[74] Page 385, paragraph 37. To date, in deliberate breach of their constitutional and legal obligations under PAIA, and with the intention of concealing evidence from this court and perverting the true and just determination of the applicant's claim, Vedalankar and Nair, as information officer and deputy information officer respectively, have persistently unlawfully withheld this critically relevant record: page 182, item 12; page 320, penultimate paragraph; page 343, part 20; page 385, paragraph 37; and page 403, part 9. Because a record of the letter or email to Mngadi exists, it has not been denied on oath under section 23 of PAIA that it exists; cf. Nair's clear statements on oath that other records specified by the applicant do not exist: pages 366–8; and 378–389.

[75] Pages 146–7, paragraphs 179–80.

[76] Ibid.

[77] Page 19.

[78] Page 382, paragraph 19; and page 388. Nair's instruction to Mdaka 'to regret' all interviewed candidates for the Pietermaritzburg and Durban Senior Litigator posts was issued on 16 August 2010, many months after Mngadi had already been notified 'in April/May' that the respondent was not going to fill the Durban post.

[79] Page 5, paragraph 20; and page 258. On 14 April 2010.

[80] Page 7, paragraph 33; and page 256. On 30 April 2010.

in their scheme to prevent the applicant's appointment and conceal their direct unfair discrimination against him.

59. In April 2010, the same month that the applicant and Clark communicated, the respondent commenced recruiting for a Senior Litigator for the Mthatha Justice Centre.[81]

60. The respondent's advertisement for a Senior Litigator for Mthatha in April 2010 shows that no budgetary or other legitimate operational considerations had arisen in the five months since the applicant's successful interview in November 2009 to prevent the filling of the respondent's remaining three critical vacant Senior Litigator posts, nor even some months later in about July 2010 when interviews were held for shortlisted candidates for the Mthatha post and a suitable candidate was selected and recommended for appointment, apparently approved, and notified accordingly.[82]

61. And indeed no record exists whatsoever of any suggestion, any proposal,[83] any discussion,[84] any agreement, any decision[85] not to fill the respondent's three remaining critical vacant Senior Litigator posts.[86]

<u>The disposal of the second complication that arose to impede Mlambo's and Vedalankar's scheme to prevent the applicant's appointment and conceal their unfair discrimination against him</u>

62. After Clark's email to the applicant on 30 April 2010, unpleasantly and disingenuously rebuking his entirely reasonable and proper enquiry after five and half months of strange, unprofessional silence and inaction – 'I think you should allow us to complete the process at the pace we have decided. ... If we require further information or follow-

[81] Page 46. The closing date for applications was 7 May 2010, and the respondent typically allowed a month for submitting them.
[82] Page 128, paragraph 84; and page 299, paragraph 186. He 'was ready to start'.
[83] Pages 339–40, part 15; and page 384, paragraph 32.
[84] Page 333, part 8, items 13 and 14; and pages 382–3, paragraphs 22 and 23.
[85] Page 342, part 18; and page 385, paragraph 35.
[86] Pages 235–40; and 251–4. Makokoane's general cost-saving email and memorandum (pages 241–30, put up by Vedalankar as record V6) is dated 30 September 2010, and is accordingly irrelevant to the reasons for the abortion of the applicant's recruitment many months earlier in late November or December 2009, and even on Vedalankar's false version to the applicant that, 'motivate[d]' by Nair, she had 'immediately ...frozen ... all senior litigator posts that were vacant ... In July 2010'.

up from yourself, our organisation will contact you'[87] – he waited a further two and a half months for information from the respondent, but as Clark had led him to expect, he got none.

63. On 12 July 2010, now eight months after his successful interview, the applicant wrote to Vedalankar, recording the peculiar and disquieting history of the matter then within his knowledge and enquiring when the appointment process might be concluded.[88]

64. The applicant's letter to Vedalankar provoked a crisis for her and Mlambo's inaction and silence strategy, as elaborated by Clark's deliberate misinformation and discouragement of the applicant, and on 29 July 2010 Vedalankar summoned Nair to discuss how to resolve it, after first consulting Clark.[89]

65. Before doing so, Vedalankar discussed the matter with a third party, probably Mlambo.[90]

66. The discussions between Vedalankar, Nair and Clark took place off the record and behind the scenes, and no record exists of them.[91]

67. Further complicating Mlambo's and Vedalankar's scheme to prevent the applicant's appointment and to conceal their unfair discrimination against him was the fact that just days or a couple of weeks[92] prior to Vedalankar's and Nair's meeting on or about 29 July 2010, a suitable candidate had been selected and recommended for appointment to the Mthatha Senior Litigator post, and had apparently been approved and notified accordingly.[93]

68. Not able to proceed with the Mthatha appointment without exposing and compromising their scheme to covertly discriminate unfairly against the applicant and

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[87] Page 256.
[88] Pages 1–17.
[89] Page 389.
[90] Page 389. Vedalankar's email has 'FW' in the subject bar, signifying a prior exchange on the same subject. She and Nair as information officer and deputy information officer respectively have failed to disclose this prior exchange to the applicant, in contempt of their legal obligations and in criminal contravention of section 90 of PAIA. This matter will be further canvassed infra.
[91] Page 342, part 18; and page 384, paragraph 32.
[92] Page 128, paragraph 84.
[93] Page 128, paragraph 84; and page 299, paragraph 186. He 'was ready to start'.

prevent him being appointed to the equivalent Pietermaritzburg post, and alive to the fact that the applicant was pursuing his appointment and was not just going away as hoped, Mlambo and Vedalankar decided to abort the recruitment of the Mthatha candidate as well.[94]

69. No record exists of Mlambo's and Vedalankar's decision to abort the Mthatha recruitment, and their decision was conveyed by Nair as 'line function executive'[95] to the Eastern Cape Regional Operations Executive verbally and off the record.[96]

70. The reason Vedalankar and Nair were astute not to leave any record of Mlambo's and Vedalankar's abortion of the recruitment of the candidate selected and recommended for appointment to the Mthatha Senior Litigator post, on the eve of his appointment after he had apparently been approved and notified of this,[97] is because they well appreciated that it was grossly irregular.

71. Mlambo's and Vedalankar's purpose in sacrificing the successful Mthatha candidate 'In July 2010'[98] off the record (precipitated by the applicant's letter to Vedalankar that month), as they had done some months earlier in respect of the Durban candidate 'in April/May' (precipitated by the applicant's persistent enquiries to Clark in April), was to fabricate a factual foundation for their assertion about to be made to the applicant that the respondent had decided, 'due to various reasons',[99] impliedly legitimate, not to fill the respondent's three remaining vacant Senior Litigator posts[100] in order to disguise her and Mlambo's unfair discrimination against the applicant in rejecting his appointment on prohibited grounds in late November or December 2009.

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[94] Ibid.
[95] Page 19.
[96] Page 351, paragraph 10; and page 365, paragraph 7.
[97] Page 128, paragraph 84; and page 299, paragraph 186. He 'was ready to start'.
[98] Page 103, paragraph 6.7; and page 104, paragraph 7.3.
[99] Page 19.
[100] Ibid.

The second attempt to put the applicant off with misinformation

72. At their meeting on or about 29 July 2010, Vedalankar instructed Nair to answer the applicant's letter to her,[101] and on 3 August 2010 Nair did so, stating to the applicant: 'I acknowledge that the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [sic] put on hold due to various reasons. I can now confirm that we will not be proceeding with the filling of any of these posts.'[102]

73. By these statements Nair falsely implied and intended the applicant to understand that a decision had first been taken to 'put on hold ... the recruitment process to finalise the appointments for all vacant Senior Litigator posts' at Pietermaritzburg, Durban and Mthatha and then another 'not [to] be proceeding with the filling of these posts'.

74. In truth and in fact:

(a) 'the recruitment process to finalise the appointment..' of the applicant to the Pietermaritzburg Senior Litigator post had been aborted immediately by Mlambo and Vedalankar, without informing him of the fact, in late November or December 2009;

(b) 'the recruitment process to finalise the appointment..' of Mngadi to the Durban Senior Litigator post was simultaneously frozen and then finally aborted by Vedalankar 'in April/May' 2010; and he was emailed to inform him that the post he had applied for was not going to be filled;[103]

(c) 'the recruitment process to finalise the appointment..' of the Mthatha candidate was never 'put on hold'; it was aborted almost immediately on or about 29 July 2010[104] after he had just been selected and recommended for appointment, apparently approved and notified accordingly,[105] subsequent to Vedalankar's sight

[101] Page 19, first sentence; and page 389.
[102] Page 19.
[103] Pages 146–7, paragraphs 179–80; and page 385, paragraph 37.
[104] Page 389.
[105] Page 128, paragraph 84; and page 299, paragraph 186. He 'was ready to start'.

of the applicant's letter to her that month pressing for the finalization of his appointment, and then her discussion of it with Nair on the said date.[106]

75. Nair's false statements and implications to the applicant were intended to deceive and mislead him concerning the actual fate of his successful application for the Pietermaritzburg Senior Litigator post, and to defraud him into abandoning his legitimate expectation of being appointed to it.

76. Nair's deliberately vague allegation, 'due to various reasons', was intended to falsely imply to the applicant that proper operational considerations had arisen causing the respondent to duly resolve first to hold and then to discontinue with the applicant's recruitment, and two others simultaneously with it.

77. In truth and in fact no operational considerations had arisen to warrant aborting the applicant's appointment in late November or December 2009, or that of the Durban and Mthatha candidates 'in April/May' and 'In July 2010' respectively; and accordingly no record exists of any such considerations in relation to these Senior Litigator posts.

78. On 23 August 2010 Nair's letter to the applicant was followed by one from Mdaka[107] in similar terms, written on Nair's instructions:[108] 'Please be advised that Legal Aid South Africa will not be proceeding with the filling of this post.' The letter was marked 'Confidential', i.e. to be kept secret and not shown to anyone else.

79. Mngadi did not receive a similar 'regret'[109] letter from Mdaka, for the reason that he had already been informed 'in April/May' 2010 that the post for which he had applied was not going to be filled.[110] And consistent with this fact, Nair confirms that besides the applicant, only two of the other three shortlisted candidates interviewed for the

[106] Page 389.
[107] Page 20.
[108] Page 388.
[109] Ibid.
[110] Page 157, paragraph 228.

Pietermaritzburg and Durban Senior Litigator posts (Ngcamu and van Wyk)[111] were sent 'regret' letters.[112] More than nine months after their interviews.

80. On 26 August 2010 the applicant interrogated and tested the veracity of Nair's claims, both express and implied, by dint of an extensive request for fifty-one specified records under the Promotion of Access to Information Act 2 of 2000 ('PAIA').[113]

81. The applicant's searching records request was obviously directed at extracting and obtaining the evidence to support his scepticism about Nair's claims, and at exposing them as false; and as the respondent's information officer Vedalankar fully appreciated this.

82. In contempt of her constitutional and legal obligations to the applicant, spelt out by the applicant in his covering letter,[114] Vedalankar's initial reaction to his request was to ignore it, and he was constrained to engage the assistance of the PAIA Unit of the South African Human Rights Commission ('the SAHRC') to intervene and obtain an undertaking to address it.[115]

83. On 1 September 2010 the applicant challenged Nair's above-quoted and other claims in a petition to his immediate superior, Makokoane.[116] He did not reply. The applicant copied Chief Financial Officer Rebecca Hlabatau concerning the squandering of public revenue in the abortion of his recruitment.[117] She did not respond. Legal Development Executive Patrick Hundermark, an attorney in the executive management structure was copied too.[118] He did not respond either.

84. On 18 October 2010, mentioning also the applicant's letter to Makokoane, Vedalankar refused the applicant's entire request for records, justifying her withholding and concealment of the incriminating documentary evidence he sought, on the basis of a false statement of law, which she claimed to be supported by a deceptively false

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[111] Page 245.
[112] Page 383, paragraph 36.
[113] Pages 49–69.
[114] Page 49–52.
[115] Page 113, paragraphs 17–19.
[116] Pages 21–39.
[117] Pages 42; and 47.
[118] Pages 41; and 47.

misquotation from a reported judgment to put the applicant off exercising his constitutional right to access the respondent's records, which judgment in truth and in fact held precisely the opposite of what Vedalankar falsely alleged it did and squarely supported the applicant's claim to entitlement to access the records he sought.[119]

85. Since she is a legally uneducated person, it is probable that Vedalankar sought legal counsel in drawing the statement of the law she alleged to be applicable to the applicant's request. And given:

(a) Mlambo's conspicuous failure to meet and address the applicant's extraordinarily serious opening complaint in his subsequent petition to him and the Board that Vedalankar had first completely ignored and then had positively rejected his August records request on the basis of a false and fraudulent misstatement of the law;[120]

(b) Mlambo's later pretence to the applicant that despite this he 'could find nothing untoward'[121] in the respondent's conduct;

(c) Mlambo's familiarity with the contents of the applicant's PAIA requests and his dissembled negative opinion, among others, expressed about those records that Vedalankar had persistently refused to produce, falsely alleging to the Minister of Justice and Constitutional Development that they were pointless rather than critically relevant;[122] and,

(d) Mlambo's and Vedalankar's collaboration and backchannel communication[123] (the records of which Nair as deputy information officer[124] is withholding in deliberate contempt of PAIA)[125] in Mlambo's dismissal of the applicant's petition to him and the Board about Vedalankar's refusal to comply with PAIA and her deceptive

[119] Pages 101–8; and 113–19, paragraphs 17–43.
[120] Page 113, paragraphs 17–43.
[121] Page 209.
[122] Page 506, first paragraph.
[123] Pages 186–7; page 201, paragraph 29.
[124] Page 387.
[125] Page 352, item 14; and page 365, paragraph 9.

misstatement of its provisions, and the indications then within his knowledge that he had been unfairly discriminated against,[126]

(all matters to be canvassed in detail infra) it is probable that Mlambo was the author of the false and misleading statement of the law concerning the applicant's right to information, and that his purpose in grossly misstating the law to him was to fob him off (as he twice did later)[127] and prevent him obtaining the records and the PAIA section 23 affidavit concerning non-existent records that he needed in order to expose the falsity of Nair's claim to him, made on their behalf to cover-up their unfair discrimination against him, and to defraud him into abandoning his claim to the records and section 23 affidavit he needed to prove his case in this court.[128]

<u>The third attempt to put the applicant off with misinformation: Mlambo's and Vedalankar's fabrication and assertion of a fake budgetary justification for aborting the applicant's appointment to camouflage their unfair discrimination against him</u>

86. Appreciating that more than eight months after his successful interview the applicant was set on pursuing his appointment, and that:

(a) their initial silence and inaction strategy had failed;

(b) their attempt through Clark to mislead the applicant and put him off pursuing his appointment had also failed; and,

(c) their bid to shake the applicant off by dissembling through Nair that it had been duly resolved that 'we will not be proceeding with the filling of any of these posts' had failed too,

Mlambo and Vedalankar now concocted and advanced a false explanation to cover the true reason for aborting the applicant's recruitment, to confound his discovery of the true facts, and to finally put him off pursuing his appointment to the Senior Litigator post for which he had been duly selected and recommended.

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[126] Pages 109–167.
[127] Pages 186; and 209.
[128] Page 165, paragraph 254.

87. Mlambo's connivance with Vedalankar in the fabrication of the false explanation she advanced to the applicant for the abortion of his successful application is evident from the facts that:

(a) as will be pleaded in detail infra, Mlambo would later consciously and deliberately tell the same lies, and more lies of his own (contradicting certain of Vedalankar's other lies), to the Minister of Justice and Constitutional Development, which lies he repeated some months later to the chairperson of the Portfolio Committee; and,

(b) the lying alibi advanced by Vedalankar as a cover story for her abortion of the applicant's successful application was uttered immediately after her deceptive misstatement of the applicant's rights under PAIA of which Mlambo was the probable author.

88. In her response on 18 October 2010 refusing the applicant's entire records request, including his request for the minutes of his interview,[129] Vedalankar alleged: 'You were recommended together with other candidates, for the second round of interviews.'[130]

89. Vedalankar's allegation to the applicant was a lie, in that in truth and in fact only the applicant and Mngadi were selected and recommended from among the four shortlisted candidates for the Pietermaritzburg and Durban posts for which they had respectively applied,[131] and no other 'candidates ... together with' them.

90. The reason Vedalankar lied to the applicant about this, just as Clark had previously done – 'At this stage it is not even clear which candidates will be considered in the second round'[132] – was because she (and Clark) sought to obscure the fact that the applicant had been the sole successful candidate selected and recommended by the professional selection panel for the Pietermaritzburg Senior Litigator post and that he enjoyed a legitimate expectation of being appointed accordingly.

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[129] Page 62, item B1.
[130] Page 104, paragraph 7.2.
[131] Pages 244; and 247.
[132] Page 256, second paragraph.

91. Vedalankar further alleged: 'The NOE, as the executive responsible for operations may also motivate a change in the organizational structure, including the freezing of positions, for discussion and finalization with the CEO (refer S.8.1.2(b) of the Legal Aid SA Approval Framework).'[133] And immediately following in the next paragraph: '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.'[134]

92. Vedalankar's allegations in context were deceptively false, and are contradicted by (a) the open facts, (b) the respondent's business records, (c) her CEO report for 2009/10, and (d) her statements on two occasions to the Portfolio Committee on Justice and Constitutional Development, to be canvassed infra.

Mlambo's response to the applicant's petition to him concerning Vedalankar's plainly unlawful refusal to comply with PAIA on dishonestly invented grounds and the indications that her claim to have aborted the applicant's recruitment for financial reasons was untrue

93. Having regard to their fiduciary duties and legal responsibilities,[135] the applicant petitioned Mlambo and the Board on 30 November 2010[136] to intervene and remedy:

(a) Vedalankar's unlawful refusal as the respondent's information officer to comply with PAIA and grant the applicant access to the records he had duly requested – first by ignoring his request, and then by refusing it wholesale on the basis of a false statement of applicable law and a fraudulent misquotation from a reported judgment claimed to support it;[137] and,

[133] Page 103, paragraph 6.6.
[134] Page 103, paragraph 6.7.
[135] Pages 111–113, paragraphs 8–16.
[136] Pages 109–67.
[137] Pages 113–19, paragraphs 17–43.

(b) her alleged decision 'In July 2010' to have aborted the applicant's appointment for financial reasons – which claim the applicant impeached with the facts and indications within his then still limited knowledge that Vedalankar's allegations in this regard were untrue.

94. At the time the applicant petitioned Mlambo and the Board, he was unaware that Mlambo was complicit[138] in Vedalankar's unfair discrimination against him, abortion of his recruitment, and cover-up.

95. The applicant's request on 8 December 2010[139] to the respondent's Board Secretary Bee-Mari Schoeman to ensure that his petition was brought to the attention of all Board members (the respondent's public information about the current membership of the Board was stale),[140] and not only Mlambo as chairperson, and his reminder to her a month later on 10 January 2011,[141] both went unanswered.

96. In the light of all the facts and circumstances, pleaded herein, it is probable that Mlambo or Vedalankar countermanded Schoeman to ensure that the applicant's petition was kept off the agenda for discussion by the Board at its next meeting, in furtherance of their scheme to covertly discriminate unfairly against him, shut him out, and keep this concealed.

97. Notwithstanding the extraordinary gravity of the applicant's complaints, and the incontestable case he had made, with reference to reported judgments, concerning Vedalankar's plainly unlawful refusal to comply with PAIA under cover of a fraudulent misstatement of applicable law[142] – later tacitly conceded[143] – Mlambo cursorily dismissed the applicant's fifty-nine page petition with a two-line rebuff, dissembling as he did so that he had given the issues raised by the applicant due consideration and had objectively and independently evaluated them: 'I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-

[138] Pages 505–7 .
[139] Pages 168–73.
[140] Pages 260–1; and 259.
[141] Page 188.
[142] Pages 113–19, paragraphs 17–43.
[143] Pages 210–24.

Natal. I could find no unfairness or arbitrariness towards you as alleged by you or at all.'[144]

98. In dismissing the applicant's petition, Mlambo acted without the authority and support of the Board. The Board was accordingly not party to Mlambo's dismissive response to the applicant, and was not even copied in his covering email to him.

99. The reason Mlambo did not address the applicant's appeal that he and the Board direct Vedalankar to comply with her constitutional and legal obligations under PAIA to afford the applicant access to the respondent's records that he had duly requested is because:

(a) Mlambo well appreciated that the applicant's comprehensive, searching records request in August 2010 was directed at exposing the falsity of Nair's claim made on Vedalankar's and Mlambo's behalf, and later repeated directly by Vedalankar[145] and Mlambo[146] themselves, that the respondent had duly resolved to abort the applicant's appointment, along with those of Mngadi and the successful Mthatha candidate, subsequent to their selection and recommendation by the professional selection panels delegated to pick the best candidates, if any, for the Senior Litigator posts in question.

(b) Mlambo himself had authored Vedalankar's deceptive faux legal justification for refusing the applicant's records request, alternatively he supported it;

(c) Like Vedalankar, Mlambo wished to prevent the applicant from obtaining the records – and sworn confirmation that others do not exist[147] – supporting his surmise that no formal decision had been taken on the record to abort his recruitment and that he had been unfairly discriminated against, thus equipping him with the evidence he needed to seek redress in this court.

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[144] Page 186. The letter is wrongly dated 9 November 2010, which is before the applicant's petition three weeks later on the 30th.
[145] Pages 101–8; and 210–24.
[146] Pages 505–7.
[147] Page 50, paragraph commencing, 'Several'.

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100. The reason Mlambo falsely pretended to the applicant that he had impartially 'reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-Natal' and found them impeccable is because he:

(a) well appreciated that Nair's claims to the applicant on 3 August 2010,[148] made on his and Vedalankar's behalf, were lies covering the real reason why the applicant's recruitment had been aborted, namely their unfair discrimination against him as a political (or racial) undesirable;

(b) well appreciated, likewise, that Vedalankar's core claims to the applicant in her letter of 18 October 2010 concerning the reason she gave for aborting his appointment were lies to the same end; and,

(c) contrived to:

(i) conceal his active complicity in the decision he took with Vedalankar to unfairly discriminate against the applicant and then do whatever necessary to cover it up; and,

(ii) maintain the applicant's illusion at the time that he was independent arbiter and authority over the respondent's executive business management, duly and properly conducted himself in this function at formal arms length, and that he was concerned and committed, with the rest of the Board, to ensure that the respondent conducted itself strictly in compliance with the law at all times.

101. According to its 'Properties' file, Mlambo's letter to the applicant dismissing his petition about Vedalankar's misconduct against him as CEO and as information officer, which Mlambo emailed the applicant as a PDF attachment on 30 December 2010, was prepared by Vedalankar on her own computer two weeks earlier on 15 December.[149]

102. This shows that Mlambo and Vedalankar worked in tandem, off the record and behind the scenes, in a joint endeavour to prevent the applicant obtaining the documentary evidence he needed to prove his surmise that he had been unfairly discriminated

[148] Page 19.
[149] Page 187.

against, thus frustrating his attempt to bring this to light and to vindicate his fundamental rights to equality and equal employment opportunity in this court.

103. Besides formal acknowledgments by Board members du Rand, Konar and Maree, no others responded to the applicant's petition. To the contrary, after being personally briefed on its contents, Gandhi responded to the applicant's complaints, following a telephonic briefing by Vawda, by wantonly smearing him as a defamer and extortionist.[150]

104. To the applicant's protest to Mlambo and the Board about this,[151] Mlambo responded by rebuffing the applicant with the further false charge: 'Your conduct is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view', and by alleging that the Board had no proper interest in the matter. 'For this reason I call on you to desist from communicating with Board members in this regard. I have, in turn, requested Board members to ignore all communications from you and/or on your behalf.'[152]

105. On 25 February 2011, on the eve of its meeting the following day, the applicant submitted a further and final appeal to the Board to address and resolve his complaints of unfair discrimination and refusal to comply with PAIA, and copied his appeal to the Minister of Justice and Constitutional Development, to the Deputy Minister, and to the chairperson of the Portfolio Committee.[153] No member of the Board responded.

106. In a bid to discount the applicant's complaints as empty and to mislead the Minister into concluding that the respondent had duly decided to abort the applicant's recruitment for good reason and had duly complied/was complying with his PAIA requests, Mlambo reacted by writing a purported rebuttal of the applicant's complaints in the form of a poisonously prejudicial and disparaging 'Confidential ... Report ... Re:

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[150] Pages 207–8.
[151] Pages 197–208.
[152] Page 209. Mlambo's alleged request – if in truth it was ever made – to other Board members to ignore the applicant's communications, duly requested under PAIA, has unlawfully been withheld: page 352, item 15; page 365, paragraph 9. Seemingly reluctant to perjure himself, Nair does not declare in his section 23 affidavit that it does not exist, thereby confirming Mlambo lied to the applicant in claiming to have made this request.
[153] Pages 310–14.

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Adv Anthony Brink' to the Minister on 9 March 2011,[154] replete with outright false and misleading information and disingenuous half-truths, to wit (inter alia):

107. 'Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts.'[155] Mlambo's improvisation of this lying alibi to the Minister to cover and account for the respondent's inaction in finalizing the applicant's appointment (because he and Vedalankar had aborted it) in the three-and-a-half-month period between 23 November 2009, when the last of the professional selection panel 'signed off' the Motivation for the applicant's appointment,[156] and 10 March 2010, when the respondent first had knowledge of its budgetary uncertainty,[157] is exposed and refuted by the following facts:

(a) Nair did not approve the professional selection panel's selection and recommendation of the applicant, and this is why he never 'signed off' the Motivation to signify 'RECOMMENDATION ACCEPTED' under the heading 'NEXT ROUND INTERVIEW APPROVAL'[158] after the applicant's successful interview. Directly contradicting Mlambo, Vedalankar explicitly confirmed to the applicant: 'the 2nd round was never approved by NOE and thus never proceeded with'.[159]

(b) According to Vedalankar, 'Seeing that the ... Senior Litigator's post was a senior post, second round interviews were to proceed to the national level with national executives and was to be coordinated and managed by the HRE'.[160] But 'Ms Clark would not have been involved in the Senior Litigator's recruitment process as the second round of interviews was not proceeded with'.[161] Indeed, five months after his successful interview Clark had never heard of the applicant and knew nothing of

[154] Pages 505–7.
[155] Page 505, second paragraph.
[156] Pages 247–8.
[157] Page 236, paragraph commencing, 'On Wednesday'.
[158] Page 248.
[159] Page 215, V7, third column.
[160] Page 217, paragraph 13.
[161] Page 220, paragraph 27.

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his pending appointment, and confirmed to him on 14 April 2010 that she was 'not directly involved at this stage'.[162] This is why she never took any steps to 'coordinate..'[163] any 'second round interviews [at] the national level', and consequently never encountered any trouble 'coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one' – as falsely alleged by Mlambo to the Minister and later to the chairperson of the Portfolio Committee, with the false implication that Clark had contacted him seeking a convenient date and time.

(c) According to Vedalankar, there were no delays in finalizing the applicant's appointment ('I reject that there were any delays in dealing with any post');[164] and the reason the applicant was kept waiting nearly nine months in the dark (before being put off by Nair on 3 August 2010)[165] was not because of 'delays in coordinating a meeting time suitable for all members of the panel', but rather because 'all those Executives that were engaged in the recruitment of the Senior Litigator posts [sic] were also involved in costs-cutting discussions/processes including identifying the areas that could be sacrificed to keep Legal Aid SA in budget', and 'naturally, the drive to secure funding took priority' over their 'recruitment drives', including the finalization of the applicant's appointment (even as in April 2010, five months after the applicant's successful interview, the respondent began recruiting for a Senior Litigator for Mthatha, and, as will be canvassed in detail infra, the respondent was creating masses of new posts and employing masses of new staff, including senior legal professionals.[166] That is, the respondent's 'Executives that were engaged in the recruitment of the Senior Litigator posts' were all much too busy with their 'drive to secure funding' all day, every day, month after month, to take the simple steps necessary to finalize the applicant's appointment, but not too busy to go about creating masses of new posts and appointing masses of new staff including lots of senior legal professionals

[162] Page 5, paragraphs 19–20.
[163] Page 217, paragraph 13.
[164] Page 220, paragraph 26.
[165] Page 19.
[166] Page 457.

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in the course of their 'recruitment drive..', nor too busy to begin their 'recruitment drive..' to find a suitable candidate for appointment as Senior Litigator in Mthatha.)

(d) Vedalankar admits that 'there is no recorded explanation for what you [the applicant] refer to as "the delay"',[167] and Nair confirms that 'no written record ... exists' concerning 'the pace we have decided ... to complete our process'.[168] That is, no records exist of email exchanges or telephone calls to show that any attempt whatsoever was made in 'coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one', and no record exists of any decision taken to postpone or call off such attempts. The reason no such records exist is because in truth and in fact there was never any attempt by Clark or anyone else to 'coordinat[e] a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one', nor were there any 'delays' in this regard, because Mlambo and Vedalankar had immediately aborted the applicant's recruitment on learning of his identity, thus killing the process to recruit him. Even on Vedalankar's false version to the applicant, she and her fellow 'Executives that were engaged in the recruitment of the Senior Litigator posts' were too distracted by their all-consuming 'drive to secure funding' in which each was involved the whole time to spare any for the finalization of the applicant's appointment. According to Vedalankar this had nothing to do with 'delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one', and this is why no records exist in this regard.

108. It follows that Mlambo's 'Confidential' allegation to the Minister and later to the chairperson of the Portfolio Committee that 'the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one' was a blatant lie improvised by him to patch the first gaping hole (among many others) in his and Vedalankar's identical lying alibi uttered variously to the applicant, to the Minister and to the chairperson of the Portfolio Committee to mislead and deceive them all, so as to

[167] Ibid.
[168] Page 327, part 3; and page 381, paragraph 15.

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cover the true reasons they had aborted the applicant's recruitment, namely because they didn't want a political (or racial) undesirable like him in 'our organization',[169] and so sought to shut him out.

109. That Mlambo was full well aware that his core allegation to the Minister and later to the chairperson of the Portfolio Committee was a lie, namely that 'pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts' – which lie he repeated: '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' – is plain from the fact that on 31 July 2010 he and the rest of the Board had passed a resolution approving 'contingency measures to cater for this'[170] that had nothing whatsoever to do with the alleged 'freezing of senior litigator posts' and the abortion of the recruitment of candidates already selected and recommended for appointment to these critical unfilled positions by professional selection panels. The only 'contingency measures to cater for this ... financial uncertainty', the 'mitigating measures in response to the OSD shortfall' approved by the Board,[171] entailed the temporary reduction of the respondent's Junior Practitioner staff establishment, by abolishing fifty-six of these non-critical junior posts – and none other.[172] (This matter will be closely canvassed infra.)

110. And when telling these 'Confidential' lies to the Minister and later to the chairperson of the Portfolio Committee, thinking the applicant would never find out about them, Mlambo knew they were lies, because the applicant had just a fortnight earlier identified them to him as lies, and pointed up the clear evidence – already within Mlambo's own knowledge – that they were lies.[173]

111. It is perfectly true, as Mlambo alleged, that 'Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time[174] ... were

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[169] Page 8, paragraph 36; page 19, second and third paragraphs; page 37, paragraph 67;
[170] Page 505, bottom line.
[171] Page 251; and page 254, paragraph 4.
[172] Page 254, paragraph 4.
[173] Pages 310–14.
[174] Pages 236–40; and 251–4.

shared with Adv Brink' – for indeed they do. But as these 'Various documents' also show, it is absolutely untrue that they 'clearly demonstrate' that 'we were contemplating ... the freezing of posts', 'the freezing of many positions', insofar as the respondent's critical vacant staff establishment was concerned. They show that in truth and in fact at no stage was the respondent 'contemplating ... the freezing of' its unfilled critical Senior Litigator posts, and that from the outset the respondent expressly 'contemplat[ed]' the reduction of its non-critical junior staff establishment only. There was never at any stage any question of 'freezing' the respondent's vacant critical senior professional staff establishment; this was never 'contemplat[ed]'. The 'Various documents ... shared with' the applicant reveal Mlambo's unambiguous, clearly intended implication to the Minister and later the chairperson of the Portfolio Committee to have been false and they show that Mlambo consciously and deliberately misled them to put them off the truth.

112. Mlambo's false allegation that 'All executives involved in this matter have confirmed that this individual was not known to them, nor his political views or publications, and that the first time they came across his name was when his letter of complaint about his non-appointment was received' is contradicted and refuted by the facts that:

(a) the Motivation for the applicant's appointment recorded his name thrice – twice as the 'recommended' candidate [175] – and noted, 'Candidate is a prolific writer/author with many commendations cited on his CV'.[176] The Motivation was submitted to Nair, presumably accompanied by the applicant's CV listing these 'publications' and 'many commendations',[177] for approval in late November or December 2009 – more than six months before the applicant's 'letter of complaint about his non-appointment was received' by Vedalankar on 12 July 2010; and,

(b) the applicant introduced himself to Clark when telephoning her on 14 April 2010 and explained the purpose of his enquiry, and she noted his name and email address so as to make enquiries about him and for him and to revert to him with what she had learned, commencing an email exchange a couple of hours later that

[175] Pages 244–8, paragraphs 1, 3 and 6.
[176] Page 246.
[177] Pages 80–2.

ensued over the following two weeks[178] – three months before the applicant's 'letter of complaint about his non-appointment was received' by Vedalankar on 12 July 2010.

113. These facts flatly disprove Mlambo's lie to the Minister and later to the chairperson of the Portfolio Committee – in the course of his and Vedalankar's cover-up of their unfair discrimination against the applicant, now taken to the highest political level – that 'the first time they [at least Nair and Clark] came across his name was when his letter of complaint about his non-appointment was received' in July 2010.

114. Mlambo did not consult the Board before writing his 'Confidential ... Report' to the Minister.[179]

115. On 23 March 2011 the chairperson of the Portfolio Committee responded to the applicant's appeal to the Board on 25 February, copied to him, by writing to Mlambo: 'Having received Advocate Brink's letter you will understand that I must ask you, your Board [of Directors] and the [Legal Aid] Board's CEO for a formal response to these allegations, please.'[180]

116. Thinking his 'Confidential ... Report' written to the Minister behind the scenes a fortnight earlier had sufficed to finish the applicant off, Mlambo did not initially bother himself with the Portfolio Committee chairperson's call on him to see to it that he, the Board and Vedalankar furnish a 'formal response' to the applicant's complaints concerning (in the words of the Committee chairperson) 'his recruitment as Senior Litigator in Pietermaritzburg and [Vedalankar's] refusal to comply with the provisions of the Promotion of Access to Information Act'.[181]

117. Three months later on 22 June 2011, when it was apparent that the applicant was persisting with his complaints,[182] Mlambo changed his mind and belatedly put up his 'Report' to the Minister in 'updated' form.[183] With a view to demolishing the applicant

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[178] Pages 256–8.
[179] Page 364, paragraph 6.
[180] Page 503.
[181] Ibid.
[182] Pages 344–52; 353–61; 395–400; and 401–14.
[183] Pages 507, 'Updated with sections in blue font 22 June 2011'.

once and for all, Mlambo quoted his abusive email to the applicant on 24 January 2011 ('Your conduct is unbecoming to say the least and borders on harassment') in his covering letter, and concluded: 'I trust that the attached report and this letter clarify the matter concerning Mr Brink.'

118. Mlambo's purpose in doing this was to denigrate the applicant as an obsessive 'insulting and malicious' lunatic, with his 'invasive conduct' and his interminable 'tirade' to 'several lengthy letters to various individuals and organizations, including to the Chairperson and other Directors of the Board of Legal Aid SA' about his 'unfounded ... conspiracy theory', his baseless paranoia about a 'conspiracy against him'.[184]

119. Mlambo did not, as the chairperson of the Portfolio Committee had requested, see to the preparation and submission of 'formal response[s]' by the Board as a whole and by Vedalankar as CEO.

120. The reason Mlambo did not obtain a 'formal response' from the Board is because the Board was not party to his and Vedalankar's covert decision to unfairly discriminate against the applicant, nor was the Board party to any 'decision ... made not to proceed with the filling of vacant senior litigator posts'.[185]

121. Contrary to Mlambo's false implications to the Minister and chairperson of the Portfolio Committee in this regard, the Board accordingly had no knowledge of 'our reasons for freezing this post',[186] as alleged.

122. The reason Mlambo did not obtain a 'formal response' from Vedalankar, as required by the chairperson of the Portfolio Committee, is because Mlambo's and Vedalankar's fake financial cover story was precisely the same.

123. Mlambo's abusive email to the applicant in January, quoted in full to the chairperson of the Portfolio Committee above his conclusion, 'I trust that the attached report and this letter clarify the matter concerning Mr Brink', was calculated to:

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[184] Pages 505–7.
[185] Page 505, second paragraph.
[186] Page 506, first paragraph.

(a) prejudice the chairperson against the applicant;

(b) imply that the applicant's complaints had no substance or merit; and,

(c) put the chairperson off further enquiry into them.

124. Mlambo's abusive email to the applicant in January quoted in his letter to the chairperson of the Portfolio Committee, contained the allegation, 'Your matter was handled at Executive Management level being the level at which such matters are handled', thus implying both to the applicant and to the chairperson that he had no involvement in the abortion of the applicant's recruitment (whereas in truth and in fact he was party to the decision taken with Vedalankar to unfairly discriminate against him, abort his recruitment, and later disguise this with a fake budgetary justification).

125. In his 'Report' to the Minister, and later to the chairperson of the Portfolio Committee, Mlambo contradicted this false claim by implying that he and the Board had been party to the decision to abort the applicant's recruitment. Regarding 'our reasons for freezing this post', Mlambo alleged that 'financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts'.[187] And, '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 the organization at the time.'[188]

126. Since the Approval Framework[189] does not empower Mlambo and Vedalankar, or any other member(s) of the management structure, to take business and operational decisions together on their own, Mlambo intended the Minister and the Committee chairperson to understand that he and the Board (we) had duly resolved to abort the applicant's appointment and the appointments of two others for similar posts. In truth and in fact, the Board never did so. Mlambo's clear implication that it had was false, and was calculated to mislead and deceive the Minister and Committee chairperson in this regard.

[187] Pages 505–7.
[188] Page 507, 'Conclusion'.
[189] Pages 370–6.

127. Mlambo correctly bargained that as a senior judge the Minister and the chairperson of the Portfolio Committee would take him at his word and assume without question that he was telling the truth; and indeed, the applicant's entreaty elicited no response from the Minister, and on 29 June 2011 the Committee chairperson informed the applicant: 'In the light of the facts set out in Justice Mlambo's response, I now regard this matter as closed.'[190]

The facts and contradictions exposing and refuting Mlambo's and Vedalankar's fake budgetary justification for aborting the applicant's appointment

128. On 15 December 2010 the applicant delivered a second PAIA request for further specified records;[191] and in her response on 28 January 2011[192] – failing to deal with it, and again refusing to comply with the applicant's August records request on the basis of yet more wholly spurious reasons[193] – Vedalankar put up twelve records, which she marked V1–V12.[194]

129. Vedalankar's stated purpose in producing these records was not to respect the applicant's constitutional right to information and to comply with his records requests – to the contrary, she even spurned his mandatory, non-refundable request fee[195] – rather, it was to 'demonstrate'[196] her allegations to him in her letter of 18 October 2010[197] about the reason she had aborted his recruitment.

130. The records produced by Vedalankar contradict and refute her false allegations to the applicant in her October letter.

131. Record V3 is a letter Vedalankar wrote the Director General of the Department of Justice and Constitutional Development on 18 March 2010; and it records that a week earlier, on 10 March, she had learned that 'Contrary to confirmed reports by the DoJ&CD, the Department did not recommend a budget baseline adjustment for MTEF

[190] Page 502.
[191] Pages 174–85.
[192] Pages 211–24.
[193] Pages 315–43.
[194] Pages 225–58.
[195] Page 224, paragraph 44.
[196] Pages 213–6, third column.
[197] Pages 101–8.

2010/13 for Legal Aid SA. This situation will result in a budget deficit for Legal Aid SA in its 2010/11 MTEF cycle.'[198]

132. Vedalankar's statement to the Director General on 18 March 2010 gives the lie to her allegation to the applicant in her letter of 18 October 2010 that 'I, and the Legal Aid SA [sic] under my watch, have never sought to make any decisions regarding the Senior Litigator posts on any ground other than the budget constraints', because Mlambo and Vedalankar had aborted the applicant's recruitment, off the record and behind the scenes, in late November or December 2009, three or four months before any question of budgetary pressure had arisen on 10 March 2010.[199] Or, on Nair's false version to the applicant, 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [sic] put on hold due to various reasons'[200] three or four months before 10 March 2010 when the respondent first apprehended that a budgetary issue had arisen.

133. Record V4 is a follow-up letter Vedalankar wrote the Director General on 13 April 2010 about the outstanding transfer of OSD funding and the Department's failure to have adjusted the respondent's baseline funding;[201] and it mentions the posts that Vedalankar and the respondent's other executive managers 'had to identify ... early this year' for possible 'reduction' to meet the funding 'shortfall'[202] – namely 'the number of practitioners that we can make available at courts', with a 'primary impact' caused by their reduction 'on service delivery at courts including increased delays and backlogs'.[203] The 'practitioners ... at courts' to which Vedalankar referred in her letter were junior criminal defence lawyers serving the district and regional courts where 'delays and backlogs' are common, and she and Nair were specific about this later on.[204]

134. Vedalankar's letter to the Director General 'early this year' on 13 April 2010 is the first mention in the respondent's records of the possible need to reduce its staff

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[198] Page 236, paragraphs 6 and 7.
[199] Page 223, paragraph 39.
[200] Page 19.
[201] Pages 238–9.
[202] Page 103, paragraph 6.7.
[203] Pages 238–9, third paragraph.
[204] Pages 240; and 253, paragraph 2.2.a).

establishment – its junior staff establishment – to relieve its budgetary uncertainty; and her letter contains no suggestion that 'management' 'had to identify' its three remaining critical vacant Senior Litigator posts when considering posts for possible 'reduction'.

135. And indeed, when the applicant telephoned Clark on 14 April 2010 and she emailed her response to his enquiry a couple of hours later, the day before Vedalankar sent this letter to the Director General, there was no suggestion from her that the respondent's remaining critical unfilled Senior Litigator posts were being considered by 'management' for possible 'reduction'. Nor was there any such suggestion by Clark in her email to the applicant two weeks later on the 30th,[205] answering his further enquiry on the 22nd,[206] following her consultation with Vedalankar and/or Nair as to the reason his recruitment was not being finalized.

136. The reason Vedalankar did not in her letter to the Director General 'identify' vacant Senior Litigator posts for 'reduction' is because, contrary to what she falsely suggested to the applicant in her letter of 18 October 2010, in truth and in fact 'management' never at any stage 'identif[ied]' such critical vacant senior posts for possible 'reduction' to alleviate the respondent's budgetary uncertainty.

137. The fact that the abolition ('or freezing') of critical vacant Senior Litigator posts for which suitable candidates had already been selected and recommended for appointment at Pietermaritzburg and Durban was in truth never contemplated by Vedalankar and other executive managers 'early this year' after 10 March 2010[207] is demonstrated by the facts that:

(a) the day after Vedalankar wrote to the Director General on 13 April 2010, Clark assured the applicant that she had 'looked into this matter and can confirm' that his application for the Pietermaritzburg Senior Litigator post was 'still in progress and has not been concluded', and, 'We hope to conclude the matter soon';[208] and,

[205] Pages 256–8.
[206] Ibid.
[207] Page 236, paragraph 6.
[208] Page 5, paragraphs 19–20.

(b) the respondent advertised in the same month to recruit a Senior Litigator for Mthatha[209] and proceeded to interview shortlisted applicants in or about July.[210]

138. Record V5 is an email by Nair addressed to Makokoane on 15 July 2010, copied to Vedalankar and Clark, as well as to Hlabatau in view of its budgetary ramifications;[211] and consistent with Vedalankar's letter to the Director General in April, it records Nair's proposal to Makokoane – duly originated and mooted by Nair in terms of his powers and responsibilities under the respondent's Approval Framework, and submitted to Makokoane for his approval under the same[212] – 'to budget for the shortfall' by means of a 'first cut of 56 practitioner posts at JCs [Justice Centres]' serving the 'District and Regional courts' to effect 'a potential savings of R16 m', that is, to abolish fifty-six junior criminal defence practitioner posts. And in the event that further staff cuts were found to be necessary 'to budget for the shortfall', Nair proposed to Makokoane that more of the same junior legal posts be abolished, with the abolition of some even lighter 'paralegal and admin positions at JCs' as an additional possibility.

139. Like Vedalankar in her letter to the Director General in April 2010, Nair never proposed the abolition (or 'freezing') of the respondent's remaining three unfilled critical Senior Litigator posts.

140. Contrary to Vedalankar's patently false claim to the applicant in her letter of 28 January 2011 that Nair's proposal to Makokoane 'show[s] that not only the Senior Litigators' posts were identified for possible freezing',[213] Nair's proposal plainly shows that in truth and in fact Senior Litigator posts were never 'identified for possible freezing', in that Nair proposed cutting some junior practitioner posts only, and if needs be some even more junior 'paralegal and admin positions'.

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[209] Page 46.
[210] Page 128, paragraph 84; and page 299, paragraph 186.
[211] Page 240.
[212] Pages 370; and 372.
[213] Page 214, V5, third column.

141. Record V10 is the second page Vedalankar supplied of the minutes of the Board meeting on 31 July 2010,[214] to which her and her fellow executive managers' 'Report to Board' a fortnight earlier on 16 July is attached;[215] and these two records show that:

(a) Makokoane, Vedalankar and Clark agreed with Nair's proposal 'to mitigate for the probable deficit' by temporarily reducing the junior practitioner staff establishment 'for the remaining part of the 2010/11 budget period' and they noted this joint 'Recommendation' in their 'Report to Board';[216]

(b) the Board approved this 'Recommendation' two weeks later, precisely in line with Nair's proposal to Makokoane on 15 July to temporarily reduce public defender 'coverage' in the district and regional courts to 80% and 90% respectively: 'The Board approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of Annexure 1';[217] and,

(c) the Board appointed Vedalankar to implement its resolution to approve her 'Recommendation' made together with Makokoane, Nair, Clark and other executive managers to temporarily reduce the junior practitioner staff establishment 'to mitigate for the probable deficit' – and no other posts.[218]

142. In sum, the respondent's records show that it was never contemplated, never proposed, never agreed, and never approved that the respondent's three remaining unfilled critical Senior Litigator posts, for which suitably qualified and experienced applicants had been selected and recommended for appointment, be cut, either by abolishing or 'freezing' them.

143. To the contrary, in their 'Report to Board' Vedalankar and her management colleagues pertinently 'prioritize[d]' the recruitment of suitable staff for 'critical positions' – such as vacant Senior Litigator posts. After raising the possible need for even further reduction of 'coverage' of 'District and Regional Courts' by junior criminal defence

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[214] Page 251.
[215] Pages 252–4.
[216] Page 253, paragraph 2.2.a).
[217] Page 251, paragraph 4.2.
[218] Page 251, paragraph 4.2, 'Responsible Person' column.

lawyers,[219] that is, the reduction of even more junior practitioner posts, they recorded: 'The recruitment process will be reviewed, centralizing the decision on filling of posts at Executive level, with due regard to the need to prioritise critical positions.'[220]

144. So when Nair wrote to the applicant on 3 August 2010 claiming that 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [sic] put on hold due to various reasons. I can now confirm that we will not be proceeding with the filling of any of these posts', implying that two formal decisions had been taken in this regard in terms of the Approval Framework, he was lying to the applicant to put him off the truth; for when he told this lie, Nair knew full well that in truth and in fact the only vacant posts that had just been temporarily cut by the Board, at his own suggestion, were some junior practitioner posts serving the lower criminal courts.[221]

145. And likewise when Vedalankar wrote to the applicant on 18 October 2010 claiming that 'In July 2010 the NOE and CEO [Nair and Vedalankar] took the decision that all senior litigator posts that were vacant would be immediately frozen', she lied to the applicant to put him off the truth; for when she told this lie, Vedalankar knew full well that in truth and in fact 'In July 2010 the NOE and CEO took the decision' along with Makokoane and Clark to do away 'for the remaining part of the 2010/11 budget period'[222] with some junior practitioner posts only, and that the Board had approved this recommendation and appointed her to implement its resolution in this regard.[223]

146. Contrary to the lies they told the applicant, the truth of it is that when Vedalankar and Nair and other executive managers 'took the decision ... In July 2010'[224] to make a 'Recommendation'[225] to the Board that it pass a resolution to approve the temporary reduction of some posts to 'mitigate for the probable deficit',[226] the only posts that they contemplated, proposed, and agreed should be reduced to this end were some junior public defender posts. And accordingly it was only these junior practitioner posts that

[219] Page 253, paragraph 2.2.a).
[220] Page 253, paragraph 2.2.b).
[221] Page 240.
[222] Page 253, paragraph 2.2.a).
[223] Page 251, paragraph 4.2, 'Responsible Person' column.
[224] Page 103, paragraph 6.7.
[225] Page 254, paragraph 4.
[226] Page 253, paragraph 2.2.

they then recommended to the Board for reduction – which 'mitigating measures'[227] the Board approved two weeks later, and the Board accordingly resolved to abolish a number of these junior posts, and none other.

147. Notwithstanding the obvious interest of Hlabatau in Vedalankar's alleged decision 'In July 2010' to agree with Nair's alleged 'motivat[ion]' to 'freeze' three Senior Litigator posts, given its budgetary implications of ~R2 million a year in combined salaries,[228] Vedalankar and Nair did not inform her of her alleged decision to free up the Senior Litigator salary budget to ease the respondent's budgetary uncertainty, and no record of any such communication exists.

148. Accordingly, Hlabatau did not reallocate the budget for Senior Litigator salaries in 2010/11 to meet the respondent's 'shortfall' in 'anticipated funding for the 2010/11 financial year', following Vedalankar's and Nair's falsely alleged decision 'In July 2010' to freeze the three vacant Senior Litigator posts 'in order to meet this shortfall',[229] and no accounting record exists to show she did.

149. The reason Hlabatau was not informed is because Vedalankar's allegation to the applicant in this regard, with Mlambo's connivance, was a lie.

150. The Approval Framework requires that the Board Remuneration Committee be informed of any level 13 appointment, such as that of a Senior Litigator.[230] A decision to abort the recruitment of three candidates already selected and recommended for appointment to three budgeted Senior Litigator posts has the same financial accountability implications. Yet Vedalankar never informed the Board Remuneration Committee that 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen'[231] – allegedly with Mlambo's and the Board's approval: 'our reasons for freezing this [Pietermaritzburg] post',[232] as he falsely implied to the Minister and chairperson of the Portfolio Committee.

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[227] Page 251, paragraph 4.2.
[228] Pages 45–6; and page 218, paragraph 20.
[229] Page 103, paragraph 6.7.
[230] Page 372, section 8.2.2, 'OTHER' column, read with page 370.
[231] Page 103, paragraph 6.7.
[232] Page 506, first paragraph.

151. Whereas Vedalankar and other executive managers had duly sought and obtained a resolution from the Board approving their decision on 16 July 2010 to cut some junior practitioner posts to alleviate the respondent's budgetary uncertainty, in view of the implications of this decision on the implementation of the respondent's strategic and business plans, they sought no such Board resolution to allegedly 'freeze' the respondent's three critical vacant Senior Litigator posts that same month, for which candidates had been interviewed, selected and recommended, either before or at the Board meeting on 31 July 2010, or before or at its subsequent meetings on 30 October 2010 and 26 February 2011. Indeed, the Board was not even informed by Vedalankar and Nair of their alleged joint decision 'In July 2010' to 'freeze' these three critical senior professional posts.[233]

152. The reason Vedalankar did not present to the Board for approval her alleged decision to 'freeze' the respondent's three remaining vacant Senior Litigator posts 'In July 2010', as allegedly 'motivate[d]' by Nair, as she had done in respect of her decision to cut some junior posts in the same month,[234] as indeed 'motivate[d]' by Nair,[235] is because contrary to her false allegations to the applicant in this regard, in truth and in fact she did not 'freeze' the posts 'immediately'[236] 'In July 2010';[237] and her allegation to the applicant that she had was a lying alibi fabricated to conceal her and Mlambo's unlawful abortion of his recruitment in late November or December 2009 'immediately'[238] on learning of his identity, and then in the course of covering it up, their unlawful abortion of Mngadi's appointment 'In April/May' 2010,[239] and then the successful Mthatha candidate's 'In July 2010' on or about the 29th,[240] all off the record.[241]

153. Vedalankar's false allegation to the applicant in her letter of 18 October 2010 that she and Nair had 'immediately ... In July 2010 ... frozen' the critical vacant Pietermaritzburg Senior Litigator post for which he had been selected and recommended for

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[233] Page 385, paragraph 36.
[234] Pages 252–4.
[235] Page 240.
[236] Page 103, last line.
[237] Page 103, penultimate line.
[238] Page 103, last line. Vedalankar's word, in a revealing slip, in a related context.
[239] Pages 146–7, paragraphs 179–80.
[240] Page 389.
[241] Page 381, paragraph 14.

appointment, together with other equivalent posts, is further contradicted by her CEO report of 19 August 2010,[242] contained in the respondent's 'Annual Report 2009/2010'. Whereas two weeks earlier on 3 August 2010 Nair had falsely claimed to the applicant on her behalf,[243] 'I can now confirm that we will not be proceeding with the filling of any of these posts',[244] Vedalankar made no mention in her annual CEO report of having just (allegedly) 'frozen' three critical senior professional posts three weeks previously. Nor does Vedalankar's false allegation to the applicant in this regard feature anywhere else in the annual report.

154. To the contrary, in her CEO report Vedalankar stated: 'Our strategic shift also incorporated changes to our support platform to support the delivery of quality legal services. ... our priority continued to be increasing access to quality legal aid services. ... The revised civil legal aid strategy mentioned above will to a certain extent increase capacity to assist clients in civil legal aid matters.'[245] This is to say, she misled and lied to the Minister, and to the Portfolio Committee to whom she presented the annual report at her meeting with it on 12 October 2010, because on her version to the applicant she had a couple of weeks earlier been obliged through lack of funds not to 'increase' but to reduce the respondent's 'delivery of quality legal services', to reduce the poor's 'access to quality legal aid services', and to reduce the respondent's 'capacity to assist clients in civil legal aid matters'.

155. Vedalankar's false allegation to the applicant on 18 October 2010 that she and Nair had 'frozen' three critical Senior Litigator posts 'immediately ... In July 2010' is contradicted again by her statement to the Portfolio Committee made six days earlier on the 12th, in which she assured the Committee that the respondent was 'on track on all components of our Business Plan and we are confident that we will deliver on this Business Plan in this financial year' and 'we don't have any problem areas that we would like to report on'.[246]

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[242] Pages 475–9.
[243] Page 19.
[244] Ibid.
[245] Pages 475–9.
[246] Page 184. The respondent's Business Plan is based on its 'Strategic Plan 2009–2012': page 452.

156. In her address to the Committee, Vedalankar did not say she had just some weeks earlier been obliged to 'freeze' three critical vacant Senior Litigator posts 'immediately ... In July 2010' for budgetary reasons; to the contrary, she stated that 'if we didn't get the OSD money that we were meant to it would mean that we would have to freeze some posts but the Minister didn't want that and said that we needed to continue with the business. And so he did get involved and he had assisted', and 'at the moment we are in the process of fixing ... the funding issues like OSD ... In fact the Minister has been involved ... and undertook to assist to resolve this issue through ... the mid-term adjustment budget'[247] – thus implying to the Committee that in accordance with the Minister's wishes, and thanks to his productive intervention in the problem of outstanding OSD funding, no posts were 'frozen'.

157. On Vedalankar's version to the applicant she lied to Parliament, because in her address to the Committee on 12 October 2010 she stated that Mlambo had suggested to the Minister (when 'our chairperson met with the Minister') that the respondent might have to 'freeze posts', 'freeze some posts'[248] as a contingent future possibility should the respondent not receive its outstanding OSD funding allocation, but because the Minister had rejected the proposal to 'freeze some posts', and had 'been involved ... and undertook to assist to resolve this issue' of outstanding OSD funding, the respondent had consequently 'continue[d] with the business'[249] normally, without 'freezing' any posts.

158. Vedalankar's false allegation to the applicant on 18 October 2010 that she and Nair had 'frozen' three critical Senior Litigator posts 'immediately ... In July 2010' is further contradicted by her information to the Portfolio Committee on 31 March 2011 in her 'Legal Aid South Africa Strategic Plan and budget 2011' presentation. According to the record of her response to the Committee's specific concern raised about 'the vacancy rate, generally, and at the professional assistant level', i.e. at the level of qualified and admitted legal professionals, 'Ms Vedalankar replied that in 2010/11, LASA had set a target of 96% of all posts being filled, although it had then held back on filling some of

[247] Ibid.
[248] Ibid.
[249] Ibid.

the vacancies because of the uncertainty of obtaining OSD funding in Phase 1, which, if not recovered, would have put the LASA into deficit. OSD was now settled in the baseline figures, and she thanked the Committee for its support in this regard. LASA now had 96% of all posts filled.'[250]

159. Vedalankar did not allege to the Committee at this meeting on 31 March 2011, as she had falsely alleged to the applicant on 18 October 2010 and again on 28 January 2011,[251] that she had 'frozen' the respondent's (three) remaining critical unfilled Senior Litigator posts; contrariwise, in her reply to the Committee's question about 'the vacancy rate' Vedalankar unambiguously implied that during some financial uncertainty, now past, the respondent had merely delayed filling some posts, now filled.

160. On her version to the applicant Vedalankar yet again on 31 March 2011 deliberately misled Parliament to conceal her and Mlambo's unlawful abortion of the applicant's appointment to the Pietermaritzburg Senior Litigator post, and then in the course of a cover-up their subsequent unlawful abortions at different times of the recruitment of the other duly selected and recommended candidates for the two other remaining equivalent posts at Durban and Mthatha, thereby preventing the respondent's employment of senior legal professionals with civil law expertise for critical vacant senior professional posts in accordance with the respondent's 'Strategic Plan 2009–2012'.

161. According to Vedalankar's information to the Committee on 31 March 2011, no remaining budgetary justification for not 'filling some of the vacancies' has existed since 'OSD was ... settled in the baseline figures'.[252]

162. According to Vedalankar's information to the Committee on 12 October 2010, the Minister had already resolved the respondent's problem with outstanding OSD funding

[250] Page 438, penultimate paragraph.
[251] Page 214, paragraph V5, third column.
[252] Ibid.

for 2010/11 and had specifically informed the respondent's chairperson that he did not want any 'freezing' of posts.[253]

163. It follows that even on Vedalankar's false version to the applicant, since 12 October 2010 at the latest there has been no budgetary justification for the respondent not to proceed with filling its remaining three critical vacant Senior Litigator posts, for which suitable candidates, including the applicant, have already been selected and recommended.

164. In his 'Report' to the Minister and later to the chairperson of the Portfolio Committee, Mlambo mentions (truthfully) that 'Various documents which clearly demonstrate the financial uncertainty at the time[254] ... were shared with Adv Brink'[255] – thus himself confirming that the respondent's 'financial uncertainty' is a thing of the past, that the respondent's own false pretext for not continuing with the applicant's appointment has evaporated, and no proper, 'honest'[256] impediment exists to prevent the finalization of his appointment to the Pietermaritzburg Senior Litigator post for which he was selected and recommended.

165. The respondent's current 'Best Employer 2010/11' profile accordingly records, on information supplied by the respondent, that the respondent 'offers a platform for advanced legal practice in its high court units and through positions such as senior litigator'[257] – contradicting Vedalankar's repeated false claims to the applicant that she had 'frozen' all critical vacant Senior Litigator posts for budgetary reasons[258] – which false claims, being false, Vedalankar has never made to the Board,[259] nor to the Portfolio Committee at either of her two presentations on 12 October 2010[260] and 31 March 2010,[261] nor to the Minister in her CEO report for 2009/10.[262]

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[253] Page 184, final paragraph.
[254] Pages 236–40.
[255] Page 505, final paragraph, sentence commencing, 'Various'.
[256] Page 506, first paragraph, first line.
[257] Page 453.
[258] Page 103, paragraph 6.7; page 104, paragraph 7.3; and page 214, paragraph V5, third column.
[259] Page 385, paragraph 36.
[260] Page 184.
[261] Pages 434–41.
[262] Pages 475–9.

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166. So when Vedalankar wrote to the applicant on 18 October 2010, six days after her address to the Portfolio Committee on the 12th, alleging to him that because 'anticipated funding for the 2010/11 financial year did not materialise', having '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. ... In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen', the respondent's temporary budgetary uncertainty caused by outstanding OSD funding had already been resolved, as she had reported to the Portfolio Committee a week earlier; and Vedalankar's allegations to the applicant, read together, were therefore deliberately false and deceptive and calculated to defraud him into abandoning his claim to appointment to the post for which he had been selected and recommended.

167. Unlike the other provinces, KwaZulu-Natal, one of the poorest and most populous, currently lacks any experienced, in-house Senior Litigator to handle 'specialised, complex or impact' civil litigation in the upper courts and to school the respondent's junior attorneys, as envisaged in the advertised job description,[263] and to 'provide support for practitioners in more complex matters', as the respondent's current annual report puts it.[264] According to Nair, it is in the rural areas that the 'demand [for] Civil legal aid ... was bigger'.[265] Mlambo has 'agreed that there was still much to be done in reaching the rural poor'.[266]

168. Thus obstructing and frustrating the implementation of the respondent's 'Strategic Plan 2009–2012', Mlambo's and Vedalankar's abortion of the applicant's recruitment (and of the internal promotion of Mngadi) has perpetuated in KwaZulu-Natal:

(a) the 'Lack of specialized legal skills taking cognizance of the complexity of the context in which the organization operates' and the 'Lack of capacity to provide impact litigation'[267] mentioned in the respondent's draft 'Strategic Plan 2009–2012' issued

[263] Page 45.
[264] Page 142, paragraph 153.
[265] Page 433, penultimate paragraph.
[266] Page 441, thirteenth paragraph.
[267] Page 445, sections III and IV.

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by Vedalankar on 5 September 2008,[268] which was why 'the Legal Aid Board should capacitate for specialized skills';[269] and,

(b) the respondent's 'Legal Delivery Challenges' in that province, raised by Vedalankar[270] in her 'Briefing of Justice Portfolio Committee 5 August 2009': 'Limited capacity to render civil legal aid services', hence its resolution in its 'Way Forward' to 'Increase Legal Aid SA's capacity to render civil legal aid services.'[271]

169. Which challenges the respondent's 'Strategic Plan 2009–2012' was aimed at resolving:

- 'To improve access to justice especially for rural/remote communities';
- 'To develop a full appreciation of the civil justice needs of the poor and provide more civil representation'; and,
- 'To undertake targeted impact litigation'.[272] And,
- 'Programme P5: To improve access to justice through Impact litigation';[273]
- 'Programme P23: ... recruit specialist skills';[274] and,
- 'Programme P24: ... increased capacity of LAB ie more legal specialists' and 'capacitate civil units ie more staff and more supervision'.[275]

170. Vedalankar's alleged 'freezing' of the Pietermaritzburg, Durban, and Mthatha Senior Litigator posts on or about 29 July 2010 – in truth her and Mlambo's abortion at different times of the recruitment processes for these posts – is contrary to the express wishes of the Minister noted and recorded two weeks earlier in her and the other executive managers' 'Report to Board' of 16 July 2010[276] and conveyed by her to the

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[268] Page 444.
[269] Page 445, section XIV.
[270] Page 426, penultimate paragraph.
[271] Page 429.
[272] Page 446, 'Client & Community'.
[273] Page 447.
[274] Page 450.
[275] Ibid.
[276] Page 252, paragraph 1.3.

Portfolio Committee on 12 October 2010;[277] and her and Mlambo's unlawful interference in the appointment of Senior Litigators is contrary to the express wishes of Parliament stated on 30 May 2007,[278] and contrary to the respondent's 'Strategic Plan 2009–2012' approved by the Board and presented to the Minister in September 2009[279] and to the Portfolio Committee by Vedalankar and Nair on 14 April 2010.[280]

171. Since it was certainly not 'accepted'[281] by the Minister that the respondent should 'freeze' its recruiting for unfilled posts, especially its critical vacant posts – to the contrary, the Minister had explicitly rejected the suggestion, as Vedalankar herself informed the Board[282] and later the Portfolio Committee[283] – the truth of it is that contrary to her lying suggestion to the applicant, 'management' never 'accepted' that 'all senior litigator posts that were vacant would be immediately frozen'.[284] And this is why no record whatsoever exists to show it ever did.

172. Vedalankar's alleged 'freezing' of the respondent's critical vacant Senior Litigator posts 'In July 2010', for which suitable candidates had been selected and recommended for appointment, is also at odds with the specific concern of the Portfolio Committee, expressed at its discussion on 4 May 2010 of national Budget Vote 23, about 'the high vacancy rate' in the Department of Justice and Constitutional Development and public bodies subject to its oversight and 'the negative consequences that vacancies can have for the delivery of justice services': 'The Committee recommends that all critical posts be filled as soon as possible, especially given the fact that the Department has the budget for the posts.'[285]

173. According to Vedalankar's information to the Portfolio Committee on 31 March 2011, 'in 2010/11, LASA had set a target of 96% of all posts being filled'.[286] Under the heading 'legal supervisory staff/managers' in the respondent's 2009/10 annual report,

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[277] Page 184, last paragraph
[278] Pages 120–1, paragraphs 50–5.
[279] Page 452.
[280] Page 431.
[281] Page 103, paragraph 6.7.
[282] Page 252, paragraph 1.3.
[283] Page 184, last paragraph.
[284] Page 103, paragraph 6.7.
[285] Pages 132–3, paragraphs 105–6.
[286] Page 438, penultimate paragraph.

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occupancy is 91%, or 252 out of 272. The First Quarter Report for 2010/11 presented to the Portfolio Committee on 12 October 2010 records occupancy at 92%, or 263 out of 286.[287] Mlambo's and Vedalankar's ill-motivated obstruction, off the record and behind the scenes, of the appointment of the candidates duly selected and recommended for the respondent's vacant critical Senior Litigator posts thus contradicts and frustrates the achievement of the respondent's occupancy target for 'legal supervisory staff/managers'.

174. As pleaded supra, according to the report of Vedalankar's address to the Portfolio Committee on 31 March 2011, the respondent had 'held back on filling some of the vacancies because of the uncertainty of obtaining OSD funding in Phase 1, which, if not recovered, would have put the LASA into deficit. OSD was now settled in the baseline figures, and she thanked the Committee for its support in this regard.'[288] In other words, the budgetary 'uncertainty' (Mlambo's term) has long been resolved with the 'support [of] the Committee'.

175. According to the respondent's report to the Portfolio Committee on 31 March 2011, its total budget for 2010/11 was R1 179 million,[289] of which 99.6% was projected to be spent.[290] The 0.4% unspent 2010/11 budget amounts to approximately R5 million – amply sufficient to meet the salaries of three Senior Litigators.[291]

176. Further contradicting Vedalankar's false claim to the applicant on 18 October 2010 that 'It was accepted that this [i.e. the 'anticipated funding for the 2010/11 financial year [which] did not materialise'] required a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall',[292] the respondent's First Quarter Report for the period April to June 2010, presented to the Portfolio Committee on 12 October 2010, shows that the respondent created 82 new budgeted posts. 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

[287] Page 457.
[288] Page 438, penultimate paragraph.
[289] Page 443.
[290] Page 437, sixth paragraph commencing, 'She noted'.
[291] Page 45; page 46; page 140, paragraph 144; page 61, item 14; and page 218, paragraph 20.
[292] Page 103, paragraph 6.7.

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attorneys.[293] Overall, the respondent's staff establishment increased by a substantial 3.2%.

177. That is, even after the process to appoint the applicant had been 'put on hold' as alleged by Nair[294] and then finally discontinued ('we will not be proceeding with the filling of any of these posts') 'In July 2010' for budgetary reasons as alleged by Vedalankar later on,[295] the respondent was actively creating masses of new posts and employing masses of new personnel, including senior legal professionals.

178. Vedalankar's claim to the applicant to have 'frozen ... all senior litigator posts that were vacant' is inconsistent and irreconcilable with the respondent's information to government noted in national Budget Vote 23 on 17 February 2010, in which it is recorded that expenditure on employee remuneration 'is set to increase as a proportion of total expenditure, mainly due to LASA's strategy to reduce the outsourcing of legal representation. This is expected to be achieved by appointing more staff and implementing the special occupational specific dispensation for legally qualified professionals.'[296] Mlambo's and Vedalankar's abortion of the applicant's appointment, and that of two other duly selected and recommended 'legally qualified professionals', stymies this 'strategy' to reduce operating costs and it perpetuates the expensive 'outsourcing of legal representation' in complex civil matters to advocates in private practice in KwaZulu-Natal.

179. Vedalankar's claim to the applicant to have 'frozen ... all senior litigator posts that were vacant' is also contradicted by her concluding statement to the applicant in her 18 October 2010 letter: 'Should we decide to unfreeze these positions in the future, the positions will be duly advertised and you will be at liberty to submit your application for any of the positions.'[297] Had Vedalankar merely 'frozen' the Pietermaritzburg Senior Litigator post, which is to say the process for the applicant's recruitment to it, as she alleged to the applicant, rather than in truth and in fact having acted with Mlambo to covertly abort his recruitment in late November or December 2009, she would have

[293] Page 457.
[294] Page 19.
[295] Page 103, paragraph 6.7.
[296] Pages 483–4, paragraph headed 'Expenditure trends'.
[297] Page 104, paragraph 7.5.

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offered to revive the interrupted recruitment process from where it had paused, concluding in the applicant's appointment to the post for which he was selected and recommended – especially since by 12 October 2010[298] at the latest the respondent's budgetary issues had been resolved[299] with the assistance of the Minister.

180. The fraudulent subterfuge behind Vedalankar's invitation to the applicant to reapply sometime in the future for the post for which he had already been selected and recommended was to put him off pursuing his appointment, and make sure that he was shut out in accordance with her and Mlambo's decision in this regard in late November or December 2009.

181. In her second letter to the applicant on 28 January 2011, Vedalankar deceitfully attempted to distance herself from and conceal her involvement in her and Mlambo's decision in late November or December 2009 to reject his appointment on prohibited grounds, by dissembling that it was not her but Nair who took the decision not to proceed with the process to finalize his appointment because it was 'never approved by NOE and thus never proceeded with'.[300]

182. Vedalankar's statement is true on its face but a lie in substance, in that the applicant's recruitment was 'never approved by NOE and thus never proceeded with' precisely because she and Mlambo had vetoed it.

183. To the same dishonest end, Vedalankar lied further in alleging in the same letter: 'I am not aware of any of the Executives discussing you and your candidacy for the above-mentioned post save the edited and blacked out recommendation[301] for the next round of interviews.'[302] That is to say, according to Vedalankar, other than the professional selection panel's discussion of the applicant's suitability and positive conclusion recorded in the Motivation[303] for the applicant's appointment there was no further

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[298] Page 184.
[299] Page 438, penultimate paragraph.
[300] Page 215, V7, third column.
[301] Pages 244–8.
[302] Page 219, paragraph 21; page 61, item 16.
[303] Page 234, first paragraph commencing, 'NB: Motivation'.

discussion of the applicant's appointment by the respondent's management executives – and certainly not by her.

184. The lie to both these false allegations by Vedalankar is given by the fact that, as will be canvassed infra, the Approval Framework requires that she and Makokoane 'Must agree' to Nair's 'Final approval', and by necessary implication his disapproval, of 'Senior Professional staff' 'Appointments'[304] following their selection and recommendation for appointment by professional selection panels. It is plain that Nair did not as a third-ranking business manager (CEO: COO: NOE) decide to abort the applicant's appointment on an unauthorized, unlawful frolic of his own without first soliciting Vedalankar's agreement or disagreement as required of him by the Approval Framework. (Indeed, Vedalankar claims responsibility for aborting the applicant's recruitment, 'motivate[d]' by Nair, 'immediately' 'In July 2010'.)[305] It follows that contrary to her lie to the applicant about it, Vedalankar indeed discussed his 'candidacy' for the Pietermaritzburg Senior Litigator post with Nair and informed him of her and Mlambo's rejection of his appointment.

185. Vedalankar's email to Nair on 29 July 2010,[306] in reaction to the applicant's letter to her of the 12th,[307] shows that contrary to her lie to the applicant that besides Mdaka on the professional selection panel, 'I am not aware of any of the Executives discussing you and your candidacy', she and other executives indeed again discussed the applicant and his 'candidacy' in July 2010, in that:

(a) On or about 29 July 2010 Vedalankar held a specific discussion with Nair about the applicant's letter of 12 July 2010 concerning his 'candidacy' and long overdue appointment;[308]

(b) 'FW:' (i.e. Forwarded) in the Subject bar of Vedalankar's said email – 'FW: Complaint against the HRE & an interview process [sic]' – shows unequivocally that there had been prior written discussion of the subject of the applicant's complaint and enquiry

[304] Page 372, section 8.2.2, read with page 370.
[305] Page 103, paragraph 6.7.
[306] Page 389.
[307] Pages 1–17.
[308] Pages 389; and 19.

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about the delay in his appointment in email traffic between Vedalankar and another party, probably Mlambo, and the absence of this prior exchange below her message shows that Vedalankar deleted the record of this discussion to conceal it before emailing Nair under the original subject heading of the prior email discussion; and,

(c) the content of Vedalankar's message – 'Please see attached letter[.] I am not sure 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 and then discuss with me' shows that notwithstanding the low cunning of her transparently feigned ignorance of the matter, Vedalankar well knew 'the outcome' of 'the process' to abort the applicant's appointment that had already been 'finalise[d]' by Mlambo and her many months earlier and of which 'outcome' 'the persons interviewed' needed to be 'advise[d]', namely the applicant above all, since Mngadi had already been 'advise[d]' by email 'in April/May' 2010[309] at her and Mlambo's instance.

186. The reason Vedalankar lied to the applicant in denying that she and other executive managers had ever discussed him or his 'candidacy' – when in truth and in fact, she and other executives had indeed discussed it in late November or December 2009, again in the last week of April 2010,[310] and again on or about 29 July 2010[311] – is because she was seeking to conceal her direct role behind the scenes in aborting his recruitment on account of unlawful political (or racial) prejudice, and her and Mlambo's developing scheme to cover it up.

<u>The alleged 'freezing' of Senior Litigator posts off the record</u>

187. In her letter to the applicant of 18 October 2010, Vedalankar alleged: 'The NOE, as the executive responsible for operations may also motivate a change in the organizational structure, including the freezing of positions, for discussion and finalization with the CEO (refer S.8.1.2 (b) of the Legal Aid SA Approval Framework).'[312] And accordingly: 'In

[309] Pages 146–7, paragraphs 179–80; and page 385, paragraph 37.
[310] Pages 5–6, paragraphs 23–4.
[311] Page 389.
[312] Page 103, paragraph 6.6.

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July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.'[313]

188. Vedalankar further alleged in her letter to the applicant on 28 January 2011 that her alleged decision 'In July 2010' to 'freeze' 'all senior litigator posts that were vacant' was 'verbal'.[314] Nair confirms on oath that no record exists of Vedalankar's alleged decision, allegedly 'motivate[d]' by him.[315]

189. Mlambo similarly alleged to the Minister on 9 March 2010[316] and to the chairperson of the Portfolio Committee on 22 June 2010[317] that '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 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.'[318]

190. Section 8.1.2(b) of the respondent's Approval Framework, read with section 8.1.2(a), provides for the 'Establishment of new positions, regrading of existing positions and abolition of posts'.[319] Contrary to Vedalankar's false claim to the applicant, the Approval Framework does not provide for 'the freezing of positions' by Vedalankar or anyone else. The Approval Framework does not give Nair the power to 'motivate' for the 'freezing of posts' for the obvious reason that it is natural that a post itself is incapable of being 'frozen', only a recruitment process to fill it. Hence Nair's claim to the applicant, 'I can now confirm that we will not be proceeding with the filling of any of

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[313] Page 103, paragraph 6.7.
[314] Page 221, paragraph 29, final sentence. 'All communication' referred to in paragraph 29 concerning the proposed 'change in the organizational structure' (the 'decision to create or abolish a post') in order to reduce operating costs went to the temporary reduction of junior practitioner posts.
[315] Page 342, Part 18; and page 385, paragraph 35.
[316] Pages 507.
[317] Page 504.
[318] Pages 505–7.
[319] Page 372.

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these posts' – in which he correctly did not claim the posts themselves were 'frozen'. Furthermore, 'freezing' a post, i.e. a recruitment process to fill it, as opposed to abolishing it, plainly does not 'change ... the organizational structure', which would result from the 'Establishment ... regrading' or 'abolition of posts', as the Approval Framework specifically envisages.[320]

191. But if, the above facts notwithstanding, it be held that the Approval Framework does implicitly permit Vedalankar to 'freeze' posts, as she alleges, section 8.1.2(b) requires Nair to 'motivate' any 'change in the organizational structure' to COO Makokoane, who 'Must agree'. HRE Clark 'Must be consulted (before)'. And 'Final approval' is Vedalankar's responsibility. This is why Nair duly observed these requirements when motivating to Makokoane for a reduction of the junior practitioner staff establishment on 16 July 2010, copying Clark and Vedalankar in.[321]

192. No record exists to show that Nair 'motivate[d]' to 'freeze' 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts'.[322] In truth and in fact the records show that in July 2010, the month in which Vedalankar falsely alleged to the applicant that she had 'frozen ... all senior litigator posts that were vacant' upon Nair's 'motivat[ion]', Nair had 'motivate[d]' a very different 'change in the organizational structure' that had nothing to do with the respondent's critical vacant Senior Litigator post establishment, namely for the reduction of some junior practitioner posts and if necessary some even lighter paralegal and administrative posts.[323] And Makokoane, Clark and Vedalankar all agreed, and recommended this to the Board for approval.[324]

193. No record exists to show that Makokoane 'agree[d]' with the alleged 'freezing' of the respondent's successful recruitment of three suitable candidates selected and recommended for appointment as Senior Litigators.[325]

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[320] Page 372, section 8.1.2.
[321] Pages 240; and 372.
[322] Page 19; page 339, part 15; and page 384, paragraph 32.
[323] Page 240.
[324] Page 254, paragraph 4.
[325] Page 221, paragraph 29.

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194. No record exists to show that Clark was consulted before 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [sic] put on hold', as Nair put it.[326] On Nair's version to the applicant, by July 2010 the applicant's appointment following his successful interview had been 'on hold', i.e. 'frozen' (with no information given him) for about eight months. In April 2010, five months after he had been selected and recommended, Clark knew nothing of the reason for the extraordinarily long delay in finalizing the applicant's appointment when he enquired of her.[327] This shows that she had not been 'consulted' as required before this alleged decision was taken to 'put on hold', i.e. 'freeze', 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts' – even on Vedalankar's false assertion to the applicant that the Approval Framework permits her to 'freeze' posts.

195. And no record exists to show that Vedalankar gave her 'Final approval' to Nair's alleged 'motivat[ion]' to 'freeze' the recruitment process for the appointment of the applicant as Senior Litigator, Pietermaritzburg,[328] and for the appointment of two other applicants for the equivalent posts in Durban and Mthatha.

196. It is manifestly not possible that a major decision – substantially impacting on and reducing (a) the respondent's ability to deliver 'quality legal services', (b) the poor's 'access to quality legal aid services' and (c) the respondent's 'capacity to assist clients in civil legal aid matters', thus contradicting the respondent's 'strategic shift' set out in its 'Strategic Plan 2009–20012', as Vedalankar summed it up in her CEO report[329] – taken by several[330] national executives at the highest levels of the management structure of a major public entity be 'verbal'[331] and that no record of the decision or the preceding debate exists whatsoever.[332] It follows that Vedalankar lied to the applicant in alleging that 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that

[326] Page 19; page 340–1, part 16; and page 384, paragraph 33.
[327] Page 5, paragraphs 19–20.
[328] Page 222, paragraph 35; page 381, paragraph 14; page 342, part 18; and page 385, paragraph 35.
[329] Pages 475–9.
[330] Page 385, paragraph 36.
[331] Page 221, paragraph 29, final sentence.
[332] Page 333, part 8, item 14; and page 383, paragraph 23.

were vacant would be immediately frozen.'[333] And that Mlambo lied to the Minister and to the chairperson of the Portfolio Committee about this accordingly.[334]

197. Any decision by Vedalankar to halt the recruitment of senior legal professionals for three out of ten remaining unfilled critical Senior Litigator posts, especially after they had already been selected and recommended for appointment by professional selection panels, contrary to the express wishes of the Minister[335] and of Parliament,[336] and contrary to the respondent's 'Strategic Plan 2009–2012' approved by the Board and presented to the Minister and to the Portfolio Committee, manifestly required the Board's approval. Hence the Board's approval sought and obtained by Vedalankar and other executive managers for their decision recorded in their 'Report to Board' on 16 July 2010 to temporarily cut some junior practitioner posts, especially given that 'The Executive Authority has however in a meeting with the Legal Aid SA Board Chairperson expressed his wish to have Legal Aid SA service delivery maintained.'[337]

198. In the premises, even on her own clearly false version, Vedalankar's alleged 'verbal' decision 'In July 2010' to 'freeze' the post for which the applicant had been selected and recommended, plus two others, was beyond her powers and unlawful.

<u>The respondent's 'second interview' and 'final approval' claims</u>

199. The respondent's managers have repeatedly alleged to the applicant that his recommendation for appointment by the professional selection panel that interviewed and selected him is or was subject to the approval, variously, of:

(a) 'the Chairperson, a Judge of Appeal' at 'a final interview' – per Brijlal in April 2010;[338]

(b) a 'second round' interview – per Clark in April 2010;[339]

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[333] Page 103, paragraph 6.7.
[334] Pages 505–7.
[335] Page 184.
[336] Pages 120–1, paragraphs 50–55.
[337] Page 252, paragraph 1.3.
[338] Page 6, paragraph 28.
[339] Page 6, paragraph 28.

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(c) Nair as 'the line function executive' and therefore 'the person responsible for the final approval of the Senior Litigator appointments in our organization ... which in this case is myself' – per Nair in August 2010;[340]

(d) a 'second stage ... interview ... by a national office panel, including the Chairperson of the Board, National Operations Executive (NOE), Legal Development Executive, Human Resource Executive and the Chief Operations Officer. ... [T]he ROE for KwaZulu-Natal together with the NOE and CEO approve the final appointment' – per Vedalankar in October 2010;[341]

(e) 'second round interviews ... with national executives'; 'the process for Senior Litigator was two-pronged ... you were ... subject to a second round interview process for which the interview panel included Mlambo JP and other National Office Executives' – per Vedalankar in January 2011;[342]

(f) 'a second interview panel' of 'identified National Office executives. ... The Chairperson of the Board was also invited to participate in this panel. The second interview panel would consider all candidates recommended from the first round of interviews to the second round of interviews. ... If after the second round interviews a recommendation is made, the Regional Operations Executive in charge would finalize the appointment only after the National Operations Executive and the Chief Executive Officer agree with the recommendation' – per Nair in April 2011.[343]

200. That is, according to the respondent's managers quoted above, the applicant's selection and recommendation by the KwaZulu-Natal regional professional selection panel for appointment as Senior Litigator, Pietermaritzburg, was subject to the discretionary approval of the respondent's national business managers and Board chairperson following a second interview of the applicant by the latter persons to again assess his suitability for appointment, and if, after this, he was approved for the second time, the applicant's appointment was subject to the final discretionary approval, variously, of the respondent's:

[340] Page 19.
[341] Page 103, paragraphs 6.2–5.
[342] Page 215, paragraph V7, third column; and page 217, paragraph 13.
[343] Page 380, paragraph 12.

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(a) chairperson; or,

(b) National Operations Executive; or,

(c) 'ROE for KwaZulu-Natal together with the NOE and CEO'; or,

(d) 'National Operations Executive and the Chief Executive Officer'; or,

(e) 'Regional Operations Executive in charge ... only after the National Operations Executive and the Chief Executive Officer agree with the recommendation'.

201. Mlambo alleged similarly to the Minister in March 2011[344] and later to the chairperson of the Portfolio Committee in June[345] that the applicant 'was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted panel ... of which the Chairperson of the Board of Directors is one'.[346]

202. 'Version_2' of the respondent's Recruitment 'policy and procedure'[347] protocol, approved by the Board on 29 November 2008,[348] 'provides the Legal Aid Board with clear guidelines to be followed when a vacancy exists', and at all times it has governed the process for the applicant's recruitment.[349]

203. Mlambo's and the respondent's managers' claims that the professional selection panel's selection and recommendation of the applicant for appointment was subject to the further approval of any of the officers enumerated above, following a second interview, is unsupported by and inconsistent with the respondent's Recruitment 'policy and procedure' protocol.

204. The Recruitment 'policy and procedure' protocol makes no provision for any of the respondent's national business managers and Board directors to conduct any 'second round interview process' of senior legal professionals selected and recommended by

[344] Page 505.
[345] Ibid.
[346] Page 505, first and second paragraphs.
[347] Page 228, paragraph 1.1.3.
[348] Page 228, footer.
[349] Page 228, paragraph 1.1.3.

regional professional selection panels for appointment as Senior Litigators at regional Justice Centres. That is, the Recruitment protocol does not require senior legal professionals, selected and recommended for appointment as Senior Litigators following the interrogation of their qualifications, expertise and suitability by a delegated panel of their senior legal professional peers, to present themselves for further examination and assessment by the respondent's nearly all legally unqualified national executive business managers, and the chairperson of the respondent's Board 'invited'[350] along to join them.

205. The respondent's executive managers, whose function is to implement the policy resolutions passed by the Board, do not have the power to deviate from the Recruitment 'policy and procedure' protocol resolved upon by the Board, and to just invent[351] off the record[352] and (sometimes) follow[353] their own ad hoc 'policy and procedure' for the recruitment of senior legal professionals[354] for the respondent's advertised vacant Senior Litigator posts.

206. Which unauthorized and irregular recruitment 'policy and procedure' Mlambo, Nair, Vedalankar and Clark have whimsically applied to some Senior Litigator candidates and not others. According to Nair, 'the second interview panel has sat on three separate occasions to consider prospective candidates'[355] – yet the respondent has filled seven of its originally advertised nine[356] Senior Litigator posts in other provinces, Pietermaritzburg and Durban excepted.

207. Nor do the respondent's executive business managers Nair, Vedalankar and Clark, all legally unqualified, have the power to arrogate to themselves a discretionary vetting function over senior legal professionals selected and recommended for appointment as Senior Litigators by duly appointed professional selection panels comprising senior

[350] Page 380, paragraph 10.
[351] Pages 379–80, paragraph 8–9.
[352] Page 380, paragraph 8.
[353] Page 380, paragraph 11.
[354] Page 280, paragraph 9, second sentence.
[355] Page 380, top of the page.
[356] Page 537.

attorneys and advocates with the necessary professional competence to assess their expertise and suitability.

208. Nor do Nair, Vedalankar, and Clark have the power to appoint the chairperson or any other lawyer on the Board to share this unauthorized and irregular gatekeeping function with them and to assist them, perhaps appreciating that because they are all legally unqualified they are entirely incapable of assessing the expertise and suitability of senior legal professionals selected and recommended for appointment by professional selection boards. Neither the respondent's Approval Framework nor its Recruitment 'policy and procedure' protocol provide for the chairperson or any other member of the Board to involve him- or herself in staff recruitment. The unlawful irregularity of such involvement by the chairperson in the respondent's operations is pointed up by Nair's own observation to the applicant: 'The Board's responsibility primarily relates to policy issues and not operations, hence appointments and freezing of positions are dealt with by Executives.'[357]

209. Consequently, Nair's claim to the applicant on 8 April 2011 that he had decided 'verbally ... in April 2008 ... in consultation with both the Chief Executive Officer and the Human Resources Executive ... that the process of recruitment for Senior Litigators will include a second round of interviews [by] a panel ... of identified National Office executives' with the 'Chairperson of the Board ... invited to participate'[358] is legally irrelevant.

210. Section 8.2.2(b) of the Approval Framework[359] read with 'Key to Levels'[360] stipulates that 'Final approval' for 'Senior Professional staff' 'Appointments' (after their selection and recommendation for appointment by professional selection panels in terms of the respondent's Recruitment protocol)[361] must be provided by Nair as NOE with the concurrence of Vedalankar and Makokoane as CEO and COO respectively, who 'Must agree'. It is implicit that absent any legitimate obstacle, these business managers will

[357] Page 364, paragraph 6.
[358] Page 380, paragraph 10.
[359] Page 372.
[360] Page 370.
[361] Pages 228–34.

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agree with and approve the professional selection panel's selection and recommendation, and not reject it on the basis of any exercise of arbitrary power.

211. In the premises, the applicant's selection and recommendation for appointment as Senior Litigator, Pietermaritzburg, is not subject to the discretionary approval of any second interview panel and thereafter of some of the same or any other of the respondent's executive business managers, as falsely alleged to the applicant.

The legal prohibition of unfair discrimination against the applicant as an 'applicant for employment'

212. Under the heading 'Prohibition of Unfair Discrimination', section 6(1) in Chapter 2 of the Employment Equity Act 55 of 1998 ('the EEA') provides: 'No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, ... conscience, belief, political opinion'.

213. Under the heading 'Definitions, Purpose, Interpretation and Application' in section 1 in Chapter 1 of the EEA, 'employment policy or practice' 'includes ... appointments and the appointment process'.

214. Under the heading 'Applicants', section 9 of the EEA provides: 'For the purposes of section 6, 7 and 8, employee includes an applicant for employment.'

215. In the premises, as an applicant for the respondent's advertised vacant Senior Litigator post at Pietermaritzburg, the EEA protects the applicant from unfair discrimination against him in 'the appointment process'.

The applicant's legitimate expectation of being appointed

216. But for Mlambo's and Vedalankar's direct covert discrimination against the applicant on prohibited grounds, he would have been appointed to the Pietermaritzburg Senior Litigator post.

217. The post remains vacant and budgeted for, and was prioritized for recruitment along with other critical unfilled posts by Vedalankar and other executive managers in their 'Report to Board' on 16 July 2010.[362]

218. The respondent is accordingly currently advertising to recruit senior legal practitioners for other critical vacant posts, such as for a Corporate Attorney in its National Office in Braamfontein and for a Justice Centre Executive at Colesburg.

219. The advertisement for the Pietermaritzburg Senior Litigator post[363] to which the applicant responded did not include 'An indication that the LAB reserves the right not to make an appointment and that applicants not contacted within two months may consider their applications unsuccessful.'[364] So Mlambo's and Vedalankar's strategy of keeping the applicant waiting in the dark for many months – with false information thereafter given to him by Clark after nearly six months, by Nair after nearly nine months, and by Vedalankar after eleven months and again more three months after that – did not and does not constitute any basis for the applicant to 'consider [his] application.. unsuccessful'.

220. Having been selected by a duly delegated regional professional selection panel from among the shortlisted applicants for the advertised Pietermaritzburg Senior Litigator post and having been recommended by the panel for appointment, the applicant has a legitimate expectation and right to be appointed.

221. And having shown that:

(a) Mlambo's and Vedalankar's stated reason for blocking the applicant's appointment is a lie;

(b) Mlambo's and Vedalankar's claim that the post for which the applicant was duly selected and recommended was duly 'frozen', along with (two) others, is unsupported and contradicted by the respondent's records; conflicts with Vedalankar's CEO report for 2009/10; conflicts with her statements to the

[362] Page 253, paragraph 2.2.b).
[363] Page 45.
[364] Page 229, paragraph 1.2.1.5(j).

Portfolio Committee on Justice and Constitutional Development; and is inconsistent with the peremptory provisions of the Approval Framework;

(c) there is no provision in the respondent's Recruitment 'policy and procedure' protocol or in any other document for any second interview by the respondent's national management executives and chairperson following the applicant's selection and recommendation for appointment by the KwaZulu-Natal regional professional selection panel; and,

(d) there is no provision in the respondent's Recruitment protocol or in any other document for any third-tier discretionary approval process,

the applicant is accordingly entitled to an order directing the respondent to appoint him to the Pietermaritzburg Senior Litigator post, subject to the clear outcome of a recruitment check conducted in terms of the respondent's 'Recruitment Check Procedure' prescribed by the Recruitment 'policy and procedure' protocol to confirm the applicant's 'personal particulars, including but not limited to, qualifications, security checks, and credit checks'[365] – in other words that he is who he says he is; holds the professional qualifications and has the professional experience he states he does;[366] poses no threat to the security of the democratic state;[367] has a spotless credit record; and has no previous convictions for any criminal offence or professional ethical infraction, nor are there any proceedings pending against him.

222. Since the Pietermaritzburg Senior Litigator post is a 'Regional Appointment' and not a 'National' one – 'Reporting to the relevant JCE',[368] i.e. the Pietermaritzburg Justice Centre Executive – 'the responsibility' per the Recruitment protocol 'of authorizing' the mandatory 'LAB-RC (Legal Aid Board recruitment check)' to verify 'the candidate's personal particulars including but not limited to, qualifications, security checks, and

[365] Page 233, paragraph 1.2.3.7.
[366] Pages 71–9.
[367] Pages 83–92.
[368] Page 537.

credit checks ... will vest in the ROE', namely Mdaka, 'who in turn can delegate it to the Regional Human Resources Manager', namely Brijlal.[369]

223. Because Mlambo and Vedalankar aborted the applicant's recruitment, no formal recruitment check was performed on him[370] and his consent[371] to such was never sought.[372]

224. As required by and in terms of the Recruitment protocol,[373] the applicant hereby notes his written consent to such an 'LAB-RC' investigation being performed on him by Mdaka or his delegate Brijlal.[374]

225. Since the advertisement for the post did not 'indicate that references were required', 'the referees as submitted by the applicant'[375] at the foot of his Curriculum Vitae[376] were superfluous; and the Recruitment protocol explicitly prohibits Mdaka or Brijlal from 'contact[ing]' them.[377]

<u>The facts supporting an award of damages to the applicant for patrimonial loss</u>

226. Having regard to the facts and circumstances enumerated below it would be just and equitable were the respondent to be ordered to pay the applicant damages for lost income in a sum equivalent to the salary he would have earned had he been employed as Senior Litigator, Pietermaritzburg, after being selected and recommended for appointment to the post.

227. But for Mlambo's and Vedalankar's unlawful abortion of the applicant's recruitment, it is probable that he would have been appointed on 1 January 2010. This is the date he indicated when asked at his interview on 12 November 2009 how soon he would be available to start should his application be successful, which date, six weeks after his

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[369] Page 233, paragraph 1.2.3.7; and page 234, paragraph 1.3.2.1.
[370] Page 351, item 3; and page 364, paragraph 2, request 3.
[371] Page 234, paragraph 1.3.3.
[372] Page 364, paragraph 3.
[373] Page 234, paragraph 1.3.3.
[374] Page 233, paragraph 1.2.3.6.
[375] Page 233, paragraph 1.2.3.6.
[376] Pages 71–9.
[377] Page 233, paragraph 1.2.3.6.

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interview, was noted by the professional selection panel and recorded by Brijlal without demur.

228. The time it has taken the applicant to bring his claim to trial in this court since Mlambo's and Vedalankar's decision to abort his recruitment in late November or December 2009 on prohibited grounds has been the direct result of their developing scheme to conceal their unfair discrimination against him, as well as Vedalankar's and Nair's[378] persistent failure to comply with their legal obligations under PAIA[379] with a view to (a) delaying the applicant's discovery of the true facts; (b) hindering the preparation and presentation of his case; (c) concealing material evidence from him and from this court;[380] and (d) perverting the true and just determination of his claim.

229. The applicant's uncovering of the facts in this matter – Mlambo's and Vedalankar's unfair discrimination against him and subsequent cover-up – has cost many hundreds of hours of his professional time diverted and applied to pursuing, unearthing and presenting the dishonestly concealed truth since 30 April 2010, when Clark disclosed the respondent's mala fides and hostile animus towards him[381] at the commencement of the respondent's persistent endeavours to misinform and defraud him into abandoning his claim to appointment.

<u>The facts, including aggravating factors, supporting an award of general compensation to the applicant</u>

230. Having regard to the facts and circumstances enumerated below it would be just and equitable were the respondent to be ordered to compensate the applicant for:

(a) violating his fundamental rights to equality and not to be unfairly discriminated against;

(b) impairing his dignity;

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[378] Page 387. This record shows that Vedalankar appointed Nair deputy information officer to handle the applicant's PAIA requests on 11 March 2011.
[379] Pages 353–61; 395–400; and 401–14.
[380] Page 37, paragraph 71; page 165, paragraph 254; and page 101, first paragraph commencing, 'I acknowledge'; page 210, paragraph 1; and page 244, paragraph 41.
[381] Pages 5–8, paragraphs 23–40.

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(c) denying him equal employment opportunity so as to penalize him economically for exercising his fundamental civil rights in the post-apartheid democratic order in campaigning for his deeply unpopular, intensely politicized cause (or on account of his race); and,

(d) chilling his fundamental right to the full and equal enjoyment of all his rights and freedoms.

231. The Bill of Rights in Chapter 2 of the Constitution guarantees the applicant's rights to think freely; to conduct scientific research; to form and hold independent opinions; to communicate the information he has researched and to impart his conclusions about it to government and to the public; to be moved to lawful action by his moral, social, and political conscience; to campaign for a cause; and to actively participate in the public policy controversies of the day. And not to be unfairly discriminated against for exercising these fundamental rights in the democratic era.

232. And indeed, like socially and politically engaged members of 'the public', the applicant is positively 'encouraged' by section 195(e) 'to participate in policy-making'.

233. Under the heading 'Rights', section 7 provides: 'This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom'; and it requires that 'The state must respect, protect, promote and fulfil the rights in the Bill of Rights.'

234. Under the heading 'Equality', section 9 provides: '(1) Everyone is equal before the law and has the right to equal protection and benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and freedoms. ... (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, ... conscience, belief, ...'

235. Section 197(3) specifically directs: 'No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause.'

236. Under the heading 'Freedom of religion, belief and opinion', section 15(1) provides: 'Everyone has the right to freedom of conscience, ... thought, belief and opinion.'

237. Under the heading 'Freedom of expression', section 16(1) provides: 'Everyone has the right to freedom of expression, which includes ... freedom to receive or impart information or ideas ... freedom of artistic creativity ... academic freedom and freedom of scientific research.'

238. Under the heading 'Political rights', section 19(1) provides: 'Every citizen is free to make political choices, which includes the right ... to campaign for a ... cause.'

239. Under the heading 'Access to information', section 32(1)(a) provides: 'Everyone has the right of access to ... any information held by the state.'

240. The respondent publicly declaims its 'Vision' to be 'A just South Africa in which the rights enshrined in our Constitution are promoted, respected, defended, protected and fulfilled to ensure justice for all'[382] – even as behind the scenes it has deliberately and contemptuously violated the applicant's fundamental right not to be unfairly discriminated against for exercising his liberty of conscience and belief. (Or on account of his race.)

241. The respondent's direct discrimination against the applicant on account of his active participation in the scientific and intense political policy controversy over the safety and utility of the pharmaceutical products AZT and nevirapine[383] for administration to the African poor, particularly to unborn and newly born children, (or on account of his race) constitutes an egregiously serious attack on his fundamental rights by an organ of state in the post-apartheid constitutional era in democratic South Africa.

242. At all material times Mlambo and Vedalankar have appreciated the gravely unlawful nature of their conduct in that:

(a) the respondent's Recruitment protocol repeatedly enjoins the respondent's officers involved in recruitment to avoid unfair discrimination, including 'hidden' discrimination on account of 'political or other beliefs' and 'race', given its unlawfulness and potentially serious 'consequences':

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[382] Page 21, paragraph 3.
[383] Pages 11–16, part 5.

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- 'The recruitment process must be fair, objective, transparent, and non-discriminatory.'[384]

- 'In the process of interviewing, the selection committee or panel must avoid irrelevant questions or questions that could be potentially discriminatory, including but not limited to an employee's ... political or other beliefs [and] race'.[385]

- 'Employees nominated to serve on a selection committee or panel should be informed, and, where necessary, trained in respect of the consequences of discrimination in the recruitment and selection process and ways to avoid hidden or latent discrimination in the recruitment processes.'[386]

- 'Care must be taken to avoid the making of recruitment decisions on discriminatory grounds.'[387] And,

(b) the respondent holds out as one its 'Values', in accordance with the founding values of the Constitution, 'Respect for human dignity (ubuntu) and diversity': 'To ensure that in all our dealings with our clients, communities and staff we respect the dignity of every person regardless of class, race, gender, sexual orientation, age or any other form of prejudice. To value our differences in a manner that celebrates diversity';[388] and,

(c) the respondent claims in its 'Terms of Reference' that 'The Constitution of South Africa, Act 108 of 1996, provides the overall legal framework from which Legal Aid South Africa derives its mandate. Chapter Two, of the Bill of Rights, outlines the right to equality (Section 9) ...'; and,

(d) the applicant pertinently drew Vedalankar's attention to relevant provisions of the Bill of Rights in his letter to her in July 2010[389] and to the statutory prohibitions

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[384] Page 228, paragraph 1.1.2.
[385] Page 232, paragraph 1.2.2.9.
[386] Page 232, paragraph 1.2.2.10.
[387] Page 233, paragraph 1.2.3.2.
[388] Page 428.
[389] Pages 3–4, paragraphs 10–13.

against discrimination on prohibited grounds in his letter to Makokoane in September 2010,[390] to which Vedalankar replied.[391]

243. And for this reason, well appreciating the unconstitutionality and illegality of his and her prejudice against the applicant in his application for the advertised post and their covert, intentional, direct unfair discrimination against him in vetoing his appointment, and thus violating his fundamental right to equality in the post-apartheid constitutional era, Mlambo and Vedalankar have cloaked it with a fake budgetary justification to cover and conceal it.

244. Notwithstanding that Mlambo's and Vedalankar's unfair discrimination against the applicant, being gravely unlawful, is undeclared and has been camouflaged with a fake cover story, a conspectus of all the relevant available evidence supports the conclusion, on a preponderance of probabilities, that the true reason they aborted the applicant's appointment was unlawful political (or racial) discrimination.

245. Not only have Mlambo and Vedalankar violated the applicant's fundamental rights guaranteed by the Constitution, they have compounded this by grossly unethically attempting to defraud him into abandoning his legitimate expectation and right to be appointed to the post for which he was selected and recommended by means of a fake budgetary justification they invented and advanced to camouflage their unfair discrimination against him and their unlawful abortion of his recruitment.

246. Mlambo's and Vedalankar's brazen dishonesty displayed towards the applicant is all the more reprehensible in the light of:

(a) the respondent's public claim that 'Integrity' is one of its 'Values': 'To be honest and ethical in all our dealings.'[392]

(b) Vedalankar's dissimulation in her letter to the applicant on 28 January 2011, with Mlambo's connivance, even as they were violating his fundamental rights to equality and to information, that 'Legal Aid SA promotes and complies with the

[390] Page 35, paragraphs 59–61.
[391] Page 101, final paragraph.
[392] Ibid.

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constitutional precepts of accountability; openness; transparency and respect for human and related rights including your right to access information in its possession.'[393]

247. Had the applicant trusted on the strength of these representations that Vedalankar, Nair, and Clark were 'honest and ethical in all our dealings', and that they respected 'the constitutional precepts of accountability; openness; transparency and respect for human and related rights including your right to access information in its possession', and had he not proceeded to examine their claims to him and found them to be false, he would not have uncovered Mlambo's and Vedalankar's unfair discrimination against him and their persistent attempts to conceal it, and he would have been defrauded into abandoning his rights.

248. Presuming without question that Mlambo was 'honest and ethical in all [his] dealings', their impression reinforced by his express claim that 'our reasons for freezing this post is [sic] honest',[394] the Minister and the chairperson of the Portfolio Committee were deliberately misled by him into believing that the respondent had duly 'frozen' the post for which the applicant had been selected and recommended for appointment, and at the same time other equivalent posts, and that it had complied/was complying with the applicant's outstanding records requests to gather the evidence necessary to plead and present his case properly, some of which requests, Mlambo further falsely claimed, were pointless, which is to say a waste of the respondent's time.[395]

249. Vedalankar and Nair have further compounded the former's violation of the applicant's fundamental rights by abusing their offices as information officer and deputy information officer respectively in ignoring and then repeatedly unlawfully refusing him access to the records he duly requested,[396] so as to conceal the evidence of Mlambo's and Vedalankar's unlawful and unethical conduct as chairperson and CEO respectively in unfairly discriminating against him on prohibited grounds and then in

[393] Page 210, paragraph 2.
[394] Page 506, first paragraph.
[395] Ibid.
[396] Pages 315–43; and 401–14.

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developing an elaborate cover story to camouflage this and defraud him into abandoning his claim to appointment.

250. The Preamble to PAIA pertinently contemplates this evil in 'RECOGNIZING THAT –
* the system of government in South Africa before 27 April 1994, amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'.

251. In further contempt of their constitutional and legal obligations under PAIA, both Vedalankar and Nair, as information officer and deputy information officer respectively, have falsely denied the existence of records requested by the applicant to unlawfully defeat the operation of PAIA, frustrate the applicant's discovery of the truth, and pervert the true and just determination of his claim. As pleaded supra:

(a) 'FW:' in the Subject bar of Vedalankar's email to Nair on 29 July 2010 evidences prior discussion of the applicant's complaint and enquiry about the delay in his appointment under the heading, 'FW: Complaint against the HRE & an interview process [sic]', in an email exchange between Vedalankar and another party, and the absence of this prior exchange below her message shows that Vedalankar deleted the record of it to conceal it before emailing Nair under the original subject heading of the prior email discussion; and,

(b) an email exchange took place between Mlambo and Vedalankar in December 2010 concerning the applicant's first petition to him and the Board to redress his complaints that he had been unfairly discriminated against and that Vedalankar had unlawfully refused to comply with PAIA on the basis both of a false statement of the provisions of PAIA and of a false misquotation from reported case interpreting and applying it.[397] The applicant emailed his petition to Mlambo while he was abroad in the US.[398] Mlambo then discussed it with Vedalankar, and asked her to prepare a brief, dismissive reply, which she did on 15 December 2010 on her computer, according to its 'Properties' file,[399] while he was still abroad. Vedalankar then

[397] Pages 109–67.
[398] Pages 168–73.
[399] Page 259.

emailed this reply that she had prepared to Mlambo, who emailed it on to the applicant from his own computer two weeks later on the 30th, following his return to the country.[400]

252. Yet Vedalankar falsely alleged in response to the applicant's request for records of 'any matters discussed by the Management Board concerning Brink and/or the Pietermaritzburg Senior Litigator post, after the re-advertisement of the post in August 2009':[401] 'I am not aware of any of the Executives discussing you and your candidacy for the above-mentioned post save the edited and blacked out recommendation' by the professional selection panel.[402]

253. On 1 March 2011[403] Vedalankar tried passing the buck to Nair for her failure to comply with the applicant's August and December 2010 records requests by appointing him deputy information officer specifically to deal with the applicant's complaints about this.[404]

254. Arising from Vedalankar's January letter, the applicant filed a third PAIA request on 9 March 2011.[405]

255. In his response to all three requests on 8 April 2011, Nair alleged, as Vedalankar had falsely done in January: 'No records of discussions exist where Mr. Brink was mentioned after August 2009 by the Management Executive Committee.'[406] Nair's statement would only be true if the records of these discussions or exchanges no longer exist, having been unlawfully[407] destroyed with the same intention of defeating the operation of PAIA, frustrating the applicant's discovery of the truth, and perverting the true and just determination of his claim.

256. Notwithstanding the applicant's request for 'All and any other records ... in which the word "Brink" features, where it clearly or possibly refers to the records requester Adv

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[400] Page 201, paragraphs 27–9. The letter is wrongly dated 9 November 2010, prior to the applicant's petition.
[401] Page 61, item 16.
[402] Page 219, paragraph 21; page 61, item 16.
[403] Page 387.
[404] Page 367, paragraphs 5–6.
[405] Pages 344–52.
[406] Page 382, paragraph 17.
[407] Page 51, 'Section 90 Offences'.

Anthony Brink',[408] Nair failed to produce Mlambo's false and highly prejudicial 'Confidential ... Report' to the Minister 'Re: Adv Anthony Brink' on 9 March 2011 under the respondent's 'Legal Aid South Africa' logo.[409]

257. Though Mlambo's 'Report' to the Minister was dated 9 March 2011, a month before Nair's response on 8 April to the applicant's third records request the same day (9 March)[410] and to his outstanding, unlawfully withheld records requests in August and December 2010,[411] Nair disingenuously avoided disclosing this highly material, prejudicial record by claiming on oath that apart from the emailed submission and transmission of the applicant's CV, 'a search was conducted on our internal email system and there are no records found where Mr. Brink's name was discussed or appears prior to his request for information'[412] – namely his request for records on 23 August 2010,[413] repeated on 3 March 2011 in his first memorandum to the SAHRC concerning the respondent's persistent failure to comply with his PAIA requests in August and December.[414]

258. By this dishonest device to defeat the operation of PAIA and conceal crucially relevant records, Nair has avoided complying with the applicant's request for 'All and any other records ... in which the word "Brink" features, where it clearly or possibly refers to the records requester Adv Anthony Brink'[415] – such as the Portfolio Committee chairperson's letter to Mlambo demanding his, the Board's and Vedalankar's 'formal response' to the applicant's PAIA request refusal and unfair discrimination complaints,[416] and Mlambo's highly material, prejudicial 'Report' to the Minister[417] with its covering letter/email. 'All and any other' records generated by the respondent since August 2010 have likewise been suppressed with this trick, with Nair declaring such

[408] Page 68, item 35; and page 338, item 35.
[409] Pages 505–7.
[410] Pages 344–52.
[411] Pages 315–43.
[412] Page 384, paragraph 30.
[413] Page 57.
[414] Page 338, item 35.
[415] Page 68, item 35; and page 338, item 35.
[416] Page 503.
[417] Pages 505–7.

highly relevant records 'not relevant because it is after we informed you that we are not proceeding to fill the Senior Litigator position'.[418]

259. If it be established on the evidence that Mlambo did not disclose to Nair his correspondence with the chairperson of the Portfolio Committee and his 'Confidential ... Report Re: Adv Anthony Brink' to the Minister and its covering letter/email, Mlambo is directly responsible for this particular instance of the respondent's flagrant failure to comply with PAIA. Mlambo was not only aware that the applicant's records requests had not been complied with – he mentioned in his 'Report' that 'We are in the process of ensuring that any outstanding requests for information are attended to',[419] thus implicitly conceding that the respondent had indeed not complied with PAIA, as the applicant had repeatedly complained – he was moreover aware of the specific records that the applicant had requested, in falsely claiming (anyway irrelevantly under section 11(3) of PAIA) that 'many of his requests do not relate to his complaint regarding non appointment'. Yet knowing the applicant sought 'All and any other records ... in which the word "Brink" features, where it clearly or possibly refers to the records requester Adv Anthony Brink',[420] Mlambo did not divulge to Nair his highly material, prejudicial 'Confidential ... Report' to the Minister 'Re: Adv Anthony Brink', and thus concealed it from the applicant.

260. Since, like Vedalankar, Nair is a legally uneducated person, it is probable that Mlambo drew or at least vetted and approved his responses to the applicant's outstanding first and seconds records requests filed in August and December 2010 and third request in March 2011, just as he in all probability did with Vedalankar's October 2010 and January 2011 responses; and for this reason Mlambo is ultimately culpable for Nair's multiple failures to comply with PAIA, in Vedalankar's pattern, in order to suppress critically relevant records.

261. Mlambo and Vedalankar dishonestly covered their unfair discrimination against the applicant with a developing elaborate fraud, in which they also contemptuously

[418] Page 365, paragraph 9.
[419] Page 506.
[420] Page 68, item 35; and page 338, item 35.

trampled on the rights and legitimate expectations of two other successful applicants for similar Senior Litigator posts, almost certainly both African.

262. Not only did the respondent's executive managers Vedalankar, Nair and Clark all lie to the applicant about the fate of his application to put him off discovering the truth and from vindicating his fundamental rights that Mlambo and Vedalankar had violated, Vedalankar compounded this yet further by responding to the applicant's correct identification of their lies in his correspondence with dishonestly made false accusations that he had made 'malicious accusations', 'serious and malicious accusations' with 'malicious intent', 'disparaging attacks on people's dignity on baseless assumptions', including 'baseless accusations of financial improprieties'[421] that were 'outright defamatory'[422] – all of which charges were to the knowledge of Vedalankar false, and were levelled at the applicant, coupled with a clearly implied threat to sue him for defamation,[423] in a further mala fide attempt to intimidate him and deter him from vindicating his fundamental rights.

263. Mlambo employed the same discreditable tactic to blacken the applicant in the eyes of the Minister and the chairperson of the Portfolio Committee, so as to divert their attention from the factual merits, by falsely characterising the applicant in his 'Report' to them as 'insulting and malicious' and the applicant's repeated approaches to the Board for justice as 'invasive conduct' and a 'tirade' sprung from an 'unfounded ... conspiracy theory' (Mlambo repeats his disparaging, mocking use of the word 'conspiracy' to drive home the derisory aspersion intended), and by falsely alleging to the applicant, which false allegation he repeated to the chairperson of the Portfolio Committee, that the applicant had gravely misconducted himself in his struggle to vindicate his rights that he and Vedalankar had violated.[424]

264. From Mlambo's identical false charge – 'insulting and malicious' – also levelled by Vedalankar in her letter to the applicant of 28 January 2011, it is probable that Mlambo read it and supported her persistent unlawful refusal of the applicant's first records

[421] Pages 151–4, paragraphs 195–214.
[422] Page 212, paragraph 5.6; page 223, paragraph 40; and page 224, paragraph 41.
[423] Page 212, paragraph 5.
[424] Pages 505–7.

request in August 2010 and her failure to respond to his second in December, as she spat back his compulsory request fee.

265. In the course of his and Vedalankar's cover-up, Mlambo falsely assured the Minister and the chairperson of the Portfolio Committee that 'We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act. We copied these responses to the SA Human Rights Commission to confirm our compliance with PAIA', at the same time conceding that 'We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA', which is to say the respondent had not complied with PAIA – but also falsely alleging about these, to play down the gravity of Vedalankar's delinquency, that 'many of his requests do not relate to his complaint regarding non appointment',[425] thus contriving to create the impression that in his insistence that Vedalankar comply with her legal obligations under PAIA and respect his constitutional right to information concerning the 'outstanding' records she was unlawfully withholding,[426] the applicant is an incompetent, distracted gadfly, wasting the respondent's time, and that his persistent complaints to the Board that Vedalankar had refused to comply fully with PAIA under cover of a slew of spurious pretexts is without merit.

266. In truth and in fact, contrary to Mlambo's false assurances to the Minister and to the chairperson of the Portfolio Committee that the respondent has 'been open and transparent with Adv Brink',[427] the respondent remains in deliberate default of its constitutional and legal obligations under PAIA in order to conceal records needed by the applicant for the full and proper pleading and presentation of his claim in this court.[428]

267. Mlambo further falsely portrayed the applicant to the Minister and to the chairperson of the Portfolio Committee as intent on mere money-grubbing rather than on an implacable quest to vindicate his fundamental rights: 'The relief he sought was

[425] Pages 506, first paragraph.
[426] Pages 315–43; and 401–14.
[427] Page 506, first paragraph.
[428] Ibid.

monetary'.[429] In truth and in fact, the primary relief the applicant has always sought is his appointment.

268. Mlambo further misrepresented to the Minister and to the chairman of the Portfolio Committee the basis of the applicant's claim for damages, thereby massively understating the respondent's financial exposure.[430]

269. On multiple scores, Mlambo, Vedalankar, Nair and Clark have violated:

(a) the 'Basic values and principles governing public administration' as set out in section 195(1) of the Constitution – applicable under subsection (2)(b) to the respondent as an 'organ of state' – requiring that 'Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles: (a) A high standard of professional ethics must be promoted and maintained. ... (f) Public administration must be accountable. (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.' And,

(b) the Batho Pele Principles governing the conduct of public servants in the post-apartheid, progressive, democratic, constitutional era: 'The creation of a people-centred and a people-driven public service that is characterised by equity, quality, timeousness and a strong code of ethics.' Which Principles require the 'alignment of staffing plans, human resources development processes and organisational capacity building with the needs of citizens'.[431] Hence, as Vedalankar puts it in her CEO report for 2009/10, the respondent's 'strategic shift also incorporated changes to our support platform to support the delivery of quality legal services. ... our priority continued to be increasing access to quality legal aid services. ... The revised civil legal aid strategy mentioned above will to a certain extent increase capacity to assist clients in civil legal aid matters',[432] inter alia, by engaging Senior Litigators.

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[429] Page 505.
[430] Page 506, second paragraph.
[431] Page 29, paragraph 34; and page 142, paragraph 154.
[432] Pages 257–9.

270. Mlambo's and Vedalankar's direct discrimination against the applicant on prohibited grounds and their unlawful abortion of his recruitment to the advertised senior professional post for which he was duly selected and recommended constitutes an extraordinarily serious abuse of power by an organ of state for unlawful, unconstitutional ends, in contempt of the core values and basic civil liberties enshrined in the Bill of Rights in Chapter 2 of the Constitution in post-apartheid, democratic South Africa, and in direct contravention of section 9(3): 'The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, ... conscience, belief'.

271. Despite (a) having resolved on 31 July 2010 to 'approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of Annexure 1',[433] namely Vedalankar's and other management executives' 'Recommendation' in paragraph 4 of their 'Report to Board' to temporarily reduce some junior practitioner posts, and none other;[434] and (b) having thrice been apprised by the applicant[435] of the indications of Vedalankar's direct covert discrimination against him on prohibited grounds and of Vedalankar's assertion of a fake budgetary justification concocted to camouflage it, as well as of Vedalankar's refusal to comply with PAIA,[436] the respondent's Board has failed to respond to the applicant's repeated pleas to intervene and remedy his complaints.

272. According to the 'Introduction' to 'Corporate Governance Arrangements' in Section 4 of LASA's Annual Report 2009/10, 'processes and practices are reviewed on an ongoing basis to ensure compliance with the legal obligation to use funds in an economic, efficient and effective manner and to adhere to good corporate governance practices ... Processes are underpinned by the principles of openness, integrity and accountability. ... Corporate governance is concerned with structures and processes for decision making, accountability, control and behaviour. It starts at the Board of the organisation and this sets the tone for behaviour down to operational level at Justice Centres. ... Legal Aid South Africa has an ethics programme which promotes ethical behaviour in

[433] Page 251, paragraph 4.2.
[434] Page 254, paragraph 4.
[435] Pages 109–65; 197–207; and 310–14.
[436] Pages 113–19; paragraphs 17-43; and pages 190–1.

the workplace. This is supported by a written business conduct policy dealing with ethics, which is applicable throughout Legal Aid South Africa. The continued focus on the business conduct policy has raised awareness of the need for ethical behaviour across the organisation. Employees are required to maintain high ethical standards and to ensure that Legal Aid South Africa's business practices are conducted in a manner that is above reproach.'[437]

273. Section 50(1)(b) of the Public Finance Management Act 1 of 1999 requires that 'The accounting authority for a public entity must act with fidelity, honesty and integrity and in the best interests of the public entity in managing the financial affairs of the public entity.' Section 83(1)(b) makes it 'an act of financial misconduct if that accounting authority wilfully or negligently ... permits ... a fruitless and wasteful expenditure'. And section 83 (2) provides that 'If the accounting authority is a board, every member is individually and severally liable for any financial misconduct of the accounting authority.'

274. Notwithstanding the Board's legal obligation as accounting authority to act with 'fidelity, honesty and integrity' and not to 'permit.. ... fruitless and wasteful expenditure' (for which 'every member is individually and severally liable'), and notwithstanding the oversight responsibility that the Board claims it exercises to ensure that 'good corporate governance practices' based on 'principles of openness, integrity and accountability' are observed by the respondent's executive managers in 'decision making, accountability, control and behaviour', and notwithstanding further the Board's professed concern about 'ethical behaviour in the workplace', namely that 'high ethical standards' be observed, and that 'business practices' should be 'above reproach' – which is why their 'processes and practices are reviewed on an ongoing basis to ensure compliance with the legal obligation to use funds in an economic, efficient and effective manner' – the Board has tacitly approved of and accorded itself with:

(a) the respondent's violation of the applicant's fundamental rights to equality and to information;

[437] Pages 111–2, paragraphs 8–11.

(b) the respondent's squandering of public revenue in unlawfully aborting the applicant's recruitment following extensive, repeated public advertising of the post for which he applied, and, in the course of the cover-up, in the subsequent abortions at different times of two similar posts; and,

(c) Vedalankar's, Nair's and Clark's unethical conduct in lying to the applicant to conceal the respondent's direct unfair discrimination against him and in their attempt to defraud him into abandoning his legitimate expectation of being appointed to the Senior Litigator post for which he was duly selected and recommended.

275. Certain members of the Board have additionally actively supported Mlambo's, Vedalankar's, Nair's and Clark's discrimination, misinformation, cover-up, and attempts to put the applicant off vindicating his fundamental rights by slandering him, with at least one, possibly two members of the Board wantonly smearing him as a blackmailer and defamer.[438] And for lodging a complaint about this[439] and for his persistent pleas to the Board that Vedalankar respect his fundamental right to records and that his unfair discrimination complaint be resolved by the Board out of court, the applicant has not only been twice rebuffed in bad faith by the respondent's chairperson – 'I have on a previous occasion informed you that I could find nothing untoward in your treatment by Legal Aid SA' – but also abused by him with the wholly unfounded accusation, 'Your conduct is unbecoming to say the least and borders on harassment',[440] thus falsely charging that the applicant has pursued his claim in a professionally dishonourable and all but unlawful fashion, and grossly improperly suggesting that he should drop his complaints of unfair discrimination and unlawful refusal of his records requests, allow the respondent to succeed with its contemptuous violation of his fundamental rights, and walk away.

276. Mlambo's and Vedalankar's direct discrimination against the applicant on prohibited grounds has additionally had the effect of violating his fundamental right to the 'full and equal enjoyment of all rights and freedoms' under section 9(2) of the Constitution, in

[438] Page 207–8.
[439] Pages 197–9, paragraphs 1–18.
[440] Page 209.

that contrary to its mandate in section 195(e), 'the public must be encouraged to participate in policy-making', their unfair discrimination against him has chilled his public participation and his promotion of the incalculably important cause for which he campaigns in the interest of the poor and the weak against the abuses of the transnational pharmaceutical industry in South Africa and other vulnerable countries of the South for fear of further inflaming and hardening their unlawful political prejudice against him.

277. Mlambo's and Vedalankar's dishonestly concealed direct and intentional unfair discrimination against the applicant and their infringement of his right to dignity have impacted severely on him in:

(a) causing him professional and social humiliation;

(b) causing him immense psychological stress over an extended period of time;

(c) impairing his general health;

(d) unnecessarily distressing his personal relationships;

(e) profoundly reducing his enjoyment of the amenities of life; and,

(f) massively consuming and wasting his professional time and resources in pursuit of the truth of the matter as a virtually fulltime project.

278. The horror of the applicant's experience of Mlambo's and Vedalankar's dishonestly camouflaged direct unfair discrimination against him has been considerably exacerbated by his apprehension that Mlambo heads the very court in which he is constrained to seek justice – particularly given the history of Mlambo's appalling, brazen dishonesty in his dissimulations to the applicant and rebukes of his approaches to him for justice; in his false representations to the Minister and chairperson of the Portfolio Committee; and in his and Vedalankar's mala fide dealing with the applicant and how best to defeat him, in cabals, behind the scenes and off the record.

279. In the premises, the egregiously outrageous and unscrupulous treatment that the applicant has been subjected to at the hands of the respondent's national executive

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managers and Board of Directors warrants an award of general compensation to him with both punitive and exemplary elements.

Referral to the CCMA within the prescribed time

280. On 28 January 2011 the applicant obtained the evidence[441] supporting his surmise that Vedalankar's repeated claims to him to have 'frozen' the Pietermaritzburg Senior Litigator post for budgetary reasons were lies.[442]

281. This evidence generated the probability, in the absence of an honest and truthful explanation, that the true reason for the abortion of the applicant's appointment was unlawful political prejudice against him as a deeply unpopular dissident activist in what has been the most emotive, politicised, and polarized policy controversy in the democratic era, in which Mlambo's and Vedalankar's beliefs and opinions, indeed the respondent's collective beliefs and opinions[443] expressed in its 'KEY'[444] operating policy and 'HIV/AIDS Strategy and Roll Out Plan',[445] diametrically opposed to the applicant's, are a matter of public record. (Alternatively, unlawful racial prejudice.)

282. The applicant referred his claim to the Commission for Conciliation, Mediation and Arbitration ('the CCMA') for conciliation on 22 March 2011.

283. The applicant's referral of his claim to the CCMA was accordingly within the six-month time limit prescribed by section 10 of the EEA for the referral of claims arising from unfair discrimination.

284. Alternatively, if it be held that the applicant had knowledge of his cause of action at the time he petitioned Mlambo and the Board on 30 November 2010 and raised the limited indications, then within his knowledge, that the financial cover story Vedalankar had advanced to him was untrue, the applicant was still within time for referring his claim to the CCMA for conciliation on 22 March 2011.

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[441] Pages 236–40; and 251–4.
[442] Page 103, paragraph 6.7; page 104, paragraph 7.3; and page 214, paragraph V5, third column.
[443] Pages 525–36; 459–61; and 462–74.
[444] Page 531.
[445] Page 534.

285. A conciliation hearing was held on 20 April 2011, at which the Commissioner unsuccessfully attempted to resolve the dispute, following which a certificate of outcome was issued under section 135(5) of the Labour Relations Act 66 of 1995.[446]

Referral to the Labour Court within a reasonable time after the issue of a certificate of outcome by the CCMA

286. The EEA does not stipulate a time limit for the referral of unfair discrimination claims to the Labour Court for trial after the issue of a certificate of outcome by the CCMA, and it is therefore implied by law that applicants must refer such claims within a reasonable time.

287. When the applicant's claim went to conciliation on 20 April 2011, the respondent had still not complied with his lawful requests for records under PAIA, which records he required to plead his claim in this court on the basis of all the available relevant documentary evidence, and on which records he intended to rely at trial.[447]

288. With a view to compelling the respondent to disgorge the records it was unlawfully withholding from him, to his prejudice in the preparation and launch of his case, the applicant filed two formal complaints against it with the SAHRC on 11 and 28 April 2011 concerning its refusal to comply with PAIA and its violation of his fundamental right to information under section 32 of the Constitution.[448] To assist the SAHRC and to expedite the matter, the applicant's second (amended and further) complaint was accompanied by a second comprehensive memorandum he drew critically analysing and exposing the legal vacancy of the respondent's pretexts advanced for withholding the records he had requested and needed.[449]

289. Pursuant to its assurances that it was dealing with the matter,[450] the applicant afforded the SAHRC some weeks to mediate in terms of its statutory power and duty to do so,[451] and repeatedly and regularly enquired about progress,[452] but without joy, and

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[446] Page 394.
[447] Pages 401–14.
[448] Pages 353–61; and 395–400.
[449] Pages 401–14. The applicant's first memorandum is at pages 315–43.
[450] Page 362.
[451] Pages 192–3.

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on 28 June 2011 he finally resorted to filing a PAIA request on the SAHRC itself to find out.[453]

290. Notwithstanding that the SAHRC found 'cogent' the applicant's complaint that the respondent had violated his fundamental right to information, it responded the following day on 29 June 2011, pleading a lack of resources to mediate and formally determine it.[454] The applicant promptly appealed to the chairperson of the SAHRC on 1 July 2011,[455] copying the Public Protector having regard to her statutory function in 'resolving disputes relating to the operation of the Promotion of Information Act of 2000 ... as mandated by' the Act.[456] The appeal was acknowledged by the SAHRC on the 11th.[457]

291. On 18 July 2011 the chairperson of the SAHRC dismissed the applicant's appeal on the novel basis that Article 4.1.3 of its Complaints Handling Procedures provides that 'the Commission may reject any complaint, which is ... the subject of a dispute before a court of law'. Although the chairperson obviously misdirected himself in holding that 'the subject of the dispute' – the applicant's fundamental right to information – was 'shortly to be adjudicated upon by the Labour Court', he noted that 'this decision ... in line with Article 4.1.3 ... is final'.[458]

292. The applicant then launched his claim without all the records needed[459] for the full and proper pleading and presentation of his claim, thanks to the respondent's contempt for its obligations and for the applicant's fundamental right to information under PAIA, and the SAHRC's dereliction thereanent.

293. Any question of delay in referring the applicant's claim to this court for trial arises directly from Vedalankar's and Nair's persistent, deliberate unlawful refusal, with Mlambo's connivance, to comply with their legal obligations under PAIA to afford the

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[452] Pages 419–20; 421–2; 423–5; 480–1; and 486.
[453] Pages 487–495.
[454] Pages 498–501.
[455] Pages 508–20; and 537.
[456] Pages 521–4.
[457] Pages 538–9; and 540.
[458] Pages 541–3.
[459] Pages 401–14.

applicant access to the respondent's records that he duly requested for the purpose of pleading and presenting his case, thus intentionally hindering him in the perfection and launch of his claim in this court – to his prejudice and not the respondent's.

294. At all events, the applicant has sued for relief from this court three months after the conciliation hearing and within six months of obtaining the clear documentary evidence on 28 January 2011 that the justification Vedalankar advanced on 18 October 2010 for aborting his recruitment was a lie, supporting the inference in all the circumstances that the respondent had unfairly discriminated against him, which six-month period (a) is allowed by the EEA for referring unfair discrimination claims to the CCMA, and (b) is the international legal norm for launching unfair discrimination claims.

295. In the situation, the applicant has diligently and attentively prosecuted his unfair discrimination claim without any undue delay on his part, and has referred it to this court for trial within a reasonable time as the EEA impliedly requires.

THE LEGAL ISSUES ARISING FROM THE ABOVE FACTS

296. Whether in terminating the process for the applicant's appointment, following his selection and recommendation for appointment as Senior Litigator, Pietermaritzburg, the respondent directly and intentionally discriminated against him on prohibited grounds, namely on account of his 'conscience, belief, political opinion' (alternatively, his 'race').

297. If so, whether the respondent's covert, direct and intentional discrimination against the applicant on prohibited grounds, later camouflaged with a fake budgetary cover story, represents so egregiously and disgracefully flagrant a deviation from constitutional standards of ethical and transparent governance in the public service in the democratic era, and constitutes so grave a violation of the applicant's fundamental rights by an organ of state, that it warrants both punitive and exemplary elements in the orders made against the respondent.

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RELIEF SOUGHT

298. An order declaring that in aborting the applicant's recruitment to the post of Senior Litigator, Pietermaritzburg, for which he was duly selected and recommended for appointment, the respondent unfairly discriminated against him on prohibited grounds enumerated in section 6(1) of the Employment Equity Act 55 of 1998, namely on grounds of his 'conscience, belief, political opinion' (alternatively his 'race').

299. An order directing the respondent to appoint the applicant to the position of Senior Litigator, Pietermaritzburg, retrospective to 1 January 2010.

300. An order directing the respondent's chairperson Dunstan Mlambo, CEO Vidhu Vedalankar and HRE Amanda Clark to issue written retractions and apologies to the applicant for their false and demeaning accusations made against him, and to copy their retractions and apologies to the Minister and Deputy Minister of Justice and Constitutional Development; to the chairperson of the Portfolio Committee on Justice and Constitutional Development; to the respondent's Board of Directors; to the respondent's entire executive management structure including KwaZulu-Natal Regional Operations Executive Vela Mdaka; to KwaZulu-Natal Regional Human Resources Manager Baboo Brijlal; and to the chairperson of the Pietermaritzburg Bar Committee, KwaZulu-Natal Society of Advocates.

301. An order directing the respondent to pay the applicant damages for lost income in a sum equivalent to the salary he would have earned had he been appointed to the said post on 1 January 2010.

302. An order directing the respondent to pay the applicant general compensation in the sum of R500 00-00.

303. An order that the respondent pay the applicant mora interest on the aforesaid sums at the prescribed rate from the date on which the matter was referred to the CCMA, 22 March 2011, to the date of payment.

304. An order directing the respondent to take steps to prevent the same unfair discrimination from being perpetrated against other applicants for its vacant advertised posts in future.

305. An order directing that the order made in this case be published.

306. An order directing the registrar of this court to refer the judgment delivered in this case, for their respective interests in the matter, to:

(a) the Minister and Deputy Minister of Justice and Constitutional Development;

(b) the chairperson of the Parliamentary Portfolio Committee on Justice and Constitutional Development;

(c) the chairperson of the Judicial Services Commission;

(d) the Director of Public Prosecutions;

(e) the chairperson of the Public Service Commission;

(f) the Auditor General; and,

(g) the chairperson of the South African Human Rights Commission.

307. An order directing the respondent to pay the applicant's costs, including two counsel.

308. Further and/or alternative relief.

SCHEDULE OF DOCUMENTS

309. A schedule of documents material and relevant to the issue is annexed.

Signed at Pietermaritzburg this 20th day of July 2011.

ANTHONY ROBIN BRINK

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TAKE NOTICE that if the respondent intends opposing this claim, it must deliver its response within 10 days of service of this statement of claim in terms of subrule 6(3) of the rules of the Labour Court, failing which the matter will be set down for default judgment with costs.

TAKE NOTICE FURTHER that the applicant will accept notices and service of all documents in this matter by telefax at 086 672 0776 or at the following address:

Adv AR Brink
25 Baker Road
Prestbury
Pietermaritzburg
KwaZulu-Natal

033 344 2420
083 779 4174

To:
The Registrar of the Labour Court of South Africa (Durban)
4th Floor
480 Smith Street
Durban 4001

And to:
The Board Secretary,
Bee-Mari Schoeman
Legal Aid South Africa
Private Bag X76
Braamfontein 2017

And to:
Guardian Employers Organization
334 Equestrian Road
Ruimsig, Gauteng
Ref: KNP 926-11 (Ms L Valentine)

And to:

The Minister of Justice and Constitutional Development,

Jeffrey Radebe MP

And to:

The Deputy Minister of Justice and Constitutional Development,

Andries Nel MP

Department of Justice and Constitutional Development

Private Bag X276

Pretoria 0001

And to:

The Chairperson of the Portfolio Committee on Justice and Constitutional Development,

Luwellyn Landers MP and all members of the Committee

PO Box 15

Cape Town 8000

And to:

The Chairperson of the Judicial Services Commission,

Chief Justice Sandile Ngcobo

Constitutional Court

Private Bag X 1

Constitution Hill

Braamfontein 2017

And to:

The Public Protector,

Adv Thulisile Madonsela

Private Bag X677

Pretoria 0001

And to:

The Chairperson of the Public Service Commission,

Dr Ralph Mgijima

Private Bag X121

Pretoria 0001

And to:

The Auditor General,

Terence Nombembe

PO Box 446

Pretoria 0001

And to:

The Director of Public Prosecutions,

Adv Menzi Simelane

Private Bag X752

Pretoria 0001

And to:

The Board and all national management executives,

Legal Aid South Africa

Private Bag X76

Braamfontein 2017

And, together with the respondent's response upon delivery, to all law school deans in South Africa, and to all media.

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY ROBIN BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

APPLICANT'S AMENDED STATEMENT OF CLAIM

THE PARTIES

1.

Applicant is Anthony Robin Brink, a major male advocate of the High Court of South Africa, who resides at 25 Baker Road, Prestbury, Pietermaritzburg, KwaZulu-Natal.

2.

Respondent is Legal Aid South Africa, a statutory body established by the Legal Aid Act 22 of 1969, whose registered office and principal place of business is at 29 De Beer Street, Braamfontein, Johannesburg, Gauteng.

THE FACTS ON WHICH APPLICANT RELIES

3.

Respondent duly created nine Senior Litigator posts at seats of the High Court in South Africa, including at Pietermaritzburg ('the Pietermaritzburg post') and Durban ('the Durban post'), which posts were:

3.1 Created to address Parliament's concern about reported public perceptions of inadequate professional expertise in Respondent;

3.2 To be filled as an integral part of Respondent's Board's Strategic Plan to develop and increase Respondent's capacity to deliver expert litigation services to indigent litigants in complex matters in specialist and High Courts, including the Supreme Court of Appeal and Constitutional Court; and,

3.3 To be filled strictly in accordance with Respondent's Policies and Procedures on Recruitment, Induction, Probation and Relocation (hereinafter referred to as the 'Recruitment code') and Approval Framework, both prescribed by the Board.

4.

The vacant Pietermaritzburg and Durban posts were advertised simultaneously in June and again in August 2009, and Applicant was shortlisted for the Pietermaritzburg post, for which he had applied.

5.

5.1 On 12 November 2009 Respondent caused a duly constituted selection panel to interview the shortlisted candidates for the two posts.

5.2 Under the Recruitment code, the terms of reference of the selection panel were to identify the most suitable candidate for appointment to each of the posts.

6.

The selection panel:

6.1 Unanimously identified Applicant and an internal candidate Bongani Mngadi, Head of the High Court Unit in the Durban Justice Centre, as the most suitable candidates for appointment to the Pietermaritzburg and the Durban posts respectively;

6.2 Certified upon a proper demographic analysis of the Pietermaritzburg and Durban Justice Centres that the appointments of Applicant and Mngadi would comply with Respondent's employment equity targets.

7.

7.1 The correct process prescribed by the Recruitment code and the Approval Framework was that upon receiving such a recommendation for the appointment of a Senior Litigator, Respondent's National Operations Executive, Brian Nair, was required to decide whether or not to agree with it, subject to Chief Executive Officer Vidhu Vedalankar's final approval.

7.2 Their approval had to be recorded, and in the event that they did not approve the recommendation, they were obliged to record their reasons.

8.

The recommendation was cast as a recommendation for a 'second round interview', which purported 'second round interview' process had been irregularly devised by Nair, acting ultra vires, and this irregular 'second round interview' process neither had any lawful effect nor could it be lawfully imposed on the approval process by Respondent's officials.

9.

On 23 November 2009 the written recommendation of the selection panel identifying Applicant as the most suitable candidate for appointment to the Pietermaritzburg post, and Mngadi for the Durban one, was e-mailed by Respondent's KwaZulu-Natal Regional Human Resources Manager Baboo Brijlal to Respondent's KwaZulu-Natal Regional Operations Executive Vela Mdaka, in order that Mdaka forward the same to Nair so that Nair could fulfil his functions as contemplated by Respondent's Approval Framework.

10.

Contrary to Respondent's own procedure prescribed by the Recruitment code and the Approval Framework, and in breach of Applicant's rights:

10.1 Mdaka failed properly and in due course to forward the recommendation to Nair for approval, alternatively,

10.2 Nair, having received the recommendation, failed to fulfil his function to either approve or reject the recommendation of Applicant and present it to Vedalankar for her final approval or rejection of his appointment, and no approval or rejection of the recommendation, nor any reason for the negative decision was ever recorded by either of them.

11.

At all material times:

11.1 Both Mdaka and Nair were aware that Applicant was a white male and a controversial dissident activist in the South African AIDS treatment debate.

11.2 Respondent and its senior echelon management executives, including Nair and Vedalankar, were historically and culturally associated with and sympathetic to those vehemently opposed to Applicant's published position in the said debate.

12.

As a result of the irregular above-mentioned inaction of Mdaka, alternatively Nair, and their failure to follow Respondent's own procedures, Applicant's recommendation was wrongfully and unlawfully aborted in that it was neither dealt with according to the requirements of Respondent's Approval Framework, nor submitted to the (legally incompetent) 'second round interview' panel.

13.

Eleven months after Applicant was interviewed, and following his numerous enquiries, Respondent, through Vedalankar, alleged on 18 October 2010 that she, in consultation with Nair, had 'frozen' the Senior Litigator Posts at Pietermaritzburg, Durban and Mthatha in July 2010, due to budgetary constraints.

14.

The said budgetary justification for Respondent's failure to appoint Applicant was false and was contrived to camouflage the true reason, namely that Respondent was unwilling to appoint Applicant on prohibited grounds of his race, alternatively his conscience, belief or political opinion.

15.

The following facts show that this budgetary justification was false:

15.1 Respondent's executive management had no lawful power whether for budgetary or any other reasons to halt, abort, or 'freeze' recruitment to Respondent's vacant Senior Litigator posts and/or to deviate from Respondent's Business plan to employ Senior Litigators, without the authority of the Board.

15.2 No such authority was ever sought or granted in respect of the Pietermaritzburg Senior Litigator post or any other vacant Senior Litigator posts at any time material to this matter.

15.3 Furthermore, none of Respondent's executive management ever recorded any such purported decision until 18 October 2010 when Vedalankar wrote to Applicant, some eleven months after the recommendation had been forwarded to Mdaka, and in response to Applicant's persistent enquiries as to the upshot of the selection and approval process.

15.4 There was never any genuine budgetary shortfall during the financial year during which the purported decision was taken, and in that year Respondent had a substantial budgetary surplus.

15.5 Some temporary budget uncertainty experienced by Respondent during the 2010/11 financial year:

15.5.1 Had no bearing on Respondent's recruitment to the posts in question; and,

15.5.2 Had been resolved prior to 18 October 2010.

15.6 Subsequent to Applicant's referral of his claim to this court, Nair alleged, in direct contradiction of the budgetary justification previously advanced for Respondent not finalizing Applicant's appointment, that 'recruitment challenges' prevented Respondent filling its vacant Senior Litigator posts, including at Pietermaritzburg.

16.

In truth and in fact, Applicant's appointment was not duly processed because Respondent through Mdaka and/or Nair and/or Vedalankar and/or other office bearers unlawfully aborted the approval process on account of Applicant's race, alternatively his conscience, belief or political opinion.

17.

In the premises, Respondent unfairly discriminated against Applicant on grounds prohibited by section 9 (3) of the Constitution and section 6 (1) of the Employment Equity Act 55 of 1998.

18.

18.1 In dealing with Applicant's legitimate enquiries and petitions to Human Resources Executive Amanda Clark, CEO Vedalankar, Board chairperson Dunstan Mlambo JP and other Board members, and in its communications with the South African Human Rights Commission, the Minister of Justice and Constitutional Development, and the Portfolio Committee on Justice and Constitutional Development in the National Assembly, and in these proceedings, Respondent has repeatedly lied, concealed information, obstructed Applicant's requests for information and for documents, and falsely charged him with unethical, reprehensible, personally inappropriate and professionally improper conduct in his pursuit of his appointment.

18.2 Over and above Respondent's breach of Applicant's constitutional rights, Respondent's outrageous and unscrupulous conduct in the matter warrants a punitive general compensation award to Applicant, and punitive costs as a mark of this court's disapproval.

19.

Following a conciliation hearing at the CCMA on 20 April 2011 the commissioner issued a certificate of non-resolution, and Applicant referred his claim to the Labour Court for trial within a reasonable time thereafter.

THE LEGAL ISSUES ARISING FROM THE ABOVE FACTS

20.

Whether or not Respondent unfairly discriminated against Applicant in aborting his appointment to the Senior Litigator post at the Pietermaritzburg Justice Centre.

RELIEF SOUGHT

21.

21.1 An order declaring that in aborting Applicant's recruitment to the Pietermaritzburg Senior Litigator post, Respondent unfairly discriminated against him on prohibited grounds enumerated in section 6 (1) of the Employment Equity Act 55 of 1998, namely on grounds of his race, alternatively his conscience, belief or political opinion.

21.2 An order directing Respondent to appoint Applicant to the position of Senior Litigator at the Pietermaritzburg Justice Centre, retrospective to 1 January 2010.

21.3 An order directing Respondent to pay Applicant damages for lost income in a sum equivalent to the salary he would have earned had he been appointed Senior Litigator, Pietermaritzburg, on 1 January 2010.

21.4 An order directing Respondent to pay Applicant general compensation in the sum of R1 million.

21.5 An order that Respondent pay Applicant mora interest on his:

21.5.1 damages for lost income, computed month to month, at the prescribed rate from 1 January 2010 to date of payment; and,

21.5.2 general compensation, from date of judgment to date of payment.

21.6 An order directing Respondent to publish the order made in this case once in the *Sunday Times* newspaper and for a period of one year on Respondent's website in the 'About us' tab.

21.7 An order directing Respondent to pay Applicant's costs, including the costs of two counsel, on the scale as between attorney and client.

21.8 Further and/or alternative relief.

SCHEDULE OF DOCUMENTS

22.

A schedule of documents material and relevant to the issues is annexed, and will be supplemented after Respondent has fully and properly discovered.

Signed at Pietermaritzburg this day of March 2013.

L R CAIN

Applicant's attorney

LLEWELLYN CAIN ATTORNEYS
4 Stranack Street
Pietermaritzburg
Tel: 033 345 0767
Fax: 033 342 9080

KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201
P O Box 1454 | Pietermaritzburg | 3200
Tel: +27 (0) 33 345 1304 | Fax: +27 (0) 33 394 9544
Docex 25 | Pietermaritzburg
E-mail: infokzn@lpc.org.za

NATIONAL OFFICE
Thornhill Office Park | Block 20, 94 Bekker Road | Vorna Valley | MIDRAND | 1686
Tel: +27 010 001 8500

R3

LEGAL PRACTICE COUNCIL

Mr T V Matiti
Legal Aid Board

Email: thembileM@legal-aid.co.za

YOUR REF:

OUR REF : NADIRA/SH

Please Quote Our Reference

10 March 2020

Dear Sir

RE: COMPLAINT AGAINST ADVOCATE ANTHONY ROBIN BRINK

We refer to the above matter and advise that the National Legal Practice Council at its meeting held on 15 February 2020 considered the Complaints Committee's (Society of Advocates) recommendation that Advocate Brink be Struck Off the roll of and resolved that all investigations convene de novo, as the Society of Advocates had no authority to conduct such investigations. All pending complaints that were dealt with by the Society of Advocates had on 1 November 2018 been referred to the Legal Practice Council for consideration.

Kindly be advise whether you wish to supplement your complaints before the matter is referred to the Legal Practice Council's Investigating Committee for consideration.

Please provide us with your reply by the 1 April 2020.

Yours faithfully

MRS N HARRIPERSAD
SENIOR LEGAL OFFICER
DISCIPLINARY DEPARTMENT

Executive Committee: Ms. Kathleen Matolo - Dlepu – Chairperson, Adv Anthea Platt SC - Deputy Chairperson, Adv. Greg Harpur SC, Ms. Trudie Nichols, Mr Lutendo Sigogo, Mr Jan Stemmett, Adv. Phillip Zilwa SC, Executive Officer (acting): Ms. Charity Nzuza

KWAZULU-NATAL OFFICE - DIRECTOR: PEARL ARNOLD MFUSI

Shoba Harkhu

From: Microsoft Outlook
To: thembileM@legal-aid.co.za
Sent: 16 March 2020 02:06 PM
Subject: Relayed: COMPLAINT AGAINST ADVOCATE ANTHONY ROBIN BRINK

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

thembileM@legal-aid.co.za (thembileM@legal-aid.co.za)

Subject: COMPLAINT AGAINST ADVOCATE ANTHONY ROBIN BRINK

COMPLAINT AGAINST ADVO...

KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201
P O Box 1454 | Pietermaritzburg | 3200
Tel: +27 (0) 33 345 1304 | Fax: +27 (0) 33 345 3028
Docex 25 | Pietermaritzburg
E-mail: kzncomplaints@lpc.org.za
Website: www.lpc.org.za

NATIONAL OFFICE
Thornhill Office Park | Block 20, 94 Bekker Road | Vorna Valley | MIDRAND | 1686
Tel: +27 010 001 8500

R3

LEGAL PRACTICE COUNCIL

The Chief Executive Officer
Mrs Kola Mantiti
Legal Aid South Africa

Email: communications@legal-aid.co.za

YOUR REF:

OUR REF : Nadira

Please Quote Our Reference

25 August 2020

Dear Sir

RE: COMPLAINT BY LEGAL AID SOUTH AFRICA (MR T V MTATI) AGAINST ADVOCATE A BRINK

Our office is currently investigating a complaint that was lodged by Mr T V Mtati, the erstwhile Corporate Services Executive of Legal Aid South Africa. The complaint was initially lodged with the Society of Advocates of KwaZulu Natal, on 24 November 2015, and the matter was investigated by the Society. In September 2018, the Legal Practice Council took over all pending complaints from the Society of Advocates.

The abovementioned complaint was considered by the Legal Practice Council in January 2020 and it was resolved that all investigations regarding the pending complaints were to commence *de novo*. Advocate Brink was forwarded a copy of the complainant's affidavit and afforded an opportunity to reply to all the allegations raised by the complainant. Advocate Brink has since requested the following information/documents from your organisation in order for him to furnish our offices with his reply.

1) Confirmation of Mr Mtati's resignation.

2) Does the current Legal Aid South Africa CEO want to continue with the complaint. If yes, then confirmation who will be the complainant on behalf of the Legal Aid South Africa.

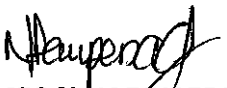
3) If the current Legal Aid South Africa CEO wants to continue with the complainant, a copy of the Resolution by the Legal Aid South Africa's Board authorising the new CEO to resubmit the complaint to the Legal Practice Council.

We await to hear from you.

Executive Committee: Ms. Kathleen Matolo - Dlepu – Chairperson, Adv Anthea Platt SC - Deputy Chairperson, Adv. Greg Harpur SC, Ms. Trudie Nichols, Mr Lutendo Sigogo, Mr Jan Stemmett, Adv. Phillip Zilwa SC, Executive Officer (acting): Ms. Charity Nzuza

KWAZULU-NATAL OFFICE - DIRECTOR: PEARL ARNOLD MFUSI

Yours faithfully



MRS N HARRIPERSAD
SENIOR LEGAL OFFICIAL
DISCIPLINARY DEPARTMENT

Nadira Harripersad

From: Nadira Harripersad
Sent: Monday, 28 September 2020 1:06 PM
To: nondumisot@legal-aid.co.za
Subject: RE : COMPLAINT AGAINST ADVOCATE BRINK.
Attachments: Untitled_28092020_130732.pdf

Good Day Ms Nondumiso,

I refer to our telephonic discussion of even date and attach herewith for your attention a copy of our email dated 27 August 2020.

We require your urgent reply by 2 October 2020 , failing which we shall no option but to close our file

Regards,

Nadira Harripersad
Senior Legal Officer
Discipline Department

KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201 P O Box 1454 | Pietermaritzburg | 3200
Tel: +27 (0) 33 345 1304 ext. 201 | Fax: +27 (0) 33 394 9544 Docex 25 | Pietermaritzburg
E-mail: nadirah@lpc.org.za

-----Original Message-----
From: pmblibrary@lpc.org.za <pmblibrary@lpc.org.za>
Sent: Monday, 28 September 2020 1:08 PM
To: Nadira Harripersad <nadirah@lpc.org.za>
Subject: Scan from samsung

Scan drom Downstairs

KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201
P O Box 1454 | Pietermaritzburg | 3200
Tel: +27 (0) 33 345 1304 | Fax: +27 (0) 33 345 3028
Docex 25 | Pietermaritzburg
E-mail: kzncomplaints@lpc.org.za
Website: www.lpc.org.za

NATIONAL OFFICE
Thornhill Office Park | Block 20, 94 Bekker Road | Vorna Valley | MIDRAND | 1686
P O Box 537 | Midrand | 1685
Tel: +27 010 001 8500

R3

LEGAL PRACTICE COUNCIL

Mr N Mhlongo

Email: NondumisoT@legal-aid.co.za

YOUR REF:

OUR REF : Nadira

Please Quote Our Reference

5 November 2020

Dear Sir

RE: COMPLAINT AGAINST ADVOCATE BRINK

The above mater and more especially your email dated 5 October 2020 refers.

We note that there has been no response by your Chief Executive Officer, despite your undertaking to revert o our offices by 7 October 2020.

Kindly note that should we not receive your response within two weeks from date hereof we will assume that you no longer intend to pursue the complaint.

Yours faithfully

Harripersad

MRS N HARRIPERSAD
SENIOR LEGAL OFFICIAL
DISCIPLINARY DEPARTMENT

Executive Committee: Ms. Kathleen Matolo - Diepu – Chairperson, Adv Anthea Platt SC - Deputy Chairperson, Adv. Greg Harpur SC, Ms. Trudie Nichols, Mr Lutendo Sigogo, Mr Jan Stemmett, Adv. Ghandi Badela, Executive Officer: Ms. Charity Nzuza

KWAZULU-NATAL OFFICE - DIRECTOR: PEARL ARNOLD MFUSI

Shoba Harkhu

From: Microsoft Outlook
To: nondumisoT@legal-aid.co.za
Sent: 09 November 2020 12:01 PM
Subject: Relayed: COMPLAINT AGAINST ADVOCATE BRINK

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

nondumisoT@legal-aid.co.za (nondumisoT@legal-aid.co.za)

Subject: COMPLAINT AGAINST ADVOCATE BRINK

COMPLAINT AGAINST ADVOC...

Nadira Harripersad

From: Nadira Harripersad
Sent: Tuesday, 06 October 2020 9:47 AM
To: 'Nondumiso Mhlongo'
Subject: RE: COMPLAINT AGAINST ADVOCATE BRINK.

Good Day Nondumiso,

Thank you for your email dated 5 October 2020, the contents of which have been noted.

We await you further report on 7th October 2020.

Regards,

Nadira Harripersad
Senior Legal Officer
Discipline Department

KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201 P O Box 1454 | Pietermaritzburg | 3200
Tel: +27 (0) 33 345 1304 ext. 201 | Fax: +27 (0) 33 394 9544 Docex 25 | Pietermaritzburg
E-mail: nadirah@lpc.org.za

-----Original Message-----
From: Nondumiso Mhlongo <NondumisoT@legal-aid.co.za>
Sent: Monday, 05 October 2020 10:20 AM
To: Nadira Harripersad <nadirah@lpc.org.za>
Subject: RE: COMPLAINT AGAINST ADVOCATE BRINK.

Good morning Ms Harripersad

Please note the Legal Aid SA will be continuing with the Brink matter. Our Chief Legal Executive is preparing a response for you and we will submit it to you by Wednesday, 07th October 2020.

Regards
Nondumiso

-----Original Message-----
From: Nadira Harripersad [mailto:nadirah@lpc.org.za]
Sent: Monday, 28 September 2020 13:06
To: Nondumiso Mhlongo <NondumisoT@legal-aid.co.za>
Subject: RE : COMPLAINT AGAINST ADVOCATE BRINK.

Good Day Ms Nondumiso,

I refer to our telephonic discussion of even date and attach herewith for your attention a copy of our email dated 27 August 2020.

We require your urgent reply by 2 October 2020 , failing which we shall no option but to close our file

Regards,

Nadira Harripersad
Senior Legal Officer
Discipline Department

KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201 P O Box 1454 | Pietermaritzburg | 3200
Tel: +27 (0) 33 345 1304 ext. 201 | Fax: +27 (0) 33 394 9544 Docex 25 | Pietermaritzburg
E-mail: nadirah@lpc.org.za

-----Original Message-----
From: pmblibrary@lpc.org.za <pmblibrary@lpc.org.za>
Sent: Monday, 28 September 2020 1:08 PM
To: Nadira Harripersad <nadirah@lpc.org.za>
Subject: Scan from samsung

Scan drom Downstairs

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Nadira Harripersad

From: Nadira Harripersad
Sent: Monday, 16 November 2020 10:01 AM
To: Nondumiso Mhlongo
Cc: Anthony Brink
Subject: RE : COMPLAINT BY LEGAL AID BOARD SA / ADVOCATE A BRINK.

Good Day Mr Mhlongo,

The above matter more especially our correspondences dated 28 September 2020, 6 October 2020 & 5 November 2020 refers. We note with regret that your Offices have failed to furnish us with a response to our letter dated 25 August 2020 despite our repeated requests.

Kindly be advised that in light of your non-response we have no option but to close the matter.

Regards,

Nadira Harripersad
Senior Legal Officer
Discipline Department

KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201
P O Box 1454 | Pietermaritzburg | 3200
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Docex 25 | Pietermaritzburg
E-mail: nadirah@lpc.org.za

LEGAL PRACTICE COUNCIL

R3

Shoba Harkhu

From: Patrick Hundermark <PatrickH@legal-aid.co.za>
Sent: 30 November 2020 05:00 PM
To: Shoba Harkhu
Subject: RE: COMPLAINT AGAINST ADVOCATE BRINK

Dear Mrs Harripersad

The writer refers to the e-mail below. Our response was considered by the Legal Aid SA Board on 28 November 2020. Unfortunately our CEO has suffered a family bereavement and is currently unavailable to sign the response.

We will submit the response as soon as same has been signed by the CEO.

Kindly acknowledge receipt.

Regards

Patrick Hundermark
Chief Legal Executive
Legal Development Department

Address: 29 De Beer Street | Braamfontein | Johannesburg
Tel: +27 11 877 2051 | Cell: +27 82 600 3926

Twitter: @LegalAidSA1 | Facebook: LegalAidSA1
Advice Line: 0800 110 110 | Please Call Me: 079 835 7179
Website: www.legal-aid.co.za | Ethics Hotline: 0800 153 728

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TARGET 16.3 Promote the rule of law at the national and international levels, and ensure equal access to justice for all

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Correct Abbreviation of Legal Aid South Africa

We have noted that a few of our stakeholders refer to us as LASA. Please be reminded that the organisation, Legal Aid South Africa, is correctly abbreviated as Legal Aid SA and not LASA. W request that you assist us in building and maintaining our brand through our name 'Legal Aid S representative of and affirms our Mission to deliver quality legal aid services to the poor and vulner Africa. The acronym 'LASA' has no meaning and adds no value, whereas the correct usage of our Aid SA' builds awareness with the term legal aid and hence builds our brands.

Vision: A South Africa in which the rights enshrined in the Constitution are realised and upheld and responsibilities are complied with to ensure equality, justice and quality of life for all

Legal Aid South Africa
Your voice. For justice.

Mission: To be a leader in the provision o sustainable, ethical, independent and quali the poor and vulnerable

From: Patrick Hundermark
Sent: Thursday, 19 November 2020 17:06
To: 'shobah@lpc.org.za' <shobah@lpc.org.za>
Subject: FW: COMPLAINT AGAINST ADVOCATE BRINK
Importance: High

Dear Mrs Harripersad

We refer to your attached letter and advise that we are engaging our Board Exco on the matter and thus require until 30 November 2020 to provide our response.

Kindly confirm that this will be in order.

Regards

Patrick Hundermark
Chief Legal Executive
Legal Development Department

Address: 29 De Beer Street | Braamfontein | Johannesburg
Tel: +27 11 877 2051 | Cell: +27 82 600 3926

Twitter: @LegalAidSA1 | Facebook: LegalAidSA1
Advice Line: 0800 110 110 | Please Call Me: 079 835 7179
Website: www.legal-aid.co.za | Ethics Hotline: 0800 153 728

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top employer 2020

16 PEACE, JUSTICE AND STRONG INSTITUTIONS

TARGET 16.3 Promote the rule of law at the national and international levels, and ensure equal access to justice for all

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Correct Abbreviation of Legal Aid South Africa

We have noted that a few of our stakeholders refer to us as LASA. Please be reminded that the organisation, Legal Aid South Africa, is correctly abbreviated as Legal Aid SA and not LASA. W request that you assist us in building and maintaining our brand through our name 'Legal Aid S representative of and affirms our Mission to deliver quality legal aid services to the poor and vulner Africa. The acronym 'LASA' has no meaning and adds no value, whereas the correct usage of our Aid SA' builds awareness with the term legal aid and hence builds our brands.

Vision: A South Africa in which the rights enshrined in the Constitution are realised and upheld and responsibilities are complied with to ensure equality, justice and quality of life for all

Legal Aid South Africa
Your voice. For justice.

Mission: To be a leader in the provision o sustainable, ethical, independent and qual the poor and vulnerable

From: Nondumiso Mhlongo
Sent: Monday, 09 November 2020 12:03
To: Patrick Hundermark <PatrickH@legal-aid.co.za>
Subject: FW: COMPLAINT AGAINST ADVOCATE BRINK
Importance: High

Good day Patrick

Please see the attached letter.

Regards
Nondumiso

From: Shoba Harkhu [mailto:shobah@lpc.org.za]
Sent: Monday, 09 November 2020 12:01
To: Nondumiso Mhlongo <NondumisoT@legal-aid.co.za>
Subject: COMPLAINT AGAINST ADVOCATE BRINK

9 November 2020

Mr N Mhlongo

Dear Sir

We are forwarding herewith our letter dated 5 November 2020

Regards,
Shoba Harkhu
Disciplinary Department
KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor| 200 Hoosen Haffejee Street| Pietermaritzburg| 3201
P O Box 1454| Pietermaritzburg| 3200
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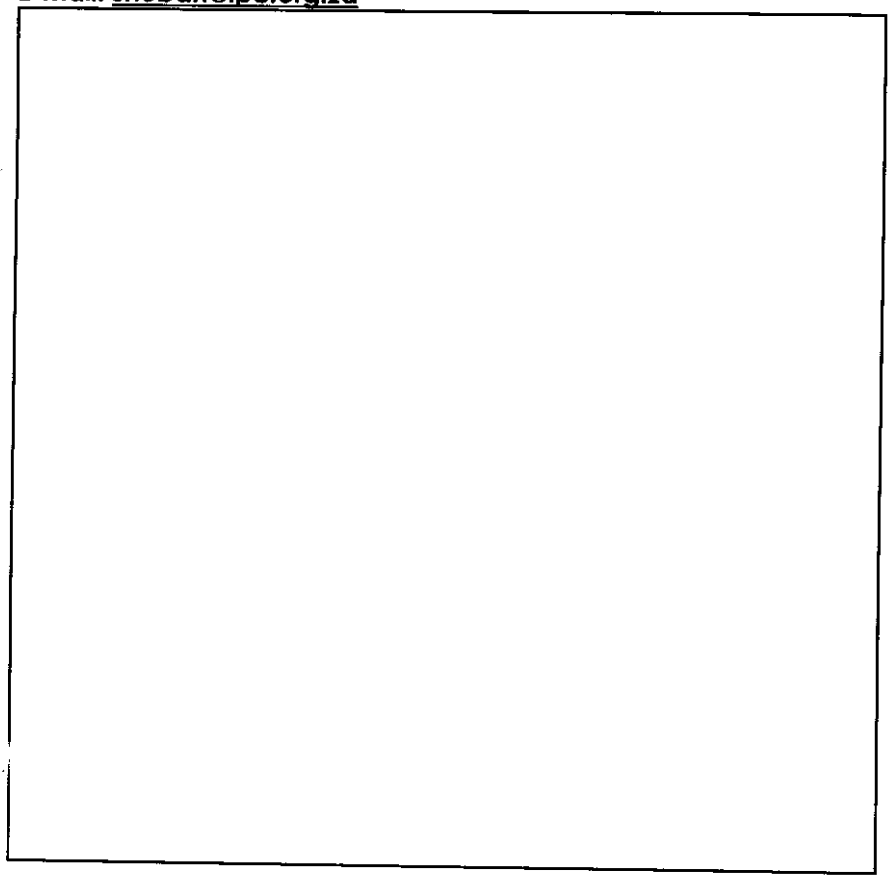

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Sent: 09 November 2020 09:25 AM
To: Shoba Harkhu <shobah@lpc.org.za>
Subject: Attached Image

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R3

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LEGAL PRACTICE COUNCIL

R3

Mr Patrick Hundermark
Chief Legal Executive
Legal Aid of South Africa

Email: PatrickH@legal-aid.co.za

YOUR REF:

OUR REF : Nadira

Please Quote Our Reference

3 December 2020

Dear Sir

RE: COMPLAINT AGAINST ADVOCATE BRINK

Your letter dated 30 November 2020 bears reference.

The Legal Practice Council at its meeting held in January 2020 resolved that the investigation in the above mentioned matter commence de novo as the Society of Advocates had no authority to deal with the complaint as the Society ceased and the Legal Practice Council took office on 1 November 2018.

Advocate Brink was forwarded a copy of the initial complaint lodged by Mr T V Mtati, the erstwhile Corperate Service Executive of Legal Aid South Africa and he was afforded an opportunity to reply to all the allegations raised by the complainant at the time. Advocate Brink had required certain information/documents from your organisation in order for him to furnish our offices with his reply.

Our offices had addressed the following correspondences dated 25 August 2020, 28 September 2020, 6 October 2020, 5 November 2020, 16 November 2020 to the Legal Aid South Africa, to which we have not yet received the requested information in order for our offices to investigate the matter. We advised your offices that in the event we do not receive the Legal Aid South Africa Boards reply to the request, then our offices will proceed to closed its file, as we cannot keep the complaint pending indefinitely as this will severely prejudice Advocate Brink.

Please note that Advocate Brink is putting extreme pressure on our offices to obtain you Boards response, so that he can file his Answering Affidavit to the complaint and have the matter finalised. We note that your Chief Executive Officer has suffered a family bereavement and we express our condolence in this regard, however our offices would require a definitive date on which your response would be forwarded to us for onward transmission to Advocate Brink.

Executive Committee: Ms. Kathleen Matolo - Diepu – Chairperson, Adv Anthea Platt SC - Deputy Chairperson, Adv. Greg Harpur SC, Ms. Trudie Nichols, Mr Lutendo Sigogo, Mr Jan Stemmett, Adv. Ghandi Badela, Executive Officer: Ms. Charity Nzuza

KWAZULU-NATAL OFFICE - DIRECTOR: PEARL ARNOLD MFUSI

We would like to brink to your attention Rule 39.3 which states:-

"In order to establish whether grounds for referring the complaint to the Investigating Committee exist, the executive officer or the legal officer, or any other person in the employ of the Council to whom the authority hos been delegated by the Council , may, in his or her discretion:-

39.3.1 notify the respondent in writing of the nature of the complaint and call upon the respondent to furnish a written explanation in answer to the complaint within 30 days of such notice; and

39.3.2 request the complainant to provide further particulars on any aspect of the complaint."

Yours faithfully

MRS N HARRIPERSAD
SENIOR LEGAL OFFICIAL
DISCIPLINARY DEPARTMET

R3

Shoba Harkhu

From:	Microsoft Outlook
To:	Patrick Hundermark
Sent:	03 December 2020 09:40 AM
Subject:	Relayed: COMPLAINT AGAINST ADVOCATE BRINK

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Patrick Hundermark (PatrickH@legal-aid.co.za)

Subject: COMPLAINT AGAINST ADVOCATE BRINK

Shoba Harkhu

From: Patrick Hundermark <PatrickH@legal-aid.co.za>
Sent: 04 December 2020 02:21 PM
To: Shoba Harkhu
Cc: anthonybrink.sa@gamil.com
Subject: RE: COMPLAINT AGAINST ADVOCATE BRINK

Dear Mrs Harripersad

The writer acknowledges receipt of your e-mail enclosing your letter dated 3 December 2020.

I do not intend to deal with the contents of your letter save to apologise for the delay in providing our response to your correspondence but as indicted in my e-mail of 19 November 2020, the current CEO was engaging with our Board and thus we required until 30 November 2020 to respond. The Board dealt with the matter on 28 November 2020 and the CEO is required to sign off the response. I am expecting the CEO to return to office next week and thus undertake to ensure that our response is delivered on or before 11 December 2020.

After more than 5 years of relative inaction, I am sure the prejudice you allude to in your letter will not be exacerbated by the extension to 11 December 2020.

Your sincerely

Patrick Hundermark
Chief Legal Executive
Legal Development Department

Address: 29 De Beer Street | Braamfontein | Johannesburg
Tel: +27 11 877 2051 | Cell: +27 82 600 3926

Twitter: @LegalAidSA1 | Facebook: LegalAidSA1 Advice Line: 0800 110 110 | Please Call Me: 079 835 7179
Website: https://eur01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.legal-aid.co.za%2F&data=04%7C01%7Cshobah%40lpc.org.za%7C2e1a01e67feb4e3e45f108d8984f16ba%7C87621f63574da8993efbab081227ce%7C0%7C0%7C637426812796088595%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=ttVLAmdJ9ldluHVv32QdvhHHk2ECbcN%2BMejU0YYAa6Q%3D&reserved=0 | Ethics Hotline: 0800 153 728

-----Original Message-----
From: Shoba Harkhu [mailto:shobah@lpc.org.za]
Sent: Thursday, 03 December 2020 09:40
To: Patrick Hundermark <PatrickH@legal-aid.co.za>
Cc: anthonybrink.sa@gamil.com
Subject: COMPLAINT AGAINST ADVOCATE BRINK

3 December 2020

Mr Patrick Hundermark

Dear Sir

We are forwarding herewith our letter dated 3 December 2020

Regards,
Shoba Harkhu
Disciplinary Department
KWAZULU-NATAL PROVINCIAL OFFICE
1ST Floor | 200 Hoosen Haffejee Street | Pietermaritzburg | 3201 P O Box 1454 | Pietermaritzburg | 3200
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Sent: 03 December 2020 09:38 AM
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Scan from Downstairs

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Report of Complaints Committee 2

Complaint against Advocate A. R. Brink

1. **Membership**

According to the latest membership list, Brink is no longer a member of the Society. Brink is apparently presently a contracted additional Magistrate, stationed in Eshowe.

2. **The identity of the complainant**

An attorney employed as a corporate services executive by Legal Aid South Africa (henceforth 'LASA').

3. **The nature of the complaint**

The complainant has alleged that Brink's conduct is not befitting of an officer of the court, nor that of a Magistrate. The complaint is in excess of 500 pages in length. The complainant alleges

that Brink's language is '**unprofessional**' and he requires sanctioning.

4. **Summary of facts**

4.1 Brink applied for a job at LASA as a senior litigator at the Pietermaritzburg Justice Centre and progressed to the second round of interviews. The second round of interviews did not proceed as a result of budgetary uncertainties, according to LASA. Brink, however, believed that he had not been successful in securing employment because of his controversial views on the effect of anti-retroviral drugs in treating AIDS (he is a well known, self taught, dissident in this field, believing that ARV's kill rather than cure). He consequently instituted litigation against LASA in the Labour Court alleging, **inter alia**, that he had been unfairly discriminated against in terms of the Employment Equity Act 55 of 1998.

4.2 The litigation was conducted in Brink's name, he being the Applicant. It appears that he drafted the

papers. Brink testified at the hearing. At the hearing in the Labour Court, Brink was initially represented by counsel (Hunt) and an attorney, but at the beginning of the matter dismissed both of them and represented himself.

4.3 The matter served before Mr. Justice Cele (henceforth 'Cele J'). On 18 September 2014, Brink's application was dismissed by Cele J, with costs. On 27 November 2014, Cele J refused Brink's application for leave to appeal and to lead new evidence on appeal.

4.4 On 7 December 2013 (this should perhaps have been dated 2014), Brink petitioned the Judge President of the Labour Court. His petition was refused on 18 February 2015.

4.5 On 7 October 2015, Brink brought an urgent application in the High Court in Pietermaritzburg in an attempt to interdict the Taxing Master in the Labour Court from finalising the taxation of the costs he was ordered to pay by Cele J in the Labour Court. The

Order sought by Brink (who appears to have been represented on this occasion) was pending an application to declare that the dismissal of his petition to the Judge President was a nullity and that it be set aside (he claimed that the Registrar who signed the Order recording the dismissal of the petition was not a Registrar in Durban, that there was no evidence in his petition file that his petition had, in fact, been refused nor was there any evidence that the three Judges who considered it were in Durban on the date the Order issued). This application was dismissed on the day that it was first set down, with costs ordered against Brink on the attorney client scale.

5. **The specific complaints**

5.1 The conduct that the complainant refers to stems largely from allegations that Brink made in his '**Statement of Claim**' in the Labour Court. In that document Brink, **inter alia**, stated that:

5.1.1 Mr. Justice Dunstan Mlambo, the Chairperson of LASA (henceforth 'the Judge'), and the CEO of LASA (henceforth 'the CEO) had been motivated by unlawful political prejudice, alternatively racial prejudice, directed at himself;

5.1.2 the Judge and the CEO had orchestrated a cover up in order to disguise the true reason why Brink was not appointed to the position in LASA;

5.1.3 the Judge had lied about the matter when reporting on the matter to the Minister of Justice and Constitutional Development in order to cover up his and the CEO's unfair discrimination against Brink;

5.1.4 the Judge lied to the chairperson of the Parliamentary Portfolio Committee when reporting to it on the matter and thereby misled, **inter alia**, parliament;

5.1.5 the financial justification for not appointing him was a bogus reason concocted by the Judge and the CEO.

5.2 Under cross examination at the hearing, Brink was forced to retract all the allegations that he had made against the Judge and the CEO. He now indicated that he exonerated the Judge and the CEO from any accusations of dishonesty and discrimination. He, however, now stated that another person had concocted the plot against him.

5.3 Brink claimed his statements about the Judge and the CEO were based on '**misconceptions**'. He also stated that he had made the allegations against the Judge and the CEO '**inadvertently**'.

5.4 In his petition to the Judge President of the Labour Court Brink, notwithstanding his earlier retraction of all the allegations against the Judge and the CEO at the trial, stated that:

5.4.1 the matter continued to involve

'the personal and professional integrity of a sitting judge president, formerly of this court,

and that of the the most senior management executives of a major public entity.'

This is clearly a continued reference to the Judge and the CEO.

5.4.2 as a consequence of

'multiple, objectively demonstrable lies'

there had been a perversion of separate Ministerial Parliamentary enquiries. This again refers to a proposition that he had allegedly previously distanced himself from.

5.4.3 the Judge had known that a

'new explanation'

that the Judge had advanced

'was false'

and that the budgetary constraints reason advanced by him

'was another lie'.

5.4.4 The Judge had participated in

'a grossly irregular, prejudicial, and unlawful recruitment process.'

5.4.5 The Judge is an active political promoter of the American and European medical industrial complex's HIV-AIDS-ARV business model,

'under the mantle of human rights.'

5.4.6 Both the Judge and the CEO are partisans of pharmaceutical interests and

'the chemical merchandise they promote'.

5.4.7 The Judge and the CEO concocted a false explanation to cover the true reason for aborting Brink's recruitment.

5.4.8 The Judge

> **'would later consciously and deliberately tell the same lies, and more lies of his own ... to the Minister of Justice and Constitutional Development, which lies he repeated some months later to the chairperson of the Portfolio Committee.'**

5.4.9 Cele J, who heard the matter in the Labour Court, was guilty of

> **'gravely prejudicial misconduct'**

that resulted in him thwarting a full and proper ventilation of the issues and had made several errors in law.

5.4.10 Cele J's judgment against him was a

> **'deplorably inattentive, glib, crude and perfunctory judgment...'**

6. Discussion

6.1 Brink has consistently identified himself as an advocate in the papers that he has drawn, even at a time when acting as a Magistrate. However, it is difficult to discern whether in making the allegations that he has made whether he was acting in his capacity as an advocate or in his capacity as a litigant in person. At best for Brink, the line between these capacities is blurred. He will no doubt allege that he was not expressing himself as an advocate but as a litigant. However, he ought to have conceived that the unsubstantiated allegations that he made might be attributed to him in his role as an advocate. Certainly this is the view adopted by the complainant, and he is justified in taking that view.

6.2 The allegations that Brink made are serious: to call the Judge dishonest and to allege that he has lied cannot be anything but serious. In addition, his disdain for the Bench is further demonstrated in the unpalatable way he has referred to Cele J. To wilfully impugn another's integrity in a profession, such as

law, where integrity is crucial is impermissible. Such allegations ought not to have been made without any evidence justifying them being made. They appear to have been gratuitously made in order to advance Brink's personal agenda of a conspiracy against him.

6.3 The fact that the allegations were withdrawn in the proceedings before Cele J does not stand to Brink's credit. Firstly, in the absence of evidence, they ought not have been made at all. Secondly, it does not appear to have been a true withdrawal, as in his petition he appears to have persisted in the scandalous allegations he had apparently withdrawn. He had had time to reflect on what he had said and pleaded and decided, in drawing his petition, to continue with allegations that he had admitted under oath were not true.

6.4 The statement that Brink had '**inadvertently**' slandered the Judge in a most disgraceful way must be considered as a dishonest statement. There was nothing inadvertent about Brink's conduct: it was deliberate and formed part of his strategy.

7. **Finding**

It is found that there is merit in the complaint.

8. **Recommendation**

Notwithstanding that Brink is not a member of the Society of Advocates, it is recommended that a striking off application be launched.

Complaints Committee 2

R. G. Mossop S.C.

M. Konigkramer

M. Manikam

17 February 2017.

REPORT TO THE BAR COUNCIL

COMPLAINT CONCERNING ADVOCATE A. R. BRINK

1. As the Bar Council will recall, Legal Aid South Africa laid a complaint against Advocate A. R. Brink concerning his conduct in certain litigation in which he, **inter alia**, called Mr Justice D. Mlambo a liar and claimed that the Judge had misled a select committee of parliament. The nature of the complaint is dealt with fully in the report of this committee dated 17 February 2017.

2. Advocate Brink is not a member of the Bar, but serves the State as an additional magistrate.

3. Following receipt of the complaint and its consideration by this committee, a decision was taken by the Bar Council to proceed with a striking off application against Advocate Brink.

4. When Advocate Brink was informed of this decision, he demanded a right to respond to the allegations made about him by Legal Aid South Africa. This had not been afforded him before the decision to strike off was taken.

5. The request of Advocate Brink was acceded to and he was

invited to make submissions in response to the allegations made by Legal Aid South Africa.

6. Ultimately, Advocate Brink submitted his representations. They consisted, primarily, of eight complaints that he has either submitted, or intends submitting, to the Judicial Services Commission concerning the conduct of Mr. Justice Mlambo. The eight complaints (and therefore the representations), contained in nine volumes, cover 264 pages.

7. Legal Aid South Africa were invited to reply to the answer of Advocate Brink and were sent his representations. After substantial reflection, Legal Aid South Africa decided that it would not reply in detail but contented itself with a general statement that Advocate Brink had raised nothing new in his answer but persisted in his allegations made against Mr. Justice Mlambo as well as another Judge.

8. This committee has considered the answer of Advocate Brink. He has persisted in his allegations against the Judge and has constructed the most elaborate conspiracy theory in an attempt to try and prove what he alleges. He has failed in this regard as the response is verbose and rambling but ultimately lacks substance. The committee, after a fresh consideration of the

matter, believes that the matter still warrants that a striking off application be brought.

9. The committee again comments that a striking off application will offer Advocate Brink the sort of platform (and, potentially, publicity) that he appears to relish in order to advance his theories. He has apparently made contact with international organisations seeking their support for his position and allegations and he has drawn the matter to the attention of Noseweek magazine.

10. The recommendation is therefore made to the Bar Council that the striking off application continues and that Advocate Brink be so advised, as well as Legal Aid South Africa.

Complaints Committee 2

R. G. Mossop SC

M. Sponneck

M. Manikam

14 September 2017.

Note from Mahen Manikam, member of Complaints Committee 2:

I agree with the views of Mossop SC in the report of committee 2 regarding Adv Brink. However, I raise a concern for consideration.

In terms of section 8 of the Judicial Service Commission Act 9 of 1994, the judicial conduct committee is chaired by the Chief Justice and the rest of the committee's members consist of judges. Therefore, by its nature such a disciplinary organ would be construed to be a higher forum than our committee and we would be expected to show deference to the former committee. Brink's allegations to the JSC overlap with his responses made by him to our committee. Gauging from the litigious history of the matter and noting also that Brink has made representations to the Human Rights Commission, he may consider it appropriate to take the decision of the bar council on review and he may contend that we ought to have allowed the JSC to rule on his complaints first before the bar council made a finding against him."

R3

	STRIKE OFF APPLICATION: ADVOCATE ANTHONY ROBIN BRINK: COMPLAINT BY MR T.V.	**It was resolved that the matter should be referred to an Investigating Committee of the LPC as it had been noted that the KZN Society of Advocates had not acquired the necessary authority from the Council after it had assumed office on 1 November 2018, to proceed with the investigation**	7 MARCH 2020

R3

	MTATI OBO LEGAL AID SOUTH AFRICA	**into the alleged conduct of Advocate Brink.**

R4

EIGHT COMPLAINTS OF GROSS MISCONDUCT AGAINST MLAMBO JP

1693

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INTRODUCTION

In June and July 2017, I submitted eight gross misconduct complaints under section 14(3)(e) of the Judicial Services Commission Act 9 of 1994 to the Judicial Service Commission ('JSC') against Legal Aid SA ('LASA') Board chairperson Dunstan Mlambo, Judge President of the Gauteng Division of the High Court of South Africa.

On 31 October 2017, the JSC secretariat conveyed the Judicial Conduct Committee's request that I index and paginate my complaints and that they be resubmitted together 'to avoid a piecemeal consideration and determination of these matters.'

The black-and-white contrast of the scanned copies I made of the signed and attested complaints before lodging them with the JSC is less than optimal (see https://goo.gl/Lp5Bu2), so for best print resolution, contrast and legibility I've compiled this bundle from the final PDFs of each complaint before signature. If the Committee requires further copies, the indexed bundle may be downloaded in PDF from goo.gl/zFqSQz.

The Committee may be interested to learn that on 27 October 2017, a few days before it requested this resubmission, the High Court at Pietermaritzburg quickly dismissed LASA's application, mentioned incidentally in my complaints, to have me declared a vexatious litigant, stripped of my ordinary constitutional right of access to the courts, and barred from accessing its records duly requested under the Promotion of Access to Information Act 2 of 2000, for which I'd repeatedly had to sue under section 78 of the Act: six applications, and a further application to compel full and proper compliance with a settlement agreement it made with me at court after totally capitulating to the first five.

A major plank of LASA case against me was my forthright criticism of Mlambo JP's gross misconduct in my pleadings and affidavits in the Labour- and Labour

Appeal Courts (irrelevant to the application, as I pointed out in my heads and the judge agreed). My answering and supplementary affidavits and my heads of argument in LASA's application are accessible at goo.gl/GUKfNj.

The preamble to an offer of settlement I made before argument of the case, and my letter to CEO Vidhu Vedalankar after LASA lost it, will quickly apprise the Committee as to what the whole thing is really all about, accounting for Mlambo JP's otherwise inexplicable persistent egregious misconduct detailed in my complaints. For this reason I've included my settlement offer and letter in the Appendices to these complaints. Under the title 'LASAGATE', I've also included a collection of illuminating quotations pointing up the several striking parallels between the infamous Watergate scandal and this one.

But in short: as Board chairperson of LASA, Mlambo JP quite naturally preferred a long-time former judicial colleague of his in the Labour Court, which he headed at the time, for appointment to LASA's top legal professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg (there's a twin post at Durban), rather than an unknown stranger, me, unexpectedly unanimously recommended by the selection panel instead. Mlambo JP's former brother judge was actually eliminated from the running for the post when it emerged at his interview for it that, notwithstanding his long judicial experience, he lacked right appearance in the High Court as an attorney.

Bearing out the adage after Watergate, 'The cover-up is always worse than the crime', Mlambo JP and LASA's top management executives responded to my enquiries after five strangely silent months about the outcome of the interviews for the post, and then my pursuit of my appointment after my selection for it was backhandedly confirmed to me, with an elaborate, cunning, escalating cover-up, involving inter alia repeated illegal and unconstitutional refusal of access to duly requested records (a key one mutely then expressly refused, then illegally redacted to conceal the potently relevant professional relationship just mentioned, then refused again, then finally surrendered uncensored, after being

sued for, at the point of argument in court – five and a half years after I requested it), and a shambles of radically contradictory, ultimately criminal lies told variously to me, to LASA's Board, to the SAHRC, to the Justice Minister, to the Justice Portfolio Committee of the National Assembly, and to the courts.

As also mentioned in my Eighth Complaint (at pp 179–80, para 6.10–14): in addition to its abortive go at having me banned as a vexatious litigant, LASA succeeded in getting summarily dismissed from my post as an acting magistrate for impeaching Mlambo JP's integrity in his conduct as chairperson of LASA's Board. And it's currently trying to have me struck off the roll of advocates for this: I'm still awaiting Rob Mossop SC and his Complaints Committee's final decision of LASA's complaint to the Society of Advocates of KwaZulu-Natal.

This is to say, after LASA's top officers' defensive and ultimately criminal strategies – calculated silence; dishonest evasion and stonewalling; unlawful and unconstitutional refusal of access to records; lying; illegal alteration of a key requested record with a black Koki pen to conceal critically material information; lying and false reporting to the Minister and to the National Assembly; and perjury – failed to deter me, they turned to adopting a multi-pronged aggressive strategy to destroy me personally and professionally, in doing so casting me as the miscreant in the matter rather than those – particularly Mlambo JP – involved in the broad-ranging, extremely grave misconduct, including criminal misconduct, described in my complaints to the JSC. (My comprehensive answering affidavit linked above details it more fully.)

Thus have LASA's top officers 'appeared indignant and played the victim' and 'attempted to turn turpitude into rectitude' – as the Supreme Court of Appeal deplored such behaviour in Gauteng Gambling Board and Another v MEC for Economic Development, Gauteng Provincial Government (620/2012) [2013] ZASCA 67; 2013 (5) SA 24 (SCA); [2013] 3 All SA 370 (SCA) (27 May 2013).

In view of the extraordinary, unprecedented gravity of this matter, and of LASA's endeavour to annihilate me for exposing the top-level corruption that I've encountered in my pursuit of my appointment, I should disclose that I've copied these complaints under the title 'Rotten to the Core: Corruption at Legal Aid SA' inter alia to the Justice Portfolio Committee, to the Justice Minister, to several anti-corruption and information transparency NGOs, and to various national print media, including centres for investigative journalism. I also copied them to the Society of Advocates of KwaZulu-Natal as my complete answer to LASA's professional misconduct charge that I disgracefully impugned Mlambo JP's integrity in my litigation against LASA and should be struck off for it. And I annexed them to my supplementary affidavit in LASA's failed application to have me banned as a vexatious litigant. (LASA tried but failed to get it struck out.) In sum, my capital complaints against Mlambo JP are both in the public domain and on the official court record.

ANTHONY BRINK
10 November 2017

'Our office seeks to be the conscience of the state and ensure that it acts with integrity and justice at all times. We investigate public sector maladministration, fraud and corruption, report on it, and take appropriate action against it. ... [C]orruption is a form of maladministration that needs to be fought not just by those in the affected organisations themselves, but also by the media and by society in general. Through our work we've also helped highlight specific forms of public sector corruption that don't necessarily involve bribery ... I would like to see South Africans recognising that corruption hurts – it eats away at the soul of the nation. I'd like us to get to a stage of realising that we all have a role to play in combating corruption: every time people act they should ask themselves: "Am I adding to the problem of corruption or am I helping solve it?" ... [T]he name and status of the people we investigate doesn't matter. Acting without fear or favour means you can investigate anyone. ... We must retain respect for the rule of law ... There also needs to be better enforcement of codes of conduct. Increasingly, we are seeing emphasis placed on being found guilty in a court of law. That suggests that you can break codes of conduct until a court of law calls it crime. It's unfair to say to people their defence against public sector corruption is the criminal justice system. People entrusted with public power should not claim privileges of criminals.'

Adv Thuli Madonsela, (then) Public Protector, interviewed by Transparency International in Berlin on winning its Integrity Award in October 2014

'[Her] work embodies Transparency International's ... belief that the corrupt should not be allowed to get away with their misdeeds.'

JC Weliamuna, Chair of Transparency International's Integrity Awards Committee

'Former public protector Thuli Madonsela has urged the public to support whistleblowers in the fight against ... corruption. Both Madonsela and former finance minister Pravin Gordhan were speaking at the Democracy Defenders Dialogue at the University of Witwatersrand in Johannesburg on Monday. ... Madonsela, who was part of a panel that discussed whistleblowers in the South African context, said for those who speak out against fraud and corruption, it is a "lonely journey". ... "There are gaps in the whistleblower protection laws. For true protection of whistleblowers, we have to empower people to know what needs to be done. What I would like to see more is ordinary people writing to parliament and the president in terms of the access to information act," Madonsela said. ... "We want our leaders to be accountable, and to be honest – that's a true democracy."

Gordhan emphasized the need for an active citizens' movement against corruption ... "At the end of the day, we can be activists, leaders, catalysts for the revitalization of democracy, but it is the masses that make history... There's space for all of us to become activists. If you look around the world, that's when change really happens. It's when citizens themselves take up these sorts of issues," he said. He warned of certain impending dangers like ... creeping authoritarianism. How do we hold people accountable for that? The third danger is one where you can have laws in your books, but laws only exist to the extent they are enforced. It is the abuse of legitimate processes for illegitimate purposes," Gordhan said.'

Huffingtonpost.co.za, 1 August 2017

FIRST 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, admitted to practice on 12 April 1983. I reside 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 brought 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. I charge the respondent with suborning perjury to defeat the ends of justice, an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act.

4. Although the gross misconduct to be described below was committed by the respondent in his capacity as LASA Board chairperson, and not as a judge, the Judicial Service Commission ('JSC') has jurisdiction to deal with this complaint by virtue of Articles 5 and 6 of the Code of Judicial Conduct and its Notes, which require judges 'always, and not only in the discharge of official duties, [to] act honourably and in a manner befitting judicial office ... in a manner that enhances public trust in, or respect for, the judiciary and the judicial system ... [to] avoid impropriety or the appearance of impropriety in all the judge's activities', and 'at all times, also in relation to extra-judicial conduct, [to] comply with the law of the land.'

5. On 31 October 2012, I sued the respondent under section 25 of the Supreme Court Act 59 of 1959 for leave to subpoena him for cross-examination at the trial of my claim against LASA in the Durban Labour Court. The nature of the claim and my reason for wishing to cross-examine the respondent will be detailed later in this affidavit.

6. Redacted for relevance to this complaint and annexed hereto marked 'A' is a material excerpt of the 'RESPONDENT'S ANSWERING AFFIDAVIT' opposing my application, deposed to by LASA's lead in-house attorney, Corporate Services Executive Thembile Mtati.

7. Paragraph 4 records that the respondent 'duly authorised' Mtati to make his answering affidavit on his behalf, and that before he did so he'd had 'consultations' with him.

8. The affidavit was saturated with objectively demonstrable perjury, to be treated in separate complaints.

9. Paragraph 51 makes the following allegation:

> The most disturbing, reprehensible and brazen act of disrespect came recently when the Applicant left the KZN province and attended unannounced and without warning at the office of the Respondent in the South Gauteng High Court. The Respondent did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is represented the Applicant's conduct amounts to professional misconduct.

10. This allegation on oath was false in every particular.

11. In truth, I've no idea where the 'South Gauteng High Court' is, much less have I ever set foot in it, never having litigated there or gone there for any

other reason, as any CCTV records will bear out; and the claim that I 'left the KZN province and attended unannounced and without warning at the office of the Respondent in the South Gauteng High Court' is pure perjury.

12. The allegation that the respondent 'did not take kindly to the Applicant's conduct' is further perjury to corruptly amplify and lend credibility to the first.

13. Compounded by the concluding third charge in the paragraph that 'In the face of litigation where Legal Aid SA is legally represented the Applicant's conduct amounts to professional misconduct', these two lies under oath were a criminal concoction calculated to defeat the ends of justice by corruptly prejudicing the Labour Court against me with poisonously inflammatory lying defamation falsely attacking my character and professional integrity.

14. This is precisely the especially wicked crime for which US President Richard Nixon's equally corrupt Special Counsel Charles Colson was disbarred and jailed; see annexed reports marked 'B'.

15. One of my reasons for not pursuing my application for leave to subpoena the respondent after reading this chilling, depraved perjury was my apprehension that it would be too dangerous to bring him to court, because he was evidently capable of saying absolutely anything, no matter how perversely false, confident that the trial judge – until quite recently the respondent's judicial colleague and superior as head of the Labour Court – would take him at his word without question as a senior judge.

16. As to the respondent's specific charge quoted above, I sharply perceived that in a contest in court between the respondent and me as to who was telling the truth and who was telling lies about this, no judge would disbelieve this detailed charge levelled by the just-appointed head of the biggest division of

the High Court in the country, conveyed by his attorney on oath, against a bare denial proffered by a mere advocate.

17. Indeed, as paragraph 59.2 of the affidavit very correctly calculated with low criminal cunning: 'there is a well-founded presumption in law in favour of the Respondent' and that as 'a senior Judge of the High Court in South Africa … enjoined by the Constitution of this country … to uphold it in all his dealings and in his actions towards others', the respondent 'will always act as Judges do' – and not tell criminal lies, animated by fear and loathing as I was closing in (see below), to falsely discredit as an unprofessional lunatic an advocate threatening to call him to account in a law court like any other public servant summoned to the witness stand, to be sworn in and examined on oath under penalty of perjury before a judge experienced and skilled in telling truth from lies, about the illegal things he'd said and done.

18. Briefly stated here, the shocking background to the respondent's false charge against me on oath will make sense of his otherwise inexplicable impeachable misconduct.

19. I'll show that the respondent's false charge is consistent with his past modus operandi in attempting to discredit me with false personal and professional misconduct accusations to distract from the gravity of my complaints about the corruption and lawlessness at LASA that I'd run into – pertinently brought to his attention again and again in finely detailed petitions, but to which he'd turned a blind eye.

20. In November 2009, I was interviewed by a duly constituted selection panel of LASA's most senior lawyers in KwaZulu-Natal for its top legal professional position in the province, its Senior Litigator post at Pietermaritzburg, for which I'd applied and been shortlisted. (There's a twin post at Durban.)

21. In August 2010, after long, strange, unexplained silence, and then evasion, hostility, obvious bad faith and prevarication in response to my repeated enquiries about the outcome of the interviews for the post, I requested access to the record of the selection panel's recommendation, among other documents, under the Promotion of Access to Information Act 2 of 2000 ('PAIA').

22. My request was illegally ignored – a deemed refusal under section 27 of PAIA and a violation of my fundamental right to information guaranteed by section 32(1)(a) of the Constitution.

23. So I appealed to the PAIA Unit of the South African Human Rights Commission ('SAHRC') to assist me under its power to do so vested by section 83(3)(c) of PAIA. Which it helpfully did, by obtaining LASA's agreement to respond to my PAIA request.

24. Immediately reneging on its undertaking given to the SAHRC, LASA CEO and information officer Vidhu Vedalankar now expressly refused my entire request in October 2010, on wholly spurious grounds, namely that (my footnotes interpolated): 'it was decided that ... your request goes beyond your individual circumstances and extends to information on other third parties[1] ... Accordingly your request for the detailed information[2] contained in your letter,[3] other than the information and explanation provided above,[4] is declined as it is not relevant to you exercising any right you may have in law.'[5]

    1. This incompetent justification is not among the 'Grounds for Refusal' of public body records enumerated in Chapter 4 of Part 2 of PAIA – certainly not section 34(1) protecting against 'the unreasonable disclosure of personal information about a third party' as defined by section 1 – and indeed it was ultimately abandoned.

    2. I did not request 'detailed information' from Vedalankar; I requested access to specified public documents in LASA's possession.

3. I did not write a 'letter' asking for 'detailed information'; I delivered a Form A request for records in compliance with the prescribed formalities.

4. Vedalankar's 'information and explanation provided', unsupported by any record, was that LASA had received insufficient budget for 2010/11 from the Department to fill its vacant Senior Litigator posts, and that in July 2010 Vedalankar and National Operations Executive Brian Nair had decided to freeze them accordingly. As I later established via PAIA, no record whatsoever exists of any such decision, and these still vacant critical posts were and to date remain budgeted for by LASA and fully funded (disclosing major contraventions of sections 52 and 55 of the Public Finance Management Act 1 of 1999 in failing to 'keep full and proper records of the financial affairs of the public entity' in regard to (unauthorised and irregular) decisions involving many millions of rands, and the deliberate unauthorised failure at executive management level, for irregular and unlawful reasons, to fully and properly implement LASA's Strategic Plan 2009–12 concerning the recruitment of legal professional specialist personnel). I was given the further false 'information and explanation' that I'd been recommended 'together with other candidates'. The contrary truth of it, revealed by the recommendation report eventually surrendered, is stated below.

5. Here the CEO and information officer of the country's biggest law firm headed by a judge president, and its most senior attorneys advising her, confused my fundamental unconditional right to public body information with my fundamental right to private body information, contingent on being 'required for the exercise or protection of any rights', per section 50(1)(a) of PAIA. C.f. sections 32(1)(a) and (b) of the Constitution, and Parts 2 and 3 of PAIA.

25. To access the record of the selection panel's recommendation for the post, which LASA's top officers were strangely concerned I shouldn't see and were therefore hiding from me, I appealed for the SAHRC's intervention again.

26. In January 2011, Vedalankar responded by providing me with a copy of the selection panel's recommendation report at last, but heavily redacted with a Koki pen to carefully black out the selection panel's 'SUMMARY OF CANDIDATES', besides of me.

27. The report confirmed I'd been recommended for the post and no one else – thus exposing and refuting Vedalankar's lie told me in her October letter, initially refusing me the report, in which she falsely alleged that I'd been recommended for the post 'together with other candidates', so as to obfuscate the unwelcome fact that I'd been the successful applicant for the post, following the interviews of all shortlisted candidates.

28. The very object of the selection process, closely regulated by LASA's Policies and Procedures on Recruitment ('Recruitment code'), was to 'identif[y] the most suitable candidate for appointment', per section 1.2.3.4.

29. LASA's High Court Unit Manager in Durban, Bongani Mngadi, was recommended for a different simultaneously advertised post in his office at Durban, for which he'd applied.

30. It's not material to canvass here the incompetence and unlawfulness, in light of LASA's peremptory Recruitment code and Approval Framework (internal regulations, prescribed by the Board, governing staff recruitment and appointment), of the selection panel's recommendation that I be interviewed again by a so-called 'second round' panel – the alleged 'brainchild' of non-executive director Mlambo JP, and presided over by him in committee with various equally unauthorised national office executives – rather than that I be appointed directly to the post, subject to Vedalankar's and National Operations Executive Brian Nair's joint approval, as required by the Approval Framework for such senior appointments.

31. Launched in July 2011, I based my claim to my appointment on unfair discrimination – mistakenly, I discovered nearly five years later, and after the dismissal of my claim in September 2014 – the true reason for the abortion of my appointment determinedly concealed from me all the while.

32. In April 2016, under a settlement agreement signed at court in February, recording LASA's total, unconditional capitulation to my several applications to compel its compliance with my further PAIA requests made in 2013–15, just as I was on the point of arguing for an order that it disgorge all requested documents, I finally forced out of LASA very reluctantly the selection panel's complete and uncensored recommendation report.

33. What this report revealed to me, years after the trial of my unsuccessful, wrongly founded labour claim, was that my rival for the post, whom I'd beaten out at the interviews, was the respondent's long-time brother in the Labour Court, of which he'd been Judge President at the time: Mzochitwayo Ngcamu AJ, as he used to be, for six-and-a-half years.

34. The recommendation report further revealed that Ngcamu had been eliminated by the selection panel for not meeting the qualifying criteria for a Senior Litigator post: he didn't have right of appearance in the High Court, which means he'd never litigated a case on his feet there.

35. He sure wasn't 'recommended together with [me]', as Vedalankar had unequivocally and falsely implied to me.

36. The recommendation report also exposed and refuted Human Resources Executive Amanda Clark's preceding lie to me, among others, in her very unpleasant don't call us, we'll call you email on 30 April 2010: 'At this stage it is not even clear which applicants will be considered in the second round'. In truth and in fact, it was perfectly clear: I was the only applicant recommended for the post for which I'd applied, been shortlisted and interviewed.

37. I finally understood what Vedalankar meant when illegally refusing my request for the recommendation report in October 2010 on the then most

puzzling and surprising basis that my 'request extends to information on third parties'.

38. She was alluding to the critically relevant 'information on third parties' being concealed from me that my rival applicant for the post was the respondent's long-time judicial colleague, noted, in as many words, by the selection panel in its recommendation report; and that he'd been eliminated by the panel from the running for appointment.

39. Which latter fact, in the lawless, ethically and procedurally corrupt recruitment regime at LASA under the respondent's chairmanship wasn't going to prevent this former Labour Court judge, as the respondent's favoured candidate, being appointed instead me, the selected and recommended one – except that instead of just walking away as hoped, I boggled the plan by insistently pressing for the outcome of the interviews after five silent months, and then for my appointment after HRE Clark backhandedly confirmed I'd been recommended by insolently inviting me to 'withdraw' my application if I didn't like 'the pace we have decided'.

40. I have it from a former LASA Regional Operations Executive (also, like me, disparaged by LASA as a 'vexatious litigant', but who in April finally won his case against it) that the respondent irregularly and unlawfully fixed the appointment of a candidate for another Senior Litigator post whom this ROE and his selection panel had rejected, and that their duly recommended candidate was passed over.

41. The respondent's unlawful central misconduct in recruitment corruption at LASA (even at the JSC itself), both procedural and ethical, will be the subject of multiple separate complaints.

42. As stated in my founding affidavit supporting my application for leave to subpoena the respondent, I wished to cross-examine him on:

(a) his astonishingly derelict and untoward repeated dismissals of my persistent petitions to him and other members of the Board to exercise their fiduciary duty to ensure LASA management's compliance with the Constitution and the law in conducting its operations, and to see to Vedalankar's compliance with my PAIA requests for access to specified records, including and especially the recommendation report, which she'd illegally refused; and her finalisation of my appointment to the said post, after I'd investigated, found, and clearly shown to him that her budgetary insufficiency excuse for cancelling my recruitment to have been a lie; and,

(b) the contents of his 'Confidential Report Re: Adv Anthony Brink', replete with lies (one later feebly retracted in the lying answering affidavit in question as 'an error', 'palpably an error' after I'd categorically refuted it as a lie), submitted to the Minister of Justice and Constitutional Development (as he was then called) in March 2011 and then a couple of months later in 'updated' form in June, to the chairperson of the Justice Portfolio Committee in the National Assembly.

To put down my complaints about Vedalankar's repeated illegal refusal to comply with my PAIA requests and manifestly false budgetary insufficiency story for not finalising my appointment, the respondent falsely alleged in his 'Confidential Report' (I learned about it and sourced it from the chairperson of the Portfolio Committee) that my three PAIA requests in 2010–11 had been duly responded to, and that the process to finalise my recruitment had been delayed by a logistical problem (a lie, later twice retracted on oath, as said) and then aborted for a due and proper financial reason (no record exists of any such decision; the extant records refute the lying excuse; and NOE Nair advanced totally different lying excuses in his 'Report to Board' in November 2011, after I'd exposed

and refuted the lying logistical and financial excuses in my original very detailed statement of claim in the Labour Court).

The respondent's deliberate misleading and successful deception of the Minister, and then the Portfolio Committee, in his covering letter and 'Confidential Report' – in the case of the Portfolio Committee crimes under sections 17(2)(d) and (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 – will be addressed in separate complaints.

43. As said, the respondent's attempt to discredit me in the Labour Court by smearing me as a demented stalker was in keeping with previous similar false charges against me. (The following instances will be the subject of separate complaints.)

44. When in January 2011 I duly appealed to the respondent and to other Board members for the second time to intervene in Vedalankar's illegal total refusal of my August 2010 PAIA request and the irregular abortion of my appointment under cover of a bogus budgetary excuse, the respondent rebuked my second petition in a late-night email the same day with a similar false accusation: 'Your conduct is unbecoming to say the least and borders on harassment.' His email is annexed marked 'C'.

45. On 22 June 2011, in a letter to the chairperson of the Portfolio Committee, the respondent repeated this malicious calumny and false mischaracterisation of my due and proper approaches to him and the Board, the better to prejudice the Committee against me and pervert its enquiry into the constitutional violations by LASA's top officers of which I'd complained. The respondent's letter, forwarded to me by the chairperson of the Portfolio Committee, is annexed marked 'D'.

46. I should mention that in response to the respondent's earlier false professional misconduct charges I duly reported myself to the Pietermaritzburg Bar Committee for investigation, but chairperson Roberts SC declined jurisdiction to deal with the matter.

47. After the stunningly irregular, premature dismissal of my petition to the Judge President of the Labour Appeal Court for leave to appeal the dismissal of my labour claim – before all the papers were in; I'd yet to answer LASA's application for condonation for opposing me out of time – an inspection of the court file (DA21/14) in April 2016 in the course of my investigation of the gross irregularity turned up an anonymous, unsigned, undated, and unstamped 'Memorandum' inadvertently left in it, persisting with this characteristic high-toned, magisterial, aggressive ad hominem denigration to improperly influence and prejudice against me Judge President Basheer Waglay, the respondent's immediate successor as head of the Labour and Labour Appeal Courts, and his former deputy: My 'vulgar and insulting language is prevalent throughout [my] affidavits. Such conduct is unacceptable for a practising advocate ... [my] vulgarity has clouded [my] mind'.

48. The anonymous 'Memorandum' – also lying about the issues tried and about my case on petition – which found its way behind and past the court registrar and his date stamp and straight into the file, unsigned and unstamped, is annexed marked 'E'. A registry clerk's certification of an inventory of the file's contents, including this criminal 'Memorandum', is annexed marked 'F'. (As at August 2016, when I had the file inspected again, the 'Memorandum' was still there.)

49. Again, this further instance of defeating the ends of justice, this phenomenal corruption at LASA under the respondent's chairmanship, which has now seeped into the judiciary, will be addressed in a separate complaint.

50. In the situation, I request that the JSC investigate the respondent's subornation of perjury to defeat the ends of justice, described herein.

Signed at Mtunzini on 4 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 4 June 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

Name:
Address:
Capacity:

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY, ROBIN BRINK — Applicant

and

DUNSTAN MLAMBO JP — Respondent

In re:

ANTHONY BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

THEMBILE VUYO MTATI,

do hereby make oath and swear that,

1. The facts deposed to herein are, unless the context indicates otherwise, within my personal knowledge, and are true and correct. Where I make submissions of a legal nature I do so on the advice of the legal representatives of the Honourable Mr Justice Mlambo (hereafter "the Respondent".

2. I am the Corporate Services Executive of the Legal Aid South Africa (hereinafter "Legal Aid SA") with offices at 29 De Beer Street, Braamfontein, Johannesburg.

3. I am the deponent to all the affidavits and signatory to all pleadings in all the proceedings instituted by the Applicant against the Legal Aid SA.

4. I have been duly authorised by the Respondent to depose to this affidavit. Where I make propositions of a legal nature I do so on the basis of the consultations I had with the Respondent and Legal Aid SA's's legal advisors which advice and information I verily regard as correct. It is important that I provide a brief background in respect of this application and particularly the Applicant.

BACKGROUND TO THE MATTER

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

51. The most disturbing, reprehensible, unprofessional and brazen act of disrespect came recently when the Applicant left the KZN province and attended unannounced and without warning at the office of the Respondent in the South Gauteng High Court. The Respondent did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is legally represented the Applicant's conduct amounts to professional misconduct.

[redacted]

59.2 I submit that the Respondent as a senior Judge of the High Court in South Africa is enjoined by the Constitution of this Country, to uphold it in all his dealings and in his actions towards others. The law recognises that as a Judge, the Respondent will always act as Judges do. Accordingly, there is a well-founded presumption in law in favour of the Respondent.

[redacted]

WHEREFORE, it may please this Court to dismiss this application accordingly.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at Johannesburg on this 16 January 2013. The regulations contained in the Government Notice No. 1258 dated 21st July 1972 (as amended) and Government Notice No. 1648 dated 19th August 1977 (as amended) having been complied with.

COMMISSIONER OF OATHS

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R4

On June 3, 1974, Colson pleaded guilty to a criminal information that read in part:

B

On or about June 28, 1971, and for a period of time thereafter, in the District of Columbia and elsewhere, CHARLES W. COLSON, the DEFENDANT, unlawfully, willfully and knowingly did corruptly endeavor to influence, obstruct and impede the due administration of justice in connection with the criminal trial of Daniel Ellsberg under indictment in the case of *United States* v. *Russo*, Criminal Case No. 9373, United States District Court, Central District of California, by devising and implementing a scheme to defame and destroy the public image and credibility of Daniel Ellsberg and those engaged in the legal defense of Daniel Ellsberg, with the intent to influence, obstruct, and impede the conduct and outcome of the criminal prosecution then being conducted in the United States District Court for the Central District of California. (Book VII, 918–23)

In the early 1970s, Nixon officials such as John Ehrlichman and Henry Kissinger planted accusations in the U.S. media that Daniel Ellsberg had secretly given the Pentagon Papers and other key documents to the Soviet Union; everyone now knows this was a lie, but at the time, American journalists repeated it constantly, helping to smear Ellsberg. That's why Ellsberg has constantly defended Snowden and Chelsea Manning from the start: because the same tactics were used to smear him.

This is the first of two articles on the former secret White House investigative unit known as the plumbers.

One was a fear—nourished in part, some sources said, by Henry A. Kissinger, then the President's national security adviser—that Daniel Ellsberg, who said he turned over the Pentagon papers to the press, might pass on to the Soviet Union secrets far more important than any information contained in the Pentagon study of the Vietnam war.

Specifically, the sources said, the White House feared that Dr. Ellsberg, a former Rand Corporation and Defense Department official, may have been a Soviet intelligence informer who, in the weeks after publication of the Pentagon papers in June, 1971, was capable of turning over details of the most closely held nuclear targeting secrets of the United States, which were contained in a highly classified document known as the Single Integrated Operation Plans, or S.I.O.P.

The second major concern was that a highly placed Soviet agent of the K.G.B., the Soviet intelligence agency, operating as an American counterspy, would be compromised by continued inquiry by the special prosecutor and the Senate Watergate committee into the Ellsberg case. The agent informed his F.B.I. contacts that a set of the Pentagon papers had been delivered to the Soviet Embassy in Washington shortly after a Federal court had ordered The Times to stop print-

Continued on Page 76, Column 1

EHRLICHMAN SCORED ON ELLSBERG CHARGE

WASHINGTON, Aug. 10 (UPI) An attorney for Dr. Daniel Ellsberg has chided the Senate Watergate committee for failing to challenge what he called "totally false and slanderous" testimony by the former White House aide, John D. Ehrlichman, suggesting that Dr. Ellsberg delivered copies of the Pentagon papers to the Soviet Embassy.

C

Anthony Brink

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

Mr Brink

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

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

I trust that you find this in order.

D Mlambo
Chairperson- Legal Aid SA and
Judge President
Labour Courts
dmlambo@justice.gov.za
Tel +27113595735/6
Fax 0866447932

Legal Aid South Africa

National Office
29 De Beer Street
Braamfontein
2017
Tel: 011-877-2055
Fax: 011-877-2222
www.legal-aid.co.za

22 June 2011

Mr L Landers MP
Chairperson Justice Portfolio Committee
National Assembly
P O Box 15
Cape Town
8000

Dear Mr Landers

Adv A Brink

Your letter dated 23 March 2011 on the above matter refers. Please accept my sincere apology for the delay in responding to your letter. Attached please find a report on this matter which was submitted to the Minister of Justice and Constitutional Development in March 2011 and which has since been updated. In summary I wish to reiterate what I said to Mr Brink when he wrote and complained to me :

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

I trust that the attached report and this letter clarify the matter concerning Mr Brink.

Yours faithfully

Judge Dumisa Ntsebeza
Chairperson
Legal Aid South Africa

DA21/14

ANTHONY ROBIN BRINK **Petitioner**

and

LEGAL AID SOUTH AFRICA **Respondent**

MEMORANDUM

The petitioner's vulgar and insulting language is prevalent throughout his affidavits. Such conduct is unacceptable for a practising advocate. His vulgarity has clouded his mind so that his application does not say in what respect the Labour Court erred in rejecting his claim.

What is common cause is that the petitioner applied and was shortlisted for the position of senior litigator Pietermaritzburg. He was recommended for a second round interview but the position for which his applied for was frozen due to budgetary constraints. He was only made aware of that decision after numerous telephone calls and correspondence. There is a dispute about the veracity of the decision to stop the process of the appointment for which the petitioner had requested recording of the board meeting in terms of the Promotion of Access to Information Act 2 of 2000.

Notwithstanding the above dispute, the petitioner does not say in what respect the court *a quo* erred in dismissing his claim. All is said in his affidavit is his judgmental comments about the credibility of employees of the respondent.

CONTENTS OF CASE FILE DA21/14

1) Blank Petitions Control Sheet with notification of case number on 10 Dec 14 attached

2) Brown cover page 3/3/2 headed Held in Durban-in the Labour Court of SA, petition set down for 18 Feb 2015, judges Waglay, Davis and Sutherland, order petition refused. Attached fax sheet of 2 page decision sent 15-13 on 18 Feb 2015

3) Letter of 27 Feb 2015 from C.Phophi to A.Brink

4) Petition refusal order stamped 18 Feb 2015 , Juta Street, Phophi, LAC

5) Respondent's notice of objection to late hearsay affidavit signed by T.Mtati 11 Feb 2015

6) Service affidavit:objection to opposing affidavit dated 12 Feb 2015 signed A.Brink 2 Feb 2015

7) Affidavit in support of proof of service Rule 4(2)(b) by Akhona Lucas Nobetsu filed Juta Street 17 Feb 2015 confirming that on 13 Feb 2015 he served a condonation application and notice of objection on the petitioner

8) Undated, unsigned memorandum regarding petitioner's vulgar and insulting language, brief summary of the dispute with conclusion that the petitioner does not say in what respect the court a quo erred in dismissing his claim as his affidavit is only his judgemental comments about the credibility of employees of the respondent.

9) Respondent's notice of objection to the petitioner's affidavit filed in support of a notice of objection dated 2 Feb 2015, filed Juta Street 11 Feb 2015 signed by T.Mtati 11 Feb 2015

10) Objection to opposing affidavit filed Juta Street 4 Feb 2015 signed A.Brink at Eshowe 27 Jan 2015 sworn Eshowe 1 Feb 2015

11) Bound red cover Petition for leave to appeal original filed Juta Street 9 Dec 2015 signed A.Brink at Eshowe 7 Dec 2014 with attached refusal of application for leave to appeal by Cele J in chambers 27 Nov 2014 with Appearances- for the applicant:in person, for the respondent Mokeoena and Machaba, the Judgement by Cele J, application for leave to appeal signed Eshowe 3 Oct 2014 and Heads signed at Pietermaritzburg 16 Sep 2013.

12) Affidavit of service of answering affidavit to the supporting affidavit in the petition for leave to appeal filed Juta Street 23 Jan 2015 sworn by Sekgota, attaching email of 22 Jan 2015 to Ngcamu, copying Mehta, Vilakazi and Brink.

13) Notice of objection to respondent's opposing affidavit signed Brink at Eshowe 27 Jan 2015

14) Notice of intention to oppose petition for leave to appeal filed Liberty House 21 Jan 2015 dated at Durban January 2015 with attached affidavit filed Durban 21 Jan 2015 signed by Sekgota confirming he sent email to Brink on 20 Jan 2015 at 3-42pm followed by a telephone call, sworn and signed at Braamfontein on 21 Oct 2014.

15) Notice of filing of respondent's opposing affidavit at Juta Street on 23 Jan 2015 with 33 page affidavit signed and sworn by Mtati on 22 Jan 2015.

P.T.O.

F

16) Respondent's notice of motion : application for condonation filed Juta Street 5 Feb 2015 signed Pp Mtati Johannesburg 5 Feb 2015 attaching 8 page founding affidavit sworn by Mtati 4 Feb 2015, attaching email from Mtati to Machaba copying Sekgota on 15 Jan 2015 saying he had not received a copy of the petition and a confirmatory affidavit, application for condonation sworn by Sekgota at Johannesburg on 4 Feb 2015.

17) Affidavit of service of notice of intention to oppose the petition for leave to appeal, two copies, filed Durban 28 Jan 2015 sworn by Sekgota 21 October 2014 attaching email to Brink 20 Jan 2015

18) Notice of filing of respondent's opposing affidavit at Durban on 28 Jan 2015 sworn by Mtati 22 Jan 2015

19) Letter from A.Brink to James Kamanga, Durban Labour Court, re petition case number.

20) Service affidavit sworn by Brink at Eshowe on 10 Dec 2014

21) Notice of intention to oppose petition for leave to appeal filed Durban 21 Jan 2015 with affidavit of service by Sekgota sworn at Braamfontein on 21 October 2014.

Contents listed by C.F.M. Rawlins 2 April 2015 C.F.M Rawlins.

ARBEIDSHOF
PRIVAATSAK/PRIVATE BAG X54370
DURBAN 4000
2015 -04- 02
1ST FLOOR LIBERTY HOUSE
269 ANTON LEMBEDE STREET, DURBAN 4001

SECOND 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. I charge the respondent with collusion in LASA CEO and information officer Vidhu Vedalankar's violation of my fundamental right to public body information entrenched by section 32(1)(a) of the Constitution, an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act.

4. Although the respondent's gross misconduct, detailed and vouched below, was committed by him in his capacity as chairperson of LASA's Board, and not as a judge, the Judicial Service Commission has jurisdiction to decide this complaint by virtue of Articles 5 and 6 of the Code of Judicial Conduct and its Notes, which require judges 'always, and not only in the discharge of official duties, [to] act honourably and in a manner befitting judicial office', 'in a manner that enhances public trust in, or respect for, the judiciary and the judicial system', to 'avoid impropriety or the appearance of impropriety in

all the judge's activities', and 'at all times, also in relation to extra-judicial conduct, [to] comply with the law of the land.'

5. Crucially to this complaint, the respondent's judicial office is not just coincidental to his leadership of LASA, it's precisely a legal requirement. Section 4(1)(a) of the Legal Aid Act 22 of 1969, in operation at the material time, required that LASA's Board include a judge, impliedly and in practice to chair it; and section 8(1) of the succeeding and current Legal Aid South Africa Act 39 of 2014 now explicitly prescribes: 'The judge appointed in terms of section 6(1)(a) is the chairperson of the Board.'

6. This is to say, LASA's top officer must be a person who has taken the judge's oath to 'uphold and protect the Constitution and the human rights entrenched in it'.

7. The Legislature evidently intended by this unique qualifying requirement for the head of a public entity in our country – that it be headed by no less than a judge – that LASA's most senior public officer can confidently be relied upon to 'uphold and protect' the country's hard-won constitutional rights in the democratic era after the apartheid one – by which former baleful epoch I'm referring, in the language of the Preamble to the Promotion of Access to Information Act 2 of 2000 ('PAIA'), to 'the system of government in South Africa before 27 April 1994, [which] amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'.

8. The Legislature's further intention in having a judge head LASA is undoubtedly to ensure that under his watch its officers will observe the rule of law, act ethically, and respect the basic civil liberties guaranteed by the Constitution, as far as he can reasonably possibly achieve this, and that he'll act to remedy problems in this regard when brought to his attention.

9. All the more since LASA is a state-funded law firm, billing itself on its website as 'the largest legal institution in Africa', which former Deputy Justice Minister Andries Nel praised in Business Day on 12 January 2011, less than a fortnight after the atrocity described in this complaint (after which the cover-up escalated, ultimately into crime, to be described in separate complaints): 'The world would be a better place if it were run by Legal Aid.'

10. Most importantly, it's expected of the judge heading LASA that he will himself observe the rule of law, act ethically, and 'uphold and protect the Constitution and the human rights entrenched in it' as sworn to do, and not tolerate, much less connive at, the 'secretive and unresponsive culture' practised at LASA with the object of covering up 'an abuse of power' by him.

11. Also that he will be especially cognisant of section 195 in Chapter 10 of the Constitution, headed 'Public Administration' (my ellipses for relevance):

> 195 Basic values and principles governing public administration
>
> (1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
>
> (a) A high standard of professional ethics must be promoted and maintained.
>
> …
>
> (f) Public administration must be accountable.
>
> (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
>
> (2) The above principles apply to –
>
> …
>
> (b) organs of state[.]

12. Indeed, at his interview by the Judicial Service Commission in May 2012 for his current post, the respondent alleged LASA's stellar compliance with the Constitution under his leadership as an additional commendation for his appointment: 'I want to believe that Legal Aid SA is a shining example of how things should have been done constitutionally'.

13. The very contrary, abysmal reality, thanks to the respondent's deliberate failure to 'uphold and protect the Constitution and the human rights entrenched in it', will be shown in this complaint and in further complaints to follow.

14. For concision, I'll refer immediately below to part of my First Complaint against the respondent lodged on 4 June 2017 (JSC/533/17), and I request that it be read as incorporated in this Second Complaint.

15. In paragraphs 20–24 of my First Complaint, I described Vedalankar's clearly illegal and unconstitutional total refusal of my request for access to LASA's public records, which I'd made under PAIA in August 2010, inter alia for the 'minute of … the selection board's interview with Brink on 12 November 2009' and the 'notification of [National Operations Executive Brian] Nair ... of the senior legal professionals selected by the ... selection board for the Pietermaritzburg and Durban Senior Litigator posts after interviewing the shortlisted candidates', in other words the selection panel's recommendation report.

16. Claimed to support her refusal, Vedalankar, or the low person writing for her:

    16.1. outrageously dishonestly fabricated, and purported to quote, fake dicta from a court judgment on PAIA (I'll revert to this);
    16.2. invoked sections of PAIA against me having no bearing on the decision of requests for public body records, namely 'sections 62 to 70', which

are found in Chapter 4, 'GROUNDS FOR REFUSAL OF ACCESS TO RECORDS', in Part 3 of PAIA, 'ACCESS TO RECORDS OF PRIVATE BODIES';

16.3. and asserted:

> the information officer of a public body must refuse access to information falling into the following categories, save in circumstances provided for in the Act:
>
> a) Mandatory privacy of a third party who is a natural person.
>
> b) Mandatory protection of certain confidential information of a third party. [...]

17. In most strangely and surprisingly citing these provisions regarding the 'privacy of a third party' and 'confidential information of a third party' to justify her refusal of my entire PAIA request, including for access to the recommendation report, the 'information' about a 'third party' that Vedalankar was anxiously suppressing as 'priva[te]' and 'confidential' (under PAIA it was neither), turned out to be the key information noted in the recommendation report that my rival for the post for which I'd been selected, and for which he'd been rejected (not having right of appearance in the High Court as an attorney, and therefore never having litigated there on his feet) was the respondent's long-time brother in the Labour Court, Ngcamu AJ, as he used to be for '±6 years'.

18. This was finally revealed to me in April 2016, when after a long and bitter struggle I eventually succeeded in disgorging from LASA the selection panel's full uncensored recommendation report, many years after I'd first requested it in August 2010, and it had been illegally refused; then several months later, under renewed pressure of the South African Human Rights Commission's PAIA Unit, supplied heavily redacted with a Koki pen to unlawfully conceal this potently relevant fact; and then finally – after

another illegal refusal and then protracted meritless opposition to my application to court to compel its production – supplied complete and uncensored at last, as I was on the point of moving for and being granted an order that it be surrendered.

19. In view of the respondent's and the Board's fiduciary duty to ensure compliance by LASA's management executives with PAIA and other statutes governing their operations, I petitioned the respondent on 30 November 2010 to entreat his intervention in and remediation of, inter alia, Vedalankar's illegal and unconstitutional refusal of my PAIA request for access to the selection panel's recommendation, among other many other specified records.

20. A material excerpt from my petition is annexed marked 'A'. In paragraphs 8–13, I underscored the respondent's and his Board's oversight obligations over LASA as a public entity, preliminary to showing in paragraphs 17–43 that Vedalankar's refusal to allow me access to LASA's public records that I'd duly requested was clearly and incontestably illegal and unconstitutional. And dishonest: in paragraph 23 of my petition, I quoted her fake citation from a court judgment on PAIA claimed falsely to justify her refusal; whereas the judge's actual dicta, which I accurately quoted, squarely supported my claim to access to the public body records I'd requested.

21. The Board Secretary emailed me a week later on 6 December 2010, to 'confirm that the Chairperson of the Board of Legal Aid SA, Judge Dunstan Mlambo, is in receipt of your letter dated 30 November 2010. Judge Mlambo is however presently out of the country and has asked me to advise you that he will respond to your letter as soon as he is able to do so.'

22. In breach of his said fiduciary obligation to LASA as chairperson of its Board, the respondent did not act to remedy my extraordinarily serious complaint that in breach of her obligations imposed by PAIA, Vedalankar had illegally refused me access to LASA's business records duly requested under the Act,

and had thus violated my constitutional right to information guaranteed by the Bill of Rights, a basic civil right entrenched in the democratic era to combat the apartheid-like 'secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'.

23. Instead, after his 'interaction with' Vedalankar about my petition to him, which commenced with my detailed complaint about her illegal, unconstitutional and dishonest total refusal to comply with my PAIA request, the respondent colluded with Vedalankar, the very subject of my complaint to him, by permitting her to forge a letter on her office computer rebuffing my petition and, 'with his knowledge and consent', to paste a scanned image of his signature below it to dissemble to me that he'd written it.

24. The words just quoted are LASA's. Under 'Facts that are common cause' in my agenda for the first pre-trial conference in my subsequent action against LASA in the Durban Labour Court (LC 529/11) for my instatement to the top post, I truly averred for LASA's admission to shorten the trial:

> 79. Mlambo did not consult the Board to discuss the applicant's extraordinarily serious complaints raised in his petition, but instead instructed Vedalankar to prepare a letter cursorily dismissing it. He was overseas at the time.
>
> 80. On 15 December 2010 Vedalankar obliged, pasting a scanned image of Mlambo's signature into the letter she'd drawn for him, and emailed him the PDF of the letter she'd created. On 30 December Mlambo emailed it in turn to the applicant.

25. A material excerpt of my pre-trial conference agenda pleading this is annexed marked 'B'. ^

26. LASA responded by admitting my paragraph 79, and denying then admitting my paragraph 80:

> Ad 79. Agreed. Mlambo JP found, upon a perusal of the Applicant's letter and the explanation received from the CEO, nothing untoward that was done by the CEO and was correct in dismissing the Applicant's complaint.
>
> Ad 80. Disagreed. The said letter was created as a direct result of Mlambo JP's interaction with the CEO and there is nothing untoward thereabout. The electronic signature by Mlambo JP could not have been used without his knowledge and consent.

27. A material excerpt of this pleading by LASA for the true information of the trial judge is annexed marked 'C'.

28. A copy of the letter in PDF which Mlambo JP emailed me is annexed marked 'D'.

29. The basis of my above-quoted averments, pleaded in my agenda for LASA's admission, was my staggering discovery in the PDF 'Author' properties of the respondent's letter that 'VidhuV' (Vidhu Vedalankar), the very subject of my complaint to the respondent, had written it on her own office computer. A screenshot reflecting this is annexed marked 'E'.

30. Such author information is automatically entered by the user's computer programme.

31. The letter is mistakenly dated 9 November, which is three weeks before the date and delivery of my petition. Its 'File', 'Title' and 'Created' information in its PDF properties, however, all show that it was created on 15 December 2010, which was Vedalankar's last day at work before LASA closed for its annual national one-month holiday.

32. In two sentences the letter dismissed my 57-page, 254-paragraph petition to the respondent, which had commenced with a closely detailed, unanswerable complaint about Vedalankar's illegal and unconstitutional refusal of my PAIA request, but which went completely ignored:

> 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.

33. The respondent knew full well that the financial insufficiency excuse given me by Vedalankar the month before for not proceeding with my appointment was a lie. In my petition, I presented the then already available clear evidence of this, and much more would later emerge. The respondent's dishonest pretence to me that all was above board in the back-room abortion of my appointment (for which NOE Nair later gave the Board two totally different false explanations, and then in court told another completely different story still) will be the subject of a separate complaint, as will the respondent's own false assertion of the bogus financial excuse, along with another lying excuse later feebly retracted on oath on his behalf as 'an error', 'palpably an error' after I'd exposed it as another flat-out lie, advanced to the Minister of Justice and Constitutional Development (as the Department was then called) and then to the Portfolio Committee of the National Assembly for the same Department.

34. In sum, in the words of Chief Justice Mogoeng Mogoeng delivering the Constitutional Court's unanimous judgment in Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11 ('the Nkandla case'), the respondent as Judge President of the country's biggest High Court and heading its biggest law firm 'failed to uphold, defend and respect the Constitution' when I pertinently called his attention to Vedalankar's

violation of my constitutional right to information by illegally and dishonestly refusing my duly made PAIA request for access to LASA's records, and implored his intervention in the exercise of his oversight authority to remedy it.

35. Obviously as one of South Africa's most senior judges, no defence that 'He might have been following wrong legal advice and therefore acting in good faith' (per the Nkandla judgment) is available to the respondent to raise against the charge that he disgracefully and culpably 'failed to uphold, defend and respect the Constitution'.

36. In other words, it is not open to the respondent to answer that he was too grossly ignorant a layman to appreciate the egregious wrong he was doing when conniving in Vedalankar's illegal, unconstitutional and dishonest obstruction of my access to LASA's records, so as to conceal from me the key fact that my rival for the top professional post for which I'd been recommended had been his long-time fellow judge in the Labour Court – entirely explaining why my recruitment had been strangely silently aborted, totally off the record. And that contrary to Vedalankar's lie to me that I'd been 'recommended together with other candidates', namely this judicial fellow, he'd actually been eliminated from the running for the post.

37. Any such 'wrong legal advice and therefore ... good faith' defence by the respondent, based on being too grossly ignorant to understand the gravity of his connivance in Vedalankar's illegal, unconstitutional and dishonest obstruction of my access to LASA's records, is further precluded by the provisions of LASA's Code of Ethics and Conduct ('Ethics Code').

38. Section 1.2 prescribes that 'Compliance with the code by all employees is mandatory', and that it 'applies equally to all ... Board Members'. Section 7.5 requires the respondent as a Board Member to 'maintain knowledge of and comply with all applicable laws' – such as PAIA, concerning which, section 13

requires: 'A prompt, courteous and accurate response should be made to all reasonable requests for information'. Section 7.3 requires Board Members to act in such a manner as to 'ensure that their conduct cannot be interpreted as being in any way in contravention of applicable laws'. And section 15.1.5 requires that they 'act honestly and in good faith at all times and report any harmful activity they observe in the workplace'.

39. Compounding the respondent's contraventions of these provisions, and his demonstrated contempt for the rights and principles stated in sections 32 and 195 of the Constitution, the respondent did not fail 'to uphold, defend and respect the Constitution' through passive dereliction and indolent neglect of his sworn obligation to do so. By conspiring with Vedalankar, about whose violation of my rights and multiple lies I'd complained in fine detail, to forge a letter dismissing my petition, and by then sending it to me from his own email address, after mulling on its untruthful contents for a further two weeks, he actively 'failed to uphold, defend and respect the Constitution' in contempt of his oath of office, in the manner of a corrupt judge conniving out of court behind the scenes with an obviously guilty criminal accused facing an extraordinarily serious charge; batting aside the complaint's clearly substantiated and unanswerable case; and allowing the accused with whom he has long been a friendly colleague, and whom he well knows to be guilty, to write a brief judgment for him dismissing the charge, and then delivering it as if he'd written it, acquitting his colleague while falsely pretending to have given the matter his judicious consideration.

40. Concerning Vedalankar's illegal refusal of my PAIA request on utterly spurious grounds, ostensibly supported by a fraudulent misquotation from a court judgment, all pertinently brought to the respondent's attention in paragraphs 17–43 of my petition, the respondent couldn't possibly have found in good faith that all was well; that Vedalankar had acted lawfully in

refusing me access to LASA's records as requested; and that my complaint about her violation of my fundamental right to information was unfounded. That is, in turning a deliberate blind eye to this, the respondent dismissed my petition in bad faith, which is to say dishonestly.

41. In flagrant breach of section 7.2 of the Ethics Code declaiming that LASA 'will not condone any violation of the law or unethical business dealing', the respondent further contravened the requirement that he 'act honestly and in good faith at all times', by dissembling to me that he saw nothing wrong in Vedalankar's:

    41.1. manifestly illegal and unconstitutional refusal to comply with a PAIA request for access to records, in order to conceal from a recommended applicant for a top professional post in LASA, whose appointment has strangely silently stalled many months after his successful interview, that an unsuccessful applicant for the same post had been the respondent's long-time judicial colleague; and her,

    41.2. dishonestly false attribution of manufactured dicta to a judge, by putting words in her mouth that she never spoke, when ostensibly quoting her judgment in a PAIA case, so as to fabricate a fake legal cover for this, at the same time citing perfectly irrelevant provisions of the Act claimed to justify her refusal.

    And so 'condone[d]' Vedalankar's 'violation of the law' and 'unethical business dealing' with me.

42. The reason the respondent corruptly connived in Vedalankar's violation of my constitutional right to information, contravened LASA's Code of Ethics and Conduct, dishonoured his judge's oath to 'uphold and protect the Constitution and the human rights entrenched in it', and didn't act to end the apartheid-like 'secretive and unresponsive culture' (per Preamble to

PAIA) at LASA that I'd unexpectedly run into – quite the contrary, he was astute to maintain this 'secretive and unresponsive culture' – came to light only last year when in April 2016 I finally succeeded in clawing out of LASA the selection panel's full, uncensored recommendation report, and discovered that the true reason my recruitment to LASA's Senior Litigator post at Pietermaritzburg had been silently aborted off the record was that in 'an abuse of power' (per Preamble to PAIA) the respondent had illegally hijacked the recruitment to get his former brother on the Labour Court bench, my rival for the post, appointed to it instead of me – irrespective of the fact that he'd been eliminated by the selection panel for not meeting the qualifying criteria. (He was quickly appointed to other LASA posts, whereas after I was selected for another post a year later, I was told the now familiar lie that LASA had decided not to fill the post. In truth, I wasn't wanted: I fortuitously sourced the Regional Operations Executive's emailed instruction to the Justice Centre Executive to 'redo the interviews' so as to find someone else.)

43. The respondent's 'abuse of power', which he sought to conceal from me by maintaining LASA's 'secretive and unresponsive culture' like that of apartheid institutions, would have succeeded but for the fact that I didn't walk away as hoped, and pressed insistently for the outcome of the Senior Litigator interviews, and then for my appointment; and then, even after my wrongly-founded unfair discrimination claim had been dismissed (my real problem was cronyism), I pursued through court the full uncensored recommendation report, among other documents (proving other recruitment corruption), and thereby finally uncovered the truth.

44. The respondent's direct involvement ethical and procedural recruitment corruption at LASA, including fixing the illegal appointment of another

rejected candidate to a different Senior Litigator post in place of the duly recommended one, will be the subject of separate complaints.

45. This Second Complaint details how to cover up recruitment corruption, of which he was at the centre, the respondent colluded in a fundamental rights violation: Vedalankar's illegal suppression of records to which I was constitutionally entitled. My next complaint will detail how, in the classic snowballing dynamic of an escalating cover-up, the respondent lied about this to the Minister of Justice and Constitutional Development. And my complaint after that, bearing out the adage after Watergate, 'the cover-up is always worse than the crime', will detail how the respondent finally lied to Parliament about it, a crime.

Signed at Mtunzini on 23 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 23 June 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

Name:
Address:
Capacity:

25 Baker Road
Prestbury
Pietermaritzburg 3201
30 November 2010

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

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

And to:

The Board of Directors: Legal Aid South Africa

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

Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

And to:

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

Dear Judge Mlambo

Pietermaritzburg Senior Litigator post:

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

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

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

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

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

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

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

16. In my letters to Vedalankar and Makokoane mentioned above, I'd assumed political prejudice against me – something I'm accustomed to. (Bundle, page 11, paragraphs 5.1–14 and pages 93–99 (a letter to Adv Paul Hoffman SC, director of the Institute for Accountability in Southern Africa, including information intended for the unwritten 'Postscript' mentioned in paragraph 58 of my letter to Makokoane)). I've recently appreciated, however, though I doubt it, that the prejudice may simply be racial, albeit no less illegal, inasmuch as my selection and recommendation for the appointment in question might have been inconvenient for the targets set out in LASA's 'Employment Equity Plan for 2010-2015'.
17. Arising from the 'behaviour' in question, I filed an extensive request for records under the Promotion of Access to Information Act ('PAIA') with Vedalankar as LASA's information officer ex officio on 30 August. (Bundle, pages 49–69)
18. On 29 September, the day before the end of the month provided by the Act for compliance with my request, and not having received any response to it, not even an acknowledgement of receipt, I approached the South African Human Rights Commission ('SAHRC') with a plea for assistance.
19. Kindly taking the matter up for me, the director of the SAHRC's PAIA Unit Chantal Kisoon ably negotiated an undertaking from LDE Patrick Hundermark to deal with my records request. Although Vedalankar was out of time for compliance (there was a mix-up over the computation of the period prescribed), I didn't mind, I was just glad that my request would be given attention at last.
20. On 18 October I received a letter from Vedalankar rejecting my request. (Bundle, pages101–108)

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

> The test to be applied to a request for information in terms of the PAIA, as laid down by the court in the case of *National Teachers Union v Superintendent General: Department of Education & Culture, Kwazulu-Natal and Another (D38/08) [2008] ZALC 18, is as follows:*
>
> a) *In dealing with a request in terms of the Act, the question is not whether the requester is entitled to information but about whether the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure.*

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

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

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

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

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

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

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY ROBIN BRINK Applicant

and

LEGAL AID SOUTH AFRICA Respondent

APPLICANT'S PRE-TRIAL CONFERENCE AGENDA

The items for discussion at the pre-trial conference, enumerated in rule 6(4) of the Labour Court Rules, are raised by the applicant under their titles in the rule, quoted in boldface. The rule provides:

In a pre-trial conference, the parties must attempt to reach consensus on the following:

1.

(i) Any means by which the dispute may be settled;

1. Given that:

- even on the respondent's own version (unsupported by any record), the Pietermaritzburg Senior Litigator post was frozen with two others to mitigate the respondent's 'financial uncertainty' arising from the Department of Justice and Constitutional Development's delay in transferring its OSD funding allocation in 2010;

- the 'OSD funding' problem has now been 'resolved' (Response, paragraph 48.10);

78. On 30 November the applicant petitioned Board chairperson Mlambo and the rest of the Board to exercise their legal responsibility to intervene in (a) Vedalankar's unlawful refusal to comply with PAIA and her violation of the applicant's fundamental right to information under section 32 of the Constitution, 1996; and (b) her unlawful block on his appointment, having regard to the still limited indications then known to him that her budgetary justification for her admitted decision to abort his recruitment was untrue.

79. Mlambo did not consult the Board to discuss the applicant's extraordinarily serious complaints raised in his petition, but instead instructed Vedalankar to prepare a letter cursorily dismissing it. He was overseas at the time.

80. On 15 December 2010 Vedalankar obliged, pasting a scanned image of Mlambo's signature into the letter she'd drawn for him, and emailed him the PDF of the letter she'd created. On 30 December Mlambo emailed it in turn to the applicant.

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

82. Besides a couple of formal acknowledgements, no other Board member responded to the applicant's petition.

83. On 20 January 2011 Christopher Rawlins met Board member Ela Gandhi in Durban to discuss the applicant's complaints in his petition that Vedalankar had violated his fundamental rights to equality and equal employment opportunity and to information. During their meeting, Board member Yusuf Vawda telephoned her, following which Gandhi accused the applicant of blackmailing and defaming the respondent/the respondent's officers. (Bundle, pages 207–8)

84. Mlambo rejected the applicant's protest about this, repeated his claim to have found nothing untoward in Vedalankar's conduct as CEO and information officer, and accused the applicant of improper conduct in pursuing his complaints:. 'I have on a previous occasion informed you that I could find nothing untoward in your treatment by Legal Aid SA. … Your conduct is unbecoming to say the least and borders on harassment.'

85. Mlambo said he'd instructed the Board to ignore the applicant's further correspondence.

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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Case No: D529/11

In the matter between:-

ANTHONY ROBIN BRINK Applicant

and

LEGAL AID SOUTH AFRICA Respondent

RESPONDENT'S ANSWER TO APPLICANT'S PRE-TRIAL AGENDA

Introduction

1. The Respondent wishes to answer the Applicant's Pre-trial Agenda (the Agenda") in the manner provided hereinbelow.

65.2. There is nothing contradictory in the CEO's position and that which was presented to the board of the Respondent's directors.

66. Ad Paragraphs 76 – 77.

66.1 Agreed.

66.2 The funding was released to the Respondent after it had taken its decision to terminate the recruitment of Senior Litigator posts. This decision has never been revisited.

67. Ad Paragraph 78.

67.1. This is irrelevant to the present proceedings and is denied.

68. Ad Paragraph 79.

68.1. Agreed.

68.2. Mlambo JP found, upon a perusal of the Applicant's letter and the explanation received from the CEO, nothing untoward that was done by the CEO and was correct in dismissing the Applicant's complaint.

69. Ad Paragraph 80.

69.1. Disagreed.

69.2. The said letter was created as a direct result of Mlambo JP's interaction with the CEO and there is nothing untoward thereabout. The electronic signature by Mlambo JP could not have been used without his knowledge and consent.

Legal Aid South Africa

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Braamfontein
Johannesburg2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

BY E-MAIL

Tuesday, November 09, 2010

Mr A Brink
25 Baker Road
Prestbury
PIETERMARITZBURG, 3201
E-mail: arbrink@iafrica.com

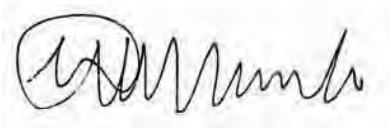
Dear Mr Brink

PIETERMARITZBURG SENIOR LITIGATOR POST

Your letter dated 30 November 2010 refers.

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

Regards



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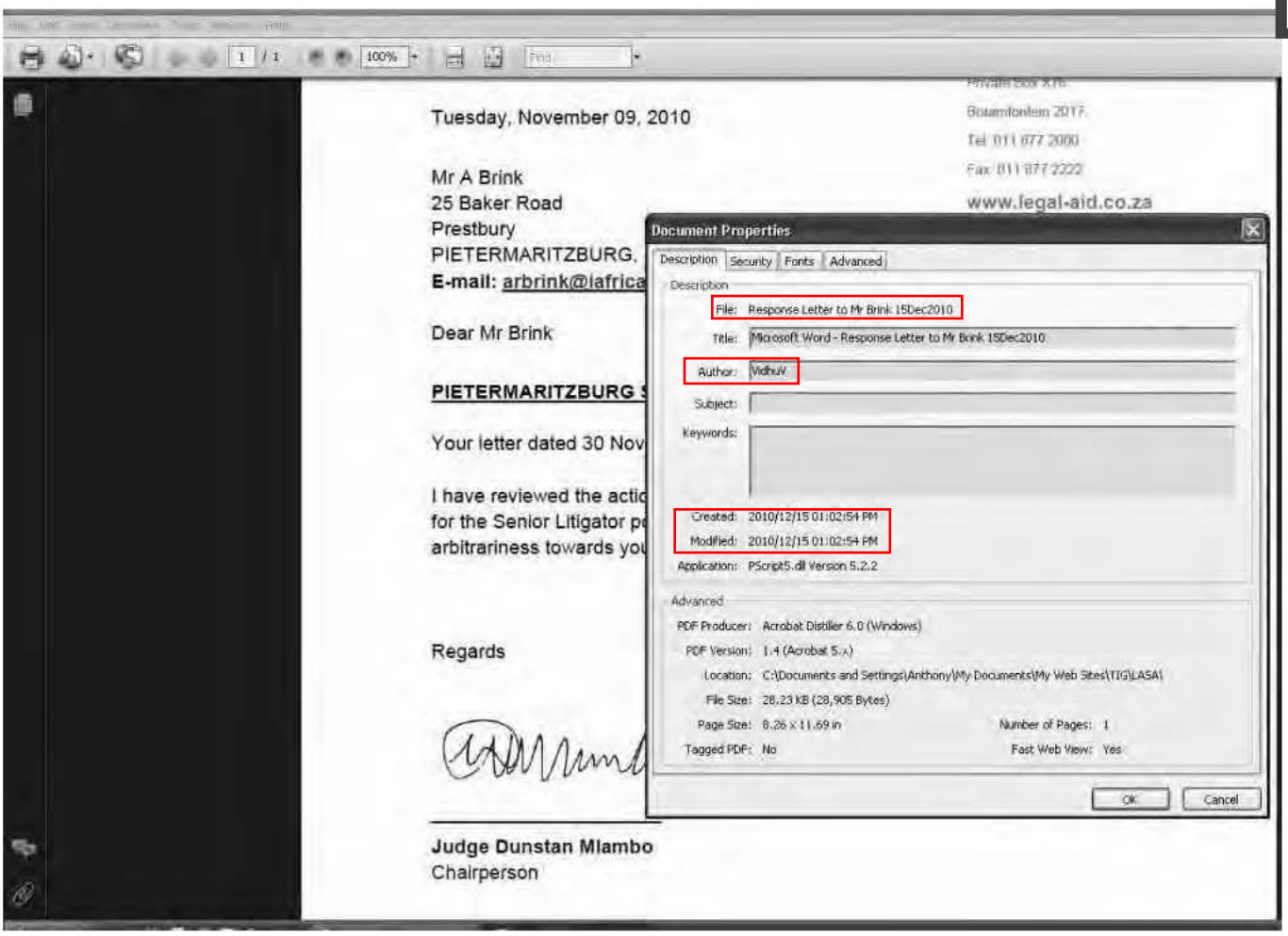
Judge Dunstan Mlambo
Chairperson



Tuesday, November 09, 2010

Mr A Brink
25 Baker Road
Prestbury
PIETERMARITZBURG,
E-mail: arbrink@lafrica

Dear Mr Brink

PIETERMARITZBURG

Your letter dated 30 Nov

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

Regards

Judge Dunstan Mlambo
Chairperson

Private Bag X16
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
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THIRD 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. Before I continue: The concluding paragraph of my Second Complaint anticipated that this, my Third Complaint, would detail the respondent's lies and false reporting to the Minister of Justice and Constitutional Development (as he was then called). On reconsideration, this will be the subject of my Sixth Complaint to follow; and the respondent's lies and false reporting to the Justice Portfolio Committee of the National Assembly – a crime – my Seventh. Before this, I've three more complaints to present against the respondent regarding his collusion with Vedalankar and his connivance at her violation of my fundamental right to information, the first of which is made here, the next two to follow.

4. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Judicial Service Commission Act (the Act'), in colluding, again, with LASA CEO and information officer Vidhu Vedalankar in her violation of my fundamental

right to public body information entrenched by section 32(1)(a) of the Constitution, given effect by the Promotion of Access to Information Act ('PAIA'), an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Act.

5. For concision, I'll refer to parts of my First and Second Complaint against the respondent, and I request that they be read as incorporated in this Third Complaint.

6. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Third Complaint.

7. On 24 January 2011, I petitioned the respondent for the second time, inter alia about Vedalankar's illegal 'denial of access to records' and 'defiance of the Promotion of Access to Information Act'. A copy of my second petition is annexed marked 'A'. Its paragraphs 27–31 and 47 are material to this complaint.

8. In my second petition to the respondent, I raised his failure in the letter he emailed me on 30 December 2010 to have dealt with 'my opening complaint' made in my first petition to him in November 2010 'that Vedalankar, as LASA information officer, has unlawfully refused my request for access to LASA's records under the Promotion of Access to Information Act' (delivered in August 2010).

9. The respondent's December letter is the subject of my Second Complaint, and is annexure 'D' to it. About which I asked him: 'Did you actually write the letter? According to its PDF properties file, Vedalankar did.'

10. I mentioned that 'I was hoping that as a senior judge you would appreciate the gravity of her refusal to comply with the Act and her disrespect for section 32(1)(a) of the Constitution behind it, and that you would instruct her to obey the law forthwith.'

11. And noted: 'Since she's already informed me that in her opinion I'm not entitled to access to any of LASA's records – grossly misquoting a reported case against her, which she claimed to support her position – I'm expecting her to refuse my second records request as well.'

12. I informed the respondent that 'In view of your and the Board's indifference to Vedalankar's defiance of the Promotion of Access to Information Act ... I've drawn draft application papers for an application to compel', and that I'd 'posted' them online 'for your perusal' at the internet address I stated.

13. And I issued him with a very proper ultimatum:

> If I haven't heard from you by the end of this week, I'll take it that your position against me remains unchanged, and I'll petition the Minister, the Deputy Minister, and all members of the Portfolio Committee as the next levels of authority and accountability – all four of my successive appeals to the Management Executive Committee and the Board of Directors having been spurned.

14. My second petition was delivered to the respondent by email attachment early in the afternoon. To record this, moments before sending it, I entered above 'Dear Judge Mlambo', 'Per email: 13h45'.

15. The respondent ruminated for several hours about what to say to me and how best to shore up the disintegrating cover-up of the true reason my appointment to the Pietermaritzburg Senior Litigator post had been aborted after I'd been selected and recommended for it.

16. Appreciating with alarm that my complaint to him was unanswerable (except that I was barking up the wrong tree in surmising unfair discrimination: it was his cronyism) and that the most serious trouble lay ahead, the respondent decided to try cowing me into abandoning my endeavour to vindicate my fundamental right to information that

Vedalankar had violated, in order to put me off discovering the true reason my recruitment had been aborted.

17. Late that night ('11:12 PM'), the respondent responded by writing me an email, in which he contemptuously rebuked my second petition with the false charge that in pleading for his and the Board's intervention in the gross unconstitutional illegality of which I was complaining at LASA, my:

> behaviour is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view.

18. The record of this email is annexure 'C' to my First Complaint.

19. As appears from its sender information, 'From: Mlambo Dunstan [DMlambo@justice.gov.za]', the respondent emailed me from his judge's email account, and not from his LASA account.

20. The Cc bar shows he copied it to Vedalankar, to let her know he'd told me to get lost.

21. Further shaking his stick at me to make me go away, the respondent made a point of adding his high judicial authority to his communication by signing it off:

> I trust you find this in order.
>
> D Mlambo
> Chairperson- Legal Aid SA and
> Judge President
> Labour Courts
> dmlambo@justice
> Tel +27113595735/6

Fax 0866447932

22. The respondent's rude and threatening dismissal of my second petition wasn't 'in order' at all; quite the contrary, and he well knew it.

23. It's impossible that as a senior judge the respondent could have failed to understand and appreciate the unconstitutional illegality of Vedalankar's total refusal of my August 2010 PAIA request, on the manifestly false and irrelevant grounds advanced in her October 2010 letter, claimed to be supported by what turned out to be a fake quotation from a judgment on PAIA, affirming the public's constitutional right of access to records held by organs of state. All of which I precisely detailed to him in paragraphs 17–43 of my first petition to him in November 2010 (annexure 'A' to my Second Complaint).

24. Instead of duly intervening as chairperson of the Board and also a top judge by directing Vedalankar to desist from violating my fundamental right to information, and to duly hand over the records I'd requested under PAIA, including those listed in my second PAIA request in December 2010 (the list of which, already drawn, I'd appended to my first petition to him in November 2010), the respondent forwarded my second petition to her without issuing any such instruction.[1]

1. I know this because Vedalankar mentioned my second petition to the respondent in her letter to me four days later on the 28th, in which she refused my entire second December 2010 PAIA request, just as I anticipated she'd do in my second petition, and again refused my entire first August 2010 PAIA request. Her letter is the subject of, and is annexed to, my Fourth Complaint, next.

   I'm unable to provide the Judicial Service Commission with a copy of the respondent's email to Vedalankar covering my second petition that he forwarded to her, because LASA now absolutely refuses to answer any more of my duly made PAIA requests on the false and untruthful basis that they're all a frivolous and vexatious waste of its time.

To prevent me enforcing my core constitutional right to information by applying to court for mandatory relief under section 78 of PAIA (most recently in Pietermaritzburg High Court case 1118/16, which I launched in October 2016), LASA responded with an application later that month to have me banned as a vexatious litigant (Pmb HC case 12124/16).

Which corrupt suit to knock me down, in furtherance of the cover-up, I've answered comprehensively in an affidavit of nearly 300 pages and 1000 paragraphs supported by 80 annexures, setting out the rampant, pervasive, systemic top-level corruption at LASA that I've uncovered in my investigation of this to date. It's accessible online in my Dropbox at: https://goo.gl/ydG4Pi.

A comprehensive history of LASA's illegal and unconstitutional persistent refusal to comply with its constitutional information transparency obligations from 2010 to date is set out in a 'SPECIAL REPORT ON LEGAL SA: AN AGGRAVATED CASE OF REPEATED WILFUL NON COMPLIANCE WITH THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 TO ILLEGALLY OBSTRUCT ACCESS TO DULY REQUESTED RECORDS, AND REPEATED FALSE ANNUAL AND 'CONFIDENTIAL' REPORTING TO CONCEAL THIS FROM THE NATIONAL ASSEMBLY'. It's online at: https://goo.gl/OwcxJe.

25. The respondent intended that I should recoil fearfully on reading his aggressive charge, which he levelled against me as Judge President of the Labour Courts from his judge's email account in the middle of the night, and that I should abandon my pursuit of access to LASA's records to which I was constitutionally entitled, including the selection panel's recommendation of me for the Pietermaritzburg Senior Litigator post – the report of which recorded, I discovered only last year, that my rival for the post, Ngcamu AJ, as he used to be, had been the respondent's brother in the Labour Court for '±6 years'.

26. Annexed marked 'B' is a copy of the recommendation report[1] revealing this information, which I finally forced out of LASA in April 2016 by suing for it in the Eshowe Magistrate's Court.[2]

1. It's incorrectly dated; in fact the interviews were held on 12 November 2009. The report's erroneous understatement of my High Court experience is immaterial to set right here; likewise the unauthorised, gerrymandered, scaled up qualifying criteria not applied to other Senior Litigator posts; likewise its repeated mention of a legally incompetent 'next round of interviews' – to be dealt with in a separate complaint about the respondent's wholesale disregard for LASA's internal regulatory instruments; his corruption of Board approved and prescribed recruitment procedure; and his violation of the rule of law.

2. After opposing me all the way, at immense wasted cost in public revenue, probably in the millions, LASA ultimately capitulated in court on 14 February 2016, as I was on the point of moving for an order that the recommendation report and other requested documents be surrendered, and agreed to hand them over.

   I duly requested all LASA's counsel's fee-notes for this futile litigation, with the stated intention of passing them on to the Auditor General for the personal recovery of the irregular and fruitless and wasteful expenditure involved, but they were illegally refused; and, as mentioned above, my application duly brought to the High Court at Pietermaritzburg in October 2016 for an order compelling their production was shortly afterwards answered with an application to have me stripped of my ordinary constitutional right to information and my constitutional right to approach the courts for relief when it's violated. Like a listed 'communist' under apartheid.

27. By:

    27.1. dissembling that 'I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view';

    27.2. falsely charging me with 'unbecoming ... behaviour' which 'borders on harassment', i.e. just about illegal conduct;

    27.3. doing nothing to remedy Vedalankar's illegal and unconstitutional refusal in October 2010 of my request for access to LASA's records duly made under PAIA in August 2010; and,

    27.4. not instructing Vedalankar to respond lawfully to my second PAIA request made in December 2010,

the respondent connived again at Vedalankar's violation of my fundamental right to information.

28. And in behaving this way, the respondent again:

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

    28.2. 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) in contempt of his judicial oath to 'uphold and protect the Constitution and the human rights entrenched in it'.

Signed at Mtunzini on 27 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 27 June 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

Name:
Address:
Capacity:

25 Baker Road
Prestbury
Pietermaritzburg 3201
24 January 2011

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

Per email: 13h45

Dear Judge Mlambo

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

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

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

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

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

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

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

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

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

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

46. Unfortunately for those persons who've moved to oppose me politically, however, we have a progressive, enforceable Constitution these days; and as our own Navi Pillay, now United Nations High Commissioner for Human Rights has pointed out: 'More than pure aspirations, human rights are real rights that can be tested in courts of law.'

47. The draft papers in my preliminary PAIA application, testing my real right of access to LASA's records, are posted for your perusal at www.tig.org.za/LASA ; username: lasa ; password: LASA2010. The application is substantially ready for launching in February.

48. My main case to vindicate and enforce my other even more basic constitutionally guaranteed human rights, disrespected and trampled on by LASA, will follow once I have my records or Vedalankar's confirmation on oath that they don't exist.

49. Please let me have the Board's assurance that the Pietermaritzburg Senior post for which I was selected and recommended will not be readvertised until my pending claim for appointment to it has been resolved, either by settlement or by order of court. Without such assurance I'll be bound to act to protect my rights with an interim interdict application.

50. Would you ask Board Secretary Schoeman to forward this letter to all Board members so that they are all fully informed of the dangerously advanced state of play and the rapidly fading prospects of a sensible internal resolution? As mentioned above, she's ignored both of my requests to inform all members of the Board. I only have some Board members' email addresses, and the rest would presumably want to know about the rocks towards which LASA is currently headed, threatening to wreck its exemplary reputation as an impeccably well managed public body (Deputy Minister Andries Nel remarked in *Business*

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

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

Yours sincerely

ANTHONY BRINK

Advocate of the High Court of South Africa

033 344 2420

083 779 4174

Cc:

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

And to: Board Secretary Schoeman;

And to: Attorneys Kisoon and Bokaba:
PAIA Unit, South African Human Rights Commission

Record of Meeting

Ela Gandhi and Christopher Rawlins
20 January 2011
2 P.M.
Ms Gandhi's home

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

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

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

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

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

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

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

Christopher Rawlins

B

Legal Aid South Africa

TO	NOE
FROM	ROE (KZN)
DATE	06th NOVEMBER 2009

SENIOR LITIGATOR INTERVIEWS

RECOMMENDATION FOR NEXT ROUND INTERVIEWS

1. PURPOSE

To recommend the following candidates for the next round of interviews:-

- Mr Anthony Brink
- Mr Bongani Mngadi

2. BACKGROUND

The above-mentioned position was advertised internally and externally a few times to give employees within the organisation and external candidates an opportunity to apply. Candidates must possess the following:

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

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

From the applications received 4 candidates were short listed for interviews for this position. Candidates were invited to an interview held on the 05-11-2009.

The selection panel consisted of the following members:

Mr Vela Mdaka	-	ROE (KZN)
Mr Baboo Brijlal	-	Reg. HR Manager (KZN Region)
Mr Kishore Mehta	-	JCE (Durban JC)
Mr Bertus Appel	-	JCE (PmBurg JC)
Mr Julian Butler	-	HCU Manager (PmBurg JC)
Mr Vis Nair	-	JCE (Pinetown JC)

3. THE INTERVIEWS PROCEEDED AS FOLLOWS:

The selection panel conducted the interviews by using the standard interview assessment form and guidelines. The results of the interview are shown in the table below:-

NAME OF CANDIDATE	Vela Mdaka	Baboo Brijlal	Kishore Mehta	Bertus Appel	Julian Butler	Vis Nair	AVERAGE & PERCENTAGE
Mr Mzochithwayo Ngcamu	25	29	33	25	35	31	29.66 / 59.33%
Mr Anthony Brink	25	32	38	33	37	26	31.83 / 63.66%
Mr Johannes van Wyk	18	26	31	27	35	31	28.00 / 56.00%
Mr Bongani Mngadi	42	35	38	27	36	32	35.00 / 70.00%

Notes:-

All scoring out of a maximum score of 50 (5 questions X 10 points each).

4. SUMMARY OF CANDIDATES

Mr Mzochithwayo Ngcamu

Mr Ngcamu has a B. Proc degree and is an admitted Attorney (Feb 1983). He is currently practicing for his own account. Candidate has acted in the Labour Court on numerous occasions (±6 years). Candidate also worked as an Assessor and a Justice College mentor to magistrates. Despite having a good knowledge of the law, candidate does not have any High Court experience (does not have right of appearance in the HC). Therefore candidate

does not meet the minimum High Court requirement as per the advert. Therefore candidate is not recommended for next round of interviews.

Mr Anthony Brink

Mr Brink has a BA & LLB degrees. He is an admitted Advocate (April 1983). Candidate is currently employed at a public interest NGO (last 5 years) with limited litigation primarily involved in advocacy work. Previously candidate worked as Prosecutor (5 years), Civil Magistrate (4 years) & Private Practice (8 years). Candidate has ±8 years experience in the High Court (2 years short of the minimum requirements as per advert). Candidate has also trained pupil advocates. Candidate had 2 matters in the SCA (1 argued & 1 settled) and 1 matter (*pro amico*) for the Constitutional Court (drafted papers). Candidate demonstrated his capability to undertake high level research. He also sufficiently demonstrated his ability to conduct training. Candidate has a good grasp of law. Candidate is a prolific writer/author with many commendations cited on his CV. After having considered the candidate's overall presentation to the panel, candidate is recommended for next round of interviews.

Mr Johannes van Wyk

Mr Van Wyk has a LLB degree and was admitted as an Attorney in July 1986. Candidate is currently practicing for his own account (Jan 1997 to date). Prior to that candidate worked as Partner (Sept 1991 to Dec 1996), State Attorney (July 1986 to Feb 1991) & (Jan 1984 to July 1986) and as a Lecturer (Jan 1981 to Dec 1981). Candidate also served pupilage at the Pretoria Bar (Mar 1991 to July 1991). Candidate has limited HC experience having briefed Counsel in most matters. Candidate also does not have any experience in the SCA (briefed Counsel) or CONCOURT. Candidate has a fair grasp of the law. Candidate did not demonstrate his ability to undertake high level research and training. Candidate does not meet minimum HC experience in terms of the advert. Therefore candidate is not recommended for next round of interviews.

Mr Bongani Mngadi

Mr Mngadi has a B.Proc, LLB and MBA degrees. He was admitted as an Attorney in January 1990 and has been in private practice for 13 years (since Feb 1991 to Sept 2005). Prior to joining the Legal Aid South Africa, candidate also worked as a Magistrate (Nov 1981 to August 1985), Lecturer (UNIZUL) & Legal Assistant in Government. Candidate is currently employed as High Court Unit Manager (June 2009 to date). Candidate previously served Legal Aid South Africa as JCE at the Port Shepstone JC (Sept 2005 to May 2009). Candidate

has trained and supervised more than Candidate Attorneys directly articled to him - has a good understanding of training CAs. Candidate also has financial management, budgeting and management experience. Candidate demonstrated his understanding of strategic management reasonably well. He further displayed good problem solving and decision making skills. He possesses good communication skills and is an assertive individual. The Candidate has a good knowledge of criminal & civil work. Candidate also acted as a Small Claims Commissioner for a period of time. Overall presentation to interview panel was very good. Candidate has 9 years experience in the High Court. Candidate does not have any SCA and CONCOURT experience. After having considered the candidate's overall presentation to the panel, the candidate is recommended for the next round of interviews.

5. EMPLOYMENT EQUITY STATUS

The Durban JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	23	10	33
2. Whites	2	3	5
3. Indians	10	17	27
4. Coloureds	1	2	3
TOTAL	36	32	68

Equity Stats as at 06.11.2009.

The PmBurg JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	19	11	30
2. Whites	6	3	9
3. Indians	12	12	24
4. Coloureds	2	1	3
TOTAL	39	27	66

Equity Stats as at 06.11.2009.

6. RECOMMENDATION

The panel recommends the following candidates for the next round of interviews:-

- Mr Anthony Brink - External Candidate
- Mr Bongani Mngadi - Internal Candidate

Legal Aid South Africa

We certify that the Employment Equity targets for the JCs have been taken into account and that this recommendation meets the Employment Equity targets.

Baboo Brijlal
Reg. HR Manager (KZN Region)

Vis Nair
JCE (Pinetown)
23/11/2009

Kishore Mehta
JCE (Durban JC) 19/11/09

Julian Butler
HEU Manager (PmBurg JC)
23/11/2009

Vela Mdaka
ROE (KZN Region)

NEXT ROUND INTERVIEW APPROVAL

NAME	RECOMMENDATION: ACCEPTED	RECOMMENDATION: NOT ACCEPTED	DATE
BRIAN NAIR NOE			

FOURTH 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. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Judicial Service Commission Act, in conniving, again, at LASA CEO and information officer Vidhu Vedalankar's violation of my fundamental right to public body information entrenched by section 32(1)(a) of the Constitution, and given effect by the Promotion of Access to Information Act 2 of 2000 ('PAIA').

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

5. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Fourth Complaint.

6. On 28 January 2011 – four days after the respondent's appalling late-night email on the 24th (the subject of my Third Complaint), in which he abusively dismissed my second petition to him and the Board earlier that day, and lied to me in claiming that he'd found, and still could find, nothing untoward about Vedalankar's illegal 'denial of access to records' and 'disrespect for section 32(1)(a) of the Constitution', about which I'd complained to him in close detail in my first petition to him, and complained again in my second – Vedalankar:

   6.1. totally refused my second PAIA request made on 15 December 2010, on the false basis that it merely 'repeated'[1] my first;

      1. In truth and in fact, I'd sought quite different records, testing her budgetary insufficiency story for aborting my recruitment to the Pietermaritzburg Senior Litigator post, which she'd fed me in her October 2010 letter illegally refusing my first PAIA request in August 2010, by means of which I was probing the circumstances in which my appointment had been blocked.

         On the 3rd of that month, LASA National Operations Executive Brian Nair responded to my plea to CEO Vedalankar in July 2010 to see to the finalisation of my appointment, now eight silent months since my successful interview, by telling me that LASA had decided 'due to various reasons' that 'we will not be proceeding with the filling of any of these posts', LASA's remaining vacant three Senior Litigator posts for which suitable candidates had been selected and recommended. (In April 2011, I forced Nair's admission on oath under section 23 of PAIA that no record whatsoever of any such decision exists.)

   6.2. revisited her refusal of my first PAIA request, and refused it again, for a new set of equally spurious and unlawful reasons;[1]

      1. The South African Human Rights Commission ('SAHRC') confirmed this a few months later in June 2011; LASA's head office lawyers admitted it to the SAHRC in October 2011; and Vedalankar's spurious and unlawful reasons were implicitly abandoned by the delivery over the following years of the initially

refused records and other similar records, which I determinedly pursued by repeatedly applying to court (6X) to compel their delivery.

The few records Vedalankar annexed to her January letter were 'To demonstrate' her several contentions, and not to respond to my request for access to the records I'd specified. But a couple of her records coincidentally partially satisfied some of my requests, including my request for a copy of the selection panel's report recommending me. Unjustifiably under any provision of PAIA, however, the report was illegally redacted with a black Koki pen to conceal from me the crucial, all-important information recorded in it, to which public body information I was entitled as of constitutional right, that my rival applicant for the post, which had strangely silently been frozen completely off the record after I'd been recommended for it, and he was unexpectedly rejected, had long been the respondent's fellow judge of the Labour Court.

The mutilation of the report before furnishing it to me, to conceal this vital information and to deny me my right to it (ultimately conceded five years later), was a criminal contravention of section 90(1) of PAIA: 'A person who with intent to deny a right of access in terms of this Act – (a) destroys, damages or alters a record; (b) conceals a record ... commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding two years.'

6.3. rejected and returned my bank cheque for the compulsory request fee prescribed by section 22 of PAIA, just to underscore her total rejection of, and absolute refusal to comply with, my August and December PAIA requests for access to LASA's records in my investigation of the true circumstances in which my recruitment had been silently aborted.

7. A copy of Vedalankar's letter to me of 28 January 2011 is annexed marked 'A'. The only document she put up with her letter that's relevant to this Fourth Complaint is the redacted and censored recommendation report, which I've annexed, marked 'B'. (Other documents she put up are relevant to and will be annexed to a different, separate, future complaint.) A copy of my unpresented cheque for the compulsory request fee that

Vedalankar unlawfully rejected and returned by post, even the envelope I sent it in, is annexed marked 'C'.

8. The cc addressees of her email covering her January letter show that Vedalankar copied it to the respondent. A copy of this email is annexed marked 'D'.

9. As one of our country's top legal authorities, it would have been immediately apparent to the respondent that the new bunch of substitute reasons given me by Vedalankar for continuing to totally refuse my PAIA requests, even spitting back my mandatory request fee, were incompetent, unlawful and unconstitutional.

10. It follows that the respondent was full well aware that Vedalankar was continuing to illegally refuse me access to duly requested records and was thereby violating my fundamental right to information.

11. Vedalankar's said letter concluded:

> The Legal Aid SA's Board of Directors; its Executives and all its staff country-wide are committed to complying with the laws and statutes of the country and most importantly the Constitution of the country and its values of accountability and transparency. In that spirit, and despite your insulting and condescending tone of language to us, that I have responded fully to your requests for access to information regarding your non-appointment to the position of Senior Litigator, PMB. We have exhausted our explanations to you[1] and trust that this final letter shall put this matter to rest. Please be advised that no further correspondence on this matter will be responded to.

1. Several months later, in November 2011, NOE Nair would give the Board totally different 'explanations', and in July/August 2013 yet another radically different 'explanation' to the Labour Court trying my claim for my instatement to the post.

12. It would have been as obvious to the respondent as it was to me that by wishing me this final good-bye, after violating my constitutional right to information that she pretended to respect, Vedalankar was trying:

    12.1. to force my acceptance of her budgetary insufficiency excuse for not approving[1] my appointment;

    12.2. prevent me testing it by requesting supporting records to vouch it, or, where they didn't exist (as I suspected, later confirmed), by requiring her to certify this on oath under section 23 of PAIA; and,

        1. Under LASA's Approval Framework, an internal regulation approved and prescribed by the respondent and his Board, Vedalankar and Nair have co-authority for approving selection panel recommendations for Senior Litigator appointments. And no one else. As a non-executive member of the Board, the respondent's illegal intrusion into LASA management's Senior Litigator selection and approval operations, in violation of the rule of law, will be the subject of a separate, future complaint.

    12.3. to discourage me from making any more requests under PAIA to examine LASA's records, in the exercise of my fundamental right to information, by telling me they'd be ignored, in further violation of this constitutional right.

13. On being copied her letter, the respondent deliberately failed to honour his judicial oath and his fiduciary duty to LASA to see to it that Vedalankar quit violating the Constitution, stop breaking the law, and cease violating my basic civil rights; and did nothing to call her to order about this.

14. By his deliberate silence and inaction the respondent tacitly approved Vedalankar's:

    14.1. clear violation of my fundamental right to information; and,

14.2. announcement of her intention to continue violating it should I attempt to exercise it again.

15. In this manner, the respondent again:

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

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

Signed at Mtunzini on 27 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 27 June 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

Name:
Address:
Capacity:

Legal Aid South Africa A

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Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
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By Email

28 January 2011

Adv A Brink

25 Baker Road

Prestbury

Pietermaritzburg, 3201

Email: arbrink@iafrica.com

Dear Adv. Anthony Brink,

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

1. I acknowledge your letter of 15 December 2010 in which you request access to information in Legal Aid SA's possession in terms of the Promotion of Access to Information Act, Act 2 of 2000 ("PAIA"). I have also considered your recent letters dated 30 November 2010 sent to the Chairperson of the Board of Legal Aid SA, Judge President Dunstan Mlambo ("Mlambo JP") and to the Board of Directors ("Board") dated 24 January 2011.

2. Legal Aid SA promotes and complies with the constitutional precepts of accountability; openness; transparency and respect for human and related rights including your right to access information in its possession. This recognition should set the tone for the answer that follows herein below.

3. In your letter to Mlambo JP, you made serious and malicious accusations which can in effect be separated into two groups. Firstly, you accuse Mr Brian Nair ("Nair"), the Legal Aid SA's National Operations Executive ("NOE"), and me of unlawfully misrepresenting information (mainly financial management issues) to Parliament's Portfolio Committee on Justice and Constitutional Development and of concocting unlawful excuses and reasons, all with malicious intent to freezing a post of Senior Litigator, Pietermaritzburg ("PMB") for which you were singly selected and recommended for appointment subject to your final interview with Mlambo JP.

4. Secondly, you accuse Mr Nair and I or even the Legal Aid SA of singling you out for differential treatment which is, according to you, unlawful and unconstitutional, because of your race and of your conscience and belief. As a result of the aforegoing conclusions, you grounded your application for access to information on section 46 of PAIA in seeking access to information from the Legal Aid SA. It is common cause that section 46 provides that:

> *"Despite other provisions of this Chapter, the information officer of a public body must grant a request for access to record of the body contemplated in section 34 (1)... if –*
>
> > *The disclosure of the record would reveal evidence of –*
> > *a substantial contravention of, failure to comply with, the law; or*
> > *...*
> > *the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question."*

5. At the outset, I wish to record my strongest rejection of your accusations which you levelled against me as the Chief Executive Officer of Legal Aid SA; members of the Executives (both individually and collectively) including but not limited to Mr Nair; Ms Amanda Clark ("Ms Clark") and the Board members including its chairperson, Mlambo JP; and its secretary Ms B Schoeman. Your views are unfounded; wrong and outright defamatory. My and my organisations' rights are strictly reserved to deal therewith at a later stage and/or an appropriate forum.

6. As I will show herein below, the premise you have chosen in seeking access to information you seek herein is baseless. This wrong assumption, which I will disprove herein below, led you to reject my answers to your request for access to our records. You continued with these malicious accusations to the Parliamentary Portfolio Committee on Justice and Constitutional Development; to the Ministry of Justice and Constitutional Development; to the Board; and to other institutions of your choice.

7. As I will demonstrate to you herein below, your assumptions in taking this route are far from the truth and are misinformed. I must however advise you, that the explanation furnished by me to you on 18 October 2010 remains valid and will be added to and clarified where possible as indicated herein below.

8. Despite the above accusations and assumptions, which I completely reject, I provide you with further information and reasons that led to the freezing of the Senior Litigator posts in Durban, Pietermaritzburg and Mthatha, in addition to the reasons furnished to you on 18 October 2010.

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

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

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

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

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

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

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

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

11. As to your requests 1 and 2: I wish to refer you to the Legal Aid SA's Policy Document read with the Approval Framework.

12. As regard your request number 3 and 4: Mr Nair relied on the Approval Framework especially at 8.2.2(c) where, you will note, he has to approve the appointment of senior staff. However, he was not the person in charge of or managing the process of recruiting a Senior Litigator. This process is managed by the relevant Regional Human Resources Manager if it is a regional post; and a HRE if it is a senior national appointment. Mr Nair is the line executive/manager responsible for the appointment of Senior Litigators.

13. Seeing that the posts of Senior Litigator's post was a senior post, second round interviews were to proceed to the national level with national executives and was to be coordinated and managed by the HRE. The relevant regional HR officer was responsible, at all times, together with the KZN ROE Mr Mdaka who managed and compiled the recommendation of the panel after the first round of interviews as attached in the above table.

14. I reject your allegations in your request number 5 and 6: I dispute your argumentative conclusion premised, of course on misguided facts and

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

15. As to request 7: I refer you to the Approval Framework annexed hereto.

16. As to requests 8 and 9 : I refuse to grant you access to this information on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA's Policy on Recruitment Checks.

17. As to request 10: No time limit was set to finalise the recruitment process.

18. As to requests 3 and 4 (both in Part A and B of the request document): there are no such communications that I am aware of. I am willing to provide you with an email from Ms Clark dated 30 April 2010 which you already have in your possession and which you have referred to in your letter to Mlambo JP on or about 30 November 2010. This was blind copied to the ROE of KZN Mr Mdaka and Brijal.

19. For your requests 11; 12; 13 (PART A); 13 (PART B); 14 (PART A); 14 (PART B); 15 (PART B): please refer to the correspondence on costs-cutting measures, read with the Legal Aid SA's Approval Framework.

20. As for your request 15: The disparity on the advertised salary between Mthatha and Durban/Pietermaritzburg Senior Litigator position, is as a result of cost of living expense which was effected on 23 October 2009. You would have noted that the difference between the two advertisements is a period of over nine months.

21. As for your request 16: I am not aware of any of the Executives discussing you and/or your candidacy for the above-mentioned post save the edited and blacked out recommendation for the next round of interviews. This is attached hereto as part of the bundle in the table above.

22. As to the regional panel members' individual assessment notes; scores; deliberations; submissions and assessment reports on you, I, having considered your request, refuse to grant you access thereto as these documents and information relating thereto were compiled from the Legal Aid SA's panel's deliberative process of decision-making in the assessment and interview of candidates, including you, for vacant posts in the Legal Aid SA. I am entitled to refuse to grant you this information in terms of section 44(1) and (2) of PAIA.

23. I have decided, notwithstanding the above position, and after I have exercised my discretion, to grant you access to an edited/blacked out version of the final recommendation of the panel to show you what its decision was.

AS TO PART B "OTHER RECORDS"

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

25. As to requests 3; and 4: Please refer to above.

26. As for requests 5; 6; 7; 8; 9; and 10: I am able to inform you that there is no recorded explanation for what you refer to as 'the delay'. I reject that there were any delays in dealing with any post. As far as I can tell, there were no time frames within which these recruitment drives were to be conducted and completed. I however wish to state that the Legal Aid SA was, at the same time as it conducted the recruitment drives referred to herein above and as you would have noted from the above documents, in a parallel process of securing funding. It had in conducting these recruitment processes parallel with fund raising drive, acted under the impression that the DoJ &CD would honour its promise to extend OSD funding to it. Accordingly and naturally, the drive to secure funding took priority as you would have noted from the correspondence above that all those Executives that were engaged in the recruitment of the Senior Litigator posts were also engaged in costs-cutting discussions/processes including identifying the areas that could be sacrificed to keep Legal Aid SA in budget. Ms Clark's mail to you was to be and must be understood in this light.

27. Because Ms Clark would not have been involved in the Senior Litigator's recruitment process as the second round of interviews was not proceeded with (see her email of 14; 22 and 30 April 2010 which you already have in your possession), Baboo Brijal would have been provided with the same updates as included herein above regarding the costs-cutting mechanisms. Obviously by November 2010, after the Memorandum from the COO, it was evident that there would be no funding coming from the DoJ. In fact a shortfall was expected up to 2012. Brijal was to update you should anything change regarding the continuation or otherwise of the recruitment drive not anything more.

28. As for requests 11; and 12: Ms Clark, as a HRE, was involved with the cost-cutting processes and was not at liberty to inform you of the reasons why the posts were not being finalised. All she did and said to you is informed by the costs-cutting measures that appear in the above documents. She was privy thereto and she too, just like all of us, had to wait and see if the Department of Justice and Constitutional Development would allocate us budget to proceed with finalising the recruitment processes. It is on this basis that you should understand Ms Clark's communications to you regarding this process.

29. As to requests 13, 14 and 15: The decision to create or abolish a post is derived from the Approval Framework which is annexed herewith. All communication relating thereto is also attached. If for any reason, the e-mail or any form of communication is not attached, it would have been verbal, the authority of which derives from the aforementioned Approval Framework.

30. As to your requests 16; 19; 20; 21; 22; 23; 24; 26; and 27: I have exercised my discretion against granting you access to this information in terms of sections 43(1) as it relates to confidential correspondence with third parties.

31. I further refuse to grant you access on the same information and documents on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA's Policy on Recruitment Checks). I also refuse to provide access to this record as it relates to research or information gathering by third parties on behalf of Legal Aid SA as contemplated in section 43(1) and (2). It seems apparent to me that you already have document(s) that you seek in this regard.

32. As for your requests 17 and 18: There is no such discussion other than the documents provided to you.

33. As for your request 25: As this information would relate to the internal deliberations; opinions and views intended for Legal Aid SA to take certain decisions as contemplated in section 44(1) and (2), I have exercised my discretion against granting you access thereto. I therefore refuse to grant you access to this information or document.

34. As for your requests 33; and 34: Your attention is referred to the costs-cutting measures correspondence in which Nair was instrumental in identifying posts that should be cut; frozen etc. This was part of the Executive's mandate around that time. See especially the email and memo from COO to all Executives; ROEs; JCEs and 'All Staff' herein above wherein Cabinet also propagated the same mechanisms as Legal Aid SA.

35. As for request 35: To the best of knowledge there are no other electronic records relating to you.

IN CONCLUSION

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

37. In light of the above information given to you, it must further be apparent that your allegations of discrimination against you as an individual are baseless and misguided. Save for the documents and information delivered to you, I refuse to grant you access to the documents I have referred to.

38. Mlambo JP had an occasion to peruse and consider your long letter of 30 November 2010 wherein you seem relentless in your complaint and accusations against me; Nair and the Legal Aid SA and has essentially, after reviewing our processes regarding the cost-cutting measures including but not limited to the Senior Litigator posts, found no evidence to substantiate your claims. Of course you do not believe him and you ridicule his findings in your subsequent correspondence and your threatened court actions. I have, on my part, also tried, notwithstanding this answer from Mlambo JP, to answer your requests and avail certain documents to you, the contents of which, I wish to repeat, are private and confidential.

39. As indicated hereinabove, I have also had an occasion of reading your recent letter dated 24 January 2011 to Mlambo JP. I, and the Legal Aid SA under my watch, have never sought to make any decisions regarding the Senior Litigator posts on any ground other than the budget constraints which you have rejected.

40. You accuse us and persist with your baseless accusations of financial improprieties and misrepresentations to the Portfolio Committees etc. I challenge you to present your investigative results of Legal Aid SA's financial mismanagement; wasteful and fruitless expenditure to the Auditor General.

41. In conclusion, I note your threats of court actions cross examining me; officials of Legal Aid SA; now the Board members; and their secretary. Your threats of *mandamus* against the Legal Aid SA; of using independent judges; of probing our executives' affidavits; of your draft notice of motion and an accompanying founding affidavit, are unnecessary. Please refrain from your disparaging attacks on people's dignity on baseless assumptions.

42. Be advised that the Legal Aid SA will defend itself against any of the threats that you have made against its officials and Board members.

43. The Legal Aid SA's Board of Directors; its Executives and all of its staff country-wide are committed to complying with the laws and statutes of the country most importantly the Constitution of the country and its values of accountability and transparency. It is in that spirit, and despite your insulting and condescending tone of language to us, that I have responded fully to your requests for access to information regarding your non-appointment to the position of Senior Litigator, PMB.

44. We have exhausted our explanations to you and trust that this final letter to you shall put this matter to rest. Please be advised that no further correspondence on this matter will be responded to. Your cheque will be returned to you with the original of this letter.

Yours faithfully,

V. V. Vedalankar

Vidhu Vedalankar

CEO: Legal Aid South Africa

V7

R4

B

Legal Aid South Africa

TO	NDE
FROM	ROE (KZN)
DATE	06th NOVEMBER 2009

SENIOR LITIGATOR INTERVIEWS
RECOMMENDATION FOR NEXT ROUND INTERVIEWS

1. PURPOSE

To recommend the following candidates for the next round of interviews:-

- Mr Anthony Brink
- Mr Bongani Mngadi

2. BACKGROUND

The above-mentioned position was advertised internally and externally a few times to give employees within the organisation and external candidates an opportunity to apply. Candidates must possess the following:

- Admitted Attorney / Advocate.
- B Proc or LLB degree, with right of Appearance in the High Court.
- A LLM will be an advantage.
- At least 12 years post qualification legal experience of which 10 years must be high court experience. Must be performing at least 80% active court litigation.
- Valid code 08 drivers licence.
- Excellent leadership & people development skills with a track record in training.
- Experience in budget preparation & management thereof.
- Advanced computer skills (MS Word, Excel, Outlook, PowerPoint & Ad infinitum).
- Strong communication, problem solving & interpersonal skills.
- Innovative, creative & analytical thinking skills. Strong research skills.
- Ability to interpret & apply policies.

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

From the applications received 4 candidates were short listed for interviews for this position. Candidates were invited to an interview held on the 05-11-2009.

The selection panel consisted of the following members:

Mr Vela Mdaka	-	RDE (KZN)
Mr Baboo Brijlal	-	Reg. HR Manager (KZN Region)
Mr Kishore Mehta	-	JCE (Durban JC)
Mr Bertus Appel	-	JCE (PmBurg JC)
Mr Julian Butler	-	HCU Manager (PmBurg JC)
Mr Vis Nair	-	JCE (Pinetown JC)

3. THE INTERVIEWS PROCEEDED AS FOLLOWS:

The selection panel conducted the interviews by using the standard interview assessment form and guidelines. The results of the interview are shown in the table below:-

NAME OF CANDIDATE	[redacted]	AVERAGE & PERCENTAGE
Mr Mzochithwayo Ngcamu	[redacted]	[redacted]
Mr Anthony Brink	[redacted]	[redacted]
Mr Johannes van Wyk	[redacted]	[redacted]
Mr Bongani Mngadi	[redacted]	[redacted]

Notes:-

All scoring out of a maximum score of 50 (5 questions X 10 points each).

4. SUMMARY OF CANDIDATES

[redacted]

Legal Aid South Africa

Mr Anthony Brink

Mr Brink has a BA & LLB degrees. He is an admitted Advocate (April 1983). Candidate is currently employed at a public interest NGO (last 5 years) with limited litigation primarily involved in advocacy work. Previously candidate worked as Prosecutor (5 years), Civil Magistrate (4 years) & Private Practice (8 years). Candidate has ±8 years experience in the High Court (2 years short of the minimum requirements as per advert). Candidate has also trained pupil advocates. Candidate had 2 matters in the SCA (1 argued & 1 settled) and 1 matter (*pro amico*) for the Constitutional Court (drafted papers). Candidate demonstrated his capability to undertake high level research. He also sufficiently demonstrated his ability to conduct training. Candidate has a good grasp of law. Candidate is a prolific writer/author with many commendations cited on his CV. After having considered the candidate's overall presentation to the panel, candidate is recommended for next round of interviews.

[redacted]

5. EMPLOYMENT EQUITY STATUS

The Durban JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	23	10	33
2. Whites	2	3	5
3. Indians	10	17	27
4. Coloureds	1	2	3
TOTAL	36	32	68

Equity Stats as at 06.11.2009.

The PmBurg JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	19	11	30
2. Whites	6	3	9
3. Indians	12	12	24
4. Coloureds	2	1	3
TOTAL	39	27	66

Equity Stats as at 06.11.2009.

6. RECOMMENDATION

The panel recommends the following candidates for the next round of interviews:-

- Mr Anthony Brink - External Candidate
- Mr Bongani Mngadi - Internal Candidate

Legal Aid South Africa

We certify that the Employment Equity targets for the JCs have been taken into account and that this recommendation meets the Employment Equity targets.

Baboo Brijlal
Reg. HR Manager (KZN Region)

Vis Nair
JCE (Pinetown)
23/11/2009

Kishore Mehta
JCE (Durban JC) 17/11/09

Verus Appiah
JCE (PmBurg JC) 23/11/09.

Julian Botlor
HCU Manager (PmBurg JC)
23/11/2009

Vela Mdaka
ROE (KZN Region)

NEXT ROUND INTERVIEW APPROVAL

NAME	RECOMMENDATION: ACCEPTED	RECOMMENDATION: NOT ACCEPTED	DATE
BRIAN NAIR NOE			

PAIA request fee rejected

Cheque returned unpresented – together with the registered envelope enclosing it, and the labelled envelope inside it.

For Personal Attention

Ms Vidhu Vedalankar
CEO and Information Officer
Legal Aid South Africa
Private Bag X76
Braamfontein 2017

***

***

From: Vidhu Vedalankar [mailto:VidhuV@legal-aid.co.za]
Sent: 28 January 2011 02:25 PM
To: Anthony Brink
Cc: Justice Dunstan Mlambo; ckisoon@sahrc.org.za
Subject: PAIA: Brink - supplementary request for records

Dear Mr Brink

Please see attached a response to your letter.

Regards

Vidhu Vedalankar

CEO

www.legal-aid.co.za

FIFTH 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. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Judicial Service Commission Act, in conniving, again, at LASA CEO and information officer Vidhu Vedalankar's violation of my fundamental right to public body information entrenched by section 32(1)(a) of the Constitution, and given effect by the Promotion of Access to Information Act 2 of 2000 ('PAIA').

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

5. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Fifth Complaint.

6. Unintimidated and undeterred by the respondent's:

6.1.1. shockingly improper and dishonest rebuff of my second petition to him (the subject of my Third Complaint), corruptly contrived to chill my endeavour to vindicate my fundamental right to information that Vedalankar had violated – clearly and incontestably demonstrated in my first petition to him in November 2010 (annexure 'A' to my Second Complaint);

6.1.2. extraordinarily 'untoward' (his word) studied indifference to this serious unconstitutional illegality by an organ of state in the democratic era that I was repeatedly protesting to him; and,

6.1.3. conscious and deliberate inaction on seeing that Vedalankar had illegally totally refused my first August 2010 PAIA request again on 28 January 2011 on manifestly spurious new grounds, and had illegally totally refused my second December 2010 PAIA request on the obviously false basis that it merely 'repeated' my first,

I petitioned the respondent and the LASA Board a third time on 25 February 2011, again seeking his intervention and remediation of Vedalankar's illegal obstruction of my access to LASA's public records – now copying in:

- LASA's Executive Authority, the Minister of Justice and Constitutional Development (as he was then called);
- the Minister's Special Advisor;
- the Deputy Minister; and,
- the chairperson of the Portfolio Committee for Justice and Constitutional Development of the National Assembly ('Portfolio Committee'), with oversight responsibility over state organs like LASA, imposed by section 55(2) of the Constitution.

7. My approach to these several high authorities fulfilled my ultimatum that I duly gave the respondent in my second petition (annexure 'A' to my Third

Complaint), namely I would escalate my complaint about Vedalankar's illegal and unconstitutional refusal to comply with my PAIA requests to them should he fail to belatedly perform his fiduciary obligation to LASA to see to it that Vedalankar comply with the Constitution and the law by allowing me access to LASA's public records as I'd requested.

8. A copy of my third petition to the respondent and other Board members, which I copied to these high authorities, is annexed marked 'A'.

9. My third petition:

   9.1. mentioned my first petition to the respondent in November 2010 (which the respondent had batted away in collusion with Vedalankar in the manner described and vouched in my Second Complaint);

   9.2. reminded the respondent that:

> My [second] petition began by detailing Vedalankar's unlawful refusal as information officer to comply with the Promotion of Access to Information Act ('PAIA'), thus exposing LASA to the shame of being listed as a non-compliant PAIA delinquent in the South African Human Rights Commission's next annual report to Parliament;[1]

1. Just as I predicted, it was; and the Portfolio Committee taxed Vedalankar about it on 9 October 2012. She evaded its repeated concerned questions by telling lies and falsely repudiating the SAHRC's report: 'Ms Vedalankar said that she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgment about this.' (Per the Parliamentary Monitoring Group's minute.) The SAHRC's annual report on public body compliance with PAIA under section 84 wasn't 'untrue'. I wasn't 'in court' when I made my PAIA requests in August and December 2010 and March 2011, and only sued in July 2011. And there was no pending case 'about

this' in which 'there was going to be an official judgment'. My entitlement to the records wasn't in issue in any court.

9.3. informed the respondent that to falsely justify continuing to totally refuse my first PAIA request in August 2010, Vedalankar had replaced her unlawful reasons given me in October 2010 with another set of equally obviously unlawful ones in her January 2011 letter (which he already knew, because Vedalankar had copied her January 2011 letter to him); and,

9.4. repeated my intention, stated in my second petition, to apply to court for an order compelling Vedalankar's production of the records she was withholding from me, for which I'd prepared draft papers.[1]

1. In his 24 January 2011 email, the respondent had sarcastically responded, in tinny legal argot calculated to impress and put me off, dishonestly insinuating, contrary to his full appreciation otherwise, that my complaint about Vedalankar's repeated and persistent illegal and unconstitutional refusal to allow me access to LASA's records had no merit and would fail in court: 'you are free to institute whatever legal action you may deem appropriate to obtain whatever redress you fathom is due to you.'

   In the event, I opted to pursue the records under the Labour Court's discovery rules instead. Faced with LASA's determined obstruction and resistance, my struggle to access its records continued: I was constrained to apply to compel discovery, after my entire list of requested documents listed in my agenda for the first pre-trial conference was totally refused. On the very correct advice of LASA's senior counsel, now Constitutional Court judge, Mbuyiseli Madlanga, openly expressed at the conference, this absolute refusal was then reversed, and all the listed records I sought were promised me. Contemptuously disregarding its minuted undertaking given on its senior counsel's advice, and being all the time determined to withhold the requested records from me and conceal them from the trial court, LASA then failed to make full and proper discovery as agreed, requiring me to apply to compel, as said. And then, in my endless difficulty getting documents from LASA that I needed for trial, I had to request

not one but two further pre-trial conferences under judicial supervision at court to extract most but still not all of the requested records.

As then LASA Board member Ela Ghandi appositely remarked in a different context in The Mercury on 23 November 2011: 'It's only when people have something they are not proud of that they try to hide things.'

10. Predicted by the respondent's emailed announcement to me on 24 January 2011 that he'd be ignoring any further entreaties by me about, inter alia, his CEO and information officer's persistent, repeated violation of my fundamental right to public body information, and my pleas that he act to remedy it – 'I call on you to desist from communicating with Board Members in this regard. I have, in turn, requested Board Members to ignore all communications from you and/or on your behalf' – the respondent indeed ignored my third petition about this, as he said he would; did not respond to it; and thereby again:

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

    10.2. 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) in contempt of his judicial oath to 'uphold and protect the Constitution and the human rights entrenched in it'.

Signed at Mtunzini on 27 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 27 June 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

Name:

Address:

Capacity:

25 Baker Road
Prestbury
Pietermaritzburg
25 February 2011

Dear Board Directors

LASA BOARD MEETING, SATURDAY 26 FEBRUARY 2011

Your meeting on Saturday presents an opportunity to address, resolve, and defuse what threatens to be the most damaging crisis in LASA's history. And so easily.

In November last year, I addressed a 59-page petition to Judge Mlambo and the Board of Directors, appealing for the Board's intervention in CEO Vidhu Vedalankar's illegal abortion of my recruitment as Senior Litigator, Pietermaritzburg, for political reasons, following my selection and recommendation for appointment by a professional selection panel in November 2009.

My petition began by detailing Vedalankar's unlawful refusal as information officer to comply with the Promotion of Access to Information Act ('PAIA'), thus exposing LASA to the shame of being listed as a non-compliant PAIA delinquent in the South African Human Rights Commission's next annual report to Parliament.

I also raised LASA's contravention of the Public Finance Management Act – (a) in incurring fruitless and wasteful expenditure in Vedalankar's illegal abortion of my appointment and the wasted cost of readvertising the post, despite having already found a suitable candidate; and (b) in publishing false financial information in LASA's current annual report (Management Executive Committee members' personal incomes are massively understated in total).

My requests to Board Secretary Schoeman to forward my letter to all Board members and to put it on the agenda of the next Board meeting was not carried out; and indeed

appear to have been countermanded, thus concealing from the Auditor General, represented at all Board Audit Sub-Committee meetings, these serious financial irregularities threatening to blot the unqualified audits that LASA has enjoyed for many years.

In her letter to me of 28 January 2011, in which Vedalankar implicitly abandoned her earlier wholly spurious reasons for not complying with PAIA and affording me access to the records I requested, replacing her clueless reasons with other equally fatuous ones, Vedalankar repeated her allegation that for financial reasons she'd 'frozen' the post for which I was selected and recommended; and she put up some records claimed to support this.

In truth, as all (besides recent) Board members are well aware, the single cost-cutting measure agreed by the Management Executive Committee on 16 July 2010 in its Report to the Board, and approved by the Board on the 31st, was the reduction of some junior criminal defence practitioner posts serving the district and regional courts.

The couple of remaining vacant critical Senior Litigator posts were never identified, never proposed, never agreed, and never approved for abolition as a cost-saving measure. On the contrary, the Report to the Board specifically distinguished vacant critical posts from the rest and prioritized them for recruitment.

This is incontrovertibly shown by (a) the Board meeting minutes; (b) the Management Executive Committee's Report to the Board; (c) NOE Nair's recommendations for cost-saving; and (d) Vedalankar's letter to the Director General on 16 April contemplating the abolition of some junior criminal defence practitioner posts, which was ultimately proposed, agreed and approved. All on the record, obviously.

Vedalankar's claims to me to have 'frozen' my post in July, and to have 'frozen' it for budgetary reasons, are lies. And being lies, they are naturally not supported by any records. Contrariwise, her lies are directly contradicted by the very records that she provided me for her own purposes (and not to comply with my PAIA requests) last month in January.

In my petition to the Board in November, I reported how in covering up her gravely illegal abortion of my appointment in late 2009/early 2010 and in contriving a bogus financial justification for it, Vedalankar also unlawfully aborted the appointments of two African lawyers duly selected and recommended for appointment to the Durban and Mthatha Senior Litigator posts, in April/May and July respectively – contemptuous of their rights, their legitimate expectations of being appointed, as well.

And all this in a grossly unlawful, furtive abuse of power; all completely off the record; with no regard for the peremptory requirements of the Approval Framework governing such operational decisions; contravening the Board's strategic policy to equip all seats of the High Court with Senior Litigators; disrespecting the express wishes of Parliament expressed in May 2007 in this regard; disrespecting the Minister's express wishes communicated to Judge Mlambo sometime in the first half of 2010; without informing the Board in the 16 July Report; and without informing the Portfolio Committee on 12 October.

The rapidly developing crisis LASA currently faces on account of Vedalankar's grossly illegal conduct, and the blind eye Judge Mlambo has turned to it in his brief, dismissive responses to my detailed petitions, is as follows:

Unless the extraordinary serious matters raised in my correspondence to the Board in November and again in January are addressed and resolved at Saturday's meeting of the Board, LASA's public reputation for exemplary probity in corporate governance and

financial management stands to be wrecked in a gargantuan public scandal when my complaints reach open court.

Here I refer to my preliminary application to the South Gauteng High Court (Johannesburg) for which I've drawn draft papers for an order compelling Vedalankar to comply with PAIA by producing the records I've lawfully requested, or where they don't exist by confirming this on oath. Moreover I refer to my claim for appointment to the post for which I was selected and recommended, but which Vedalankar illegally aborted for political reasons, behind the scenes and completely off the record, and which she later tried covering up with a patently untruthful budgetary justification, contradicted by the very records she produced in January. Callously sacrificing two African lawyers on the way.

In his email to me on 24 January, Judge Mlambo told me he'd requested all Board members 'to ignore all communications from' me, notwithstanding the Board's statutory responsibilities to oversee and ensure the proper management of LASA by the Management Executive Committee and its compliance with the laws of the country that I'd highlighted.

Having regard to the extraordinarily serious nature of the matters I've raised – *so easily fixed* – I would suggest that you rather 'ignore' judge Mlambo's grossly improper request to 'ignore' my petitions pointing up the breakdown of proper corporate governance and Vedalankar's evident contempt for the Constitution and the law of our country and the fundamental constitutional rights of its people.

In the situation, I respectfully call on you as a Director to exercise your responsibility to LASA, to Parliament, and to the people of South Africa, and to move for the discussion by the Board of the grave matters I've brought to your attention so that they can be openly ventilated, debated, and resolved. Before this shambles spills into the open to the

considerable embarrassment of the Minister and Deputy Minister of Justice and Constitutional Development.

All relevant documents in this matter are accessible online at a private secure archive: www.tig.org.za/LASA; username: lasa; password: LASA2010.

Thank you for your attention.

Yours sincerely

ADV ANTHONY BRINK

CC:

The Minister of Justice and Constitutional Development, the Honourable Mr Jeffrey Radebe MP

The Deputy Minister of Justice and Constitutional Development, the Honourable Mr Andries Nel MP

Special Advisor to the Minister of Justice and Constitutional Development, Dr Jabulani Mzaliya

The Chairperson, Parliamentary Portfolio Committee on Justice and Constitutional Development, the Honourable Mr Lewellyn Landers MP

SIXTH 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. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act, in lying to the Minister of Justice and Constitutional Development (as he was then named; hereafter 'the Minister') in a 'confidential' report, submitted under a covering letter quoting a dishonest and disparaging email he'd sent me, to pervert the Minister's enquiry into my complaint repeated in my third petition to the respondent and his Board, which I'd copied to the Minister, that LASA CEO and information officer Vidhu Vedalankar had persistently and repeatedly illegally refused to comply with my requests made in August and December 2010 under the Promotion of Access to Information Act 2 of 2000 ('PAIA') for access to specified LASA records, and that she'd thereby violated my fundamental right to public body information entrenched by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution.

4. For concision, I'll refer to parts of my previous Complaints against the respondent, and I request that they be read as incorporated in this Sixth Complaint. So as to avoid interrupting the central narrative, I'll provide explanatory notes and traverse some collateral matters in an Endnote.

5. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Sixth Complaint.

6. As said in my Fifth Complaint, I petitioned the respondent and the Board for the third time on 25 February 2011 about information officer Vedalankar's repeated, persistent illegal total refusal to comply with my PAIA requests of August and December 2010. And, as anticipated by my ultimatum to the respondent in my second petition that should he fail to act on this grave unconstitutional illegality I'd petition the Minister and Parliament next, I copied my third petition to LASA's Executive Authority, the Minister; to his Special Advisor; to the Deputy Minister; and to the chairperson of the Justice Portfolio Committee of the National Assembly, charged with oversight over LASA by section 55(2) of the Constitution.

7. In contradistinction to the respondent, who ignored it as he said he would, the Minister and the chairperson of the Portfolio Committee immediately recognised the enormity and the gravity of my fundamental rights violation complaints repeated in my third petition, and initiated separate, independent enquiries into them.

8. Certainly, the chairperson of the Portfolio Committee did so, because I have a copy of his demand that the respondent report to him; but in the case of the Minister, I'm surmising he also demanded a report from the fact that the respondent made a report to him. Other possible reasons the respondent reported to the Minister are canvassed in my Endnote, Part One.

9. I'm unable to furnish the Judicial Service Commission with a copy of the Minister's demand, presuming he made it, for the reason stated in my Endnote, Part Five.

10. At all events, the respondent reported to the Minister on 9 March 2011. A copy of his 'Report to the Honourable Minister of Justice and Constitutional Development Re: Adv Anthony Brink' ('the report'), which he signed on that date, is annexed marked 'A'.

11. The report was ghost-written by LASA National Operations Executive Brian Nair. I treat this further in my Endnote, Part Two.

12. I'm similarly unable to furnish the Judicial Service Commission with a copy of the letter the respondent wrote the Minister covering his report, for the reason stated in my Endnote, Parts Three and Five.

13. Whereas the report contains no 'Confidential' information of any description, let alone as any law defines it, the header of every page strangely urged on the Minister this furtive classification for the concealment of the information it contained from anyone else. Like from me.

14. The respondent didn't copy his report to me, and it was only by chance that I learned of its existence from the chairperson of the Portfolio Committee some months later, in June 2011. How LASA then unlawfully withheld and concealed the report from me for years, despite my repeatedly made requests for it during pre-trial document discovery process in the Labour Court, and how I eventually fortuitously found it and obtained a copy, is recounted in my Endnote, Part Four.

15. Concerning my complaint in my third petition made yet again about Vedalankar's outrageous repeated illegal total refusals of my PAIA requests, and her persistent violation of my fundamental civil right to information held

by the state in the democratic era, the report stated unctuously and dishonestly:

> He is currently pursuing his requests for further information with the Human Rights Commission and has threatened litigation. We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA. … Notwithstanding the insulting and malicious tone of most of Adv Brink's correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. … As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

16. The respondent's report to the Minister was self-evidently calculated to pervert his enquiry by misleading him and inducing him to believe incorrectly that:

    16.1. my three complaints to the respondent in November 2010 and January and February 2011 about Vedalankar's illegal refusals of my PAIA requests were baseless;

16.2. she'd duly complied with my PAIA requests and had refused me nothing;

16.3. a few outstanding records that she'd agreed to provide me were still being gathered for delivery;

16.4. she'd duly furnished me with all the documents I needed to see for myself that the financial explanation she'd given for the abortion of my appointment was true;

16.5. I was mentally perturbed for not accepting her budgetary insufficiency explanation for the abortion of my appointment, and for complaining that the documents that she'd put up, and others I'd sourced, did not support and actually contradicted her claim that LASA's three remaining vacant critical Senior Litigator posts had been frozen indefinitely for want of sufficient budget from the Department to fill them;

16.6. I'd asked for and was wasting her time in seeking access to irrelevant documents that had no bearing on the abortion of my appointment;

16.7. my 'requests for further information' (in fact the same illegally refused information) that I was 'currently pursuing ... with the Human Rights Commission' were an equal waste of time;

16.8. my 'threatened litigation' to compel her compliance with my PAIA requests was meritless and bound to fail;

16.9. my correspondence with LASA's executive management and Board was 'insulting and malicious' and my 'conduct ... invasive' – which is to say, in repeatedly entreating the respondent and the Board to see to Vedalankar's compliance with my PAIA requests, and thereby respect my fundamental right to information held by the state guaranteed by

section 32(1)(a) in the Bill of Rights of the Constitution, I'd grievously misconducted myself and was continuing to do so; and,

16.10. in my communications with LASA's officers, as I was pursuing entirely misconceived claims and complaints, I was raving like a demented person.

17. All the respondent's claims and clear implications to the Minister in his report about my complaint, repeated again in my third petition, that Vedalankar had illegally and unconstitutionally refused to comply with my PAIA requests, were lies.

18. The respondent knew full well they were lies, because he'd received, had read, had well understood, and had very deliberately spurned my three petitions to him inter alia about Vedalankar's persistent, repeated illegal refusals of my PAIA requests and her ongoing violation of my fundamental right to information.

19. My first petition (annexure 'A' to my Second Complaint) had closely and precisely detailed the unlawfulness and dishonesty of her first refusal in October 2010. My second petition repeated my complaint about this. And my third petition (a) reiterated my complaint; (b) added another about Vedalankar's rejection of my second PAIA request in December 2010 on the false basis that it was a mere repetition of my first request in August; and (c) complained of her ongoing repeated illegal and unconstitutional refusal of my August request for a fresh bunch of plainly spurious, unlawful reasons.

20. That is, the respondent signed and submitted the report to the Minister well knowing – because I'd spelt it out to him in fine detail, which as a top, former appellate judge he well understood – that Vedalankar's repeated absolute refusal to open LASA's books to me was incontestably illegal and unconstitutional.

21. Besides the respondent's lies and false implications to dishonestly discredit and put down my complaint about Vedalankar's persistent illegal total refusal of my PAIA requests made in August and December 2010, the respondent's report contained a multitude of other lies, chiefly concerning (a) the strange, silent, long, unexplained delay in my appointment to the Pietermaritzburg Senior Litigator post for which I'd been selected and recommended, and then (b) when I pressed Vedalankar to finalise it eight months after my successful interview, the wholly off-the-record, unauthorised, illegal abortion of my recruitment to the post (still vacant, still funded to this day). My Eighth Complaint to follow will again expose and refute the respondent's lies in this regard. (After exposing and refuting these lies in my unusually detailed original statement of claim in the Labour Court in July 2011, the respondent's first lie to the Minister was recanted and retracted as a mere mistake in an affidavit made on his behalf, and his second lie was dropped and replaced with other totally different lies told in a 'Report to Board'.)

22. With the corrupt intention of prejudicing the Minister against me and my complaint, the better to pervert his enquiry into Vedalankar's persistent illegal and unconstitutional total refusals of my requests for access to LASA's public records, about which I'd repeatedly complained to him in my three petitions, the respondent defamed me in a letter covering his report by putting up or quoting his false and insulting late-night email sent me on 24 January 2010 (annexure 'C' to my First Complaint).

23. The 'attached email' mentioned in the last sentence of the penultimate paragraph of the report is undoubtedly this outrageous email, because the same sentence appears in the subsequent report to the Justice Portfolio Committee (to be annexed to and the subject of my Seventh Complaint to follow); and in his covering letter to the Committee (which I have) it pleased

the respondent to quote his dishonest and insulting email to me to the same corrupt end. (As said, I can't provide a copy for the reason stated in my Endnote, Part Five.)

24. Since the lies told in the respondent's report and covering letter were subscribed by a senior judge, the Minister naturally believed them to be true; concluded that my PAIA complaints were devoid of merit and that I was a personal and professional reprobate as the respondent alleged, even a bit of a nutcase not worth responding to; and closed the matter – as is evident from the fact that I got no reply from him.

25. The respondent thus succeeded in corruptly misleading the Minister, and thereby perverting his enquiry inter alia into my complaint – reiterated in my third petition to the respondent on 25 February 2011, copied to the Minister – that LASA CEO and information officer Vidhu Vedalankar had repeatedly and persistently illegally refused my duly made requests for access to LASA records and was thereby violating my fundamental right to public body information entrenched by section 32(1)(a) of the Bill of Rights in the Constitution.

26. By deceiving LASA's Executive Authority in this manner, the respondent again:

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

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

ENDNOTE

Part One

1. It may be that on seeing from the cc list at the foot of my third petition that I'd copied it to the Minister, the respondent decided to report to him defensively and pre-emptively, before being required to do so.

2. It's also possible that my third petition emailed on 25 February 2011 was discussed by the Board at its meeting held the following day, Saturday the 26th, and that it was resolved to report to the Minister about it.

3. (LASA's annual report for 2010/11 shows that a Board meeting was held in February 2011; and since such meetings are invariably held on the last Saturday of the month, it was almost certainly on the 26th.)

4. I don't know and therefore can't inform the Commission whether my third petition to the Board was discussed at its February 2011 meeting, because LASA is determinedly withholding the minute of it. After it was initially refused and then repeatedly promised over the years, then repeatedly not delivered, and despite my having twice sued for it, I've been unable to extract it from LASA. Part Five below explains why.

Part Two

1. Proving this, a screenshot of the PDF 'Author' properties of the report, recording 'Briann', is annexed marked 'B'.

2. At the trial of my labour claim, Nair initially falsely disputed that he wrote it, and I was persistently but unsuccessfully cross-examined on the issue. Finally appreciating that he was cornered by his electronic fingerprints left behind on the document – like a robber leaving his ID on the floor on his way out the bank – he admitted it in his evidence.

3. My stunning and frankly quite disorientating discovery of Nair's authorship of the report just days before the trial – as well as my approximately simultaneous discovery, from his distinctive, idiosyncratic broken syntactical tics (which at trial he admitted), that he'd ghost-written Vedalankar's October 2010 letter (which at trial he denied) refusing my August records request and feeding me the phony budgetary insufficiency excuse – led me to change my mind and conclude, wrongly it turned out, that Nair was principally responsible for the illegal abortion of my appointment; and I therefore decided to exclude the respondent from involvement in it at the presentation of my case.

4. I told the trial judge so at the outset before evidence, and he was evidently relieved by this major shift in the direction of my litigation, away from the respondent – cautioning me in his chambers to stick to it, shortly after I'd begun testifying, when I said I still had a lot more evidence to lead than just the essential facts noted in my Timeline: 'Don't make the mistake of throwing your net so far out that you catch more than you can bring in.' His meaning in the context was unmistakable: *Keep the respondent out of it, or your case before me is doomed*.

5. In his evidence, however, Nair claimed to have had very little to do with the abortion of my recruitment. Considered against his pathetically weak showing in the witness stand as I cross-examined him – after which the judge found he'd been 'not generous with the truth' on 'a number' of occasions – this particular exculpatory claim of his rang true to me, because it had become clear to me that he didn't have the clout on his own, as I'd wrongly believed, to interfere in the implementation of LASA's Strategic Plan 2009–12, inter alia to employ Senior Litigators; and in my petition for leave to appeal I again indicted the respondent's central involvement in the illegal abortion of my recruitment and the cover-up that followed, criminally escalated all the way to the National Assembly.

6. My reassessment was confirmed correct in April 2016 when I discovered the respondent's long professional relationship with my rival applicant for the post as a brother Labour Court judge. It's certain now that Nair was a patsy in the matter and a tool used by the respondent in the cover-up, both of the illegal abortion of my appointment and of the illegal refusal of my PAIA requests probing it.

<u>Part Three</u>

1. The respondent's covering letter to the Minister was among the requested records that LASA finally agreed at court in February 2016 to give me, but it reneged on its undertaking to do so, and answered my application to compel its compliance with its total surrender treaty in the manner described in Part Five below.

<u>Part Four</u>

1. In my agenda for the pre-trial conference held in October 2011 after the close of pleadings in my labour case, I requested a copy of the report, obviously needing it to present in evidence at the trial, and thereafter persistently sought it three more times: in my application to compel discovery (converted at my request into a pre-trial conference at court under judicial supervision); in my agenda for this pre-trial conference at court; and in my agenda for the second pre-trial conference at court (which I had to request when LASA reneged on its discovery undertakings minuted at the first one).

2. That is, LASA determinedly withheld the report from me for about two years for different, shifting reasons – until June 2013 when, at the second conference at court just weeks from trial, at which I was desperately trying to crow-bar records out of LASA that I needed for trial, I chanced to discover it among some other Microsoft Word documents in a folder on LASA's lead in-house attorney Thembile Mtati's laptop computer as we were searching together for a different document that I needed. No longer able to lie that he didn't have it, now that I'd seen it, Mtati agreed to email it to me, which he did, in PDF, a couple of days later.

Part Five

1. In the Eshowe Magistrates Court on 14 February 2016, LASA totally capitulated to my several applications to court, set down together, for orders compelling its compliance with my PAIA requests made in the period 2013–15, including for documents I'd tried but failed to disgorge via round after round of document discovery process in the Labour Court, and agreed at last to hand over all requested records that it had until then persistently illegally refused me just as I was on the point of moving for an order that they be surrendered.

2. Among these documents were the Minister's demand for a report and the respondent's covering letter for his report: items B38 and B39 on my Consolidated List of Requested Records.

3. Under section 23 of PAIA, Mtati alleged on oath concerning the Minister's demand: 'No such record exists. ... it cannot be located.' The statements on oath contradict each other, because the second implies the record does indeed exist but has been lost.

4. Concerning the respondent's covering letter to the Minister, Mtati swore: 'No such record exists. The officials specified were consulted and they have no recollection of the existence of the record.' The lie to this is given by the penultimate sentence in the report about 'the attached email'.

5. Concerning 'The minutes of all Board meetings held in the period October 2009 to February 2011', my item H15 Mtati swore: 'No such record could be found', i.e. the records exist but are lost.

6. Mtati's perjury is exposed by the facts that (a) despite this claim, he gave me other Board minutes, besides the February 2011 one which he continued illegally withholding; and
(b) LASA cannot possibly just lose the minutes of its Board meetings: Its annual report for 2010/11 states that they're filed with the secretariat in hard copy and stored electronically on the U drive.

7. When in May 2016 Mtati disregarded my plea that he deliver the documents he'd undertaken at court to deliver but had failed to, and to furnish a fully and properly compliant section 23 affidavit in regard to documents not furnished, and I applied:

   (a) to the same Magistrate's Court in July 2016 under the default clause of the settlement agreement to compel LASA's full and proper compliance with it; and,

   (b) to the High Court at Pietermaritzburg in October 2016 to compel LASA's compliance with two other PAIA requests duly made in 2016, both illegally totally refused, the one explicitly contemplated in the settlement agreement, the other for all legal cost vouchers reflecting the colossal waste of public money spent on illegally refusing my PAIA requests in 2013–15 and then unjustifiably opposing my applications to compel them all the way to argument,

   LASA responded, in a display of supreme contempt for its constitutional information transparency obligations, by applying to the High Court at Pietermaritzburg to have me stripped of my basic civil rights (i) to information and (ii) to enforce this right in a court of law, by having me banned as a vexatious litigant. The matter has been set down for 27 October 2017.

Signed at Mtunzini on 2 July 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 2 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

Name:

Address:

Capacity:

Confidential

REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Re: Adv Anthony Brink

1. Background

On 12 July 2010 Advocate Anthony Brink wrote to the CEO expressing his concern with regards the delays in the finalisation of the recruitment process for the senior litigator position at our Pietermaritzburg Justice Centre. Adv Brink was an applicant for this position and he was interviewed by our regional selection panel. He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted interview panel.

This nationally constituted panel did not however sit to consider applicants recommended for the second stage of interviews. Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts. Adv Brink was subsequently informed of this decision.

This resulted in him generating numerous requests for information in terms of PAIA, arising from his discontent with not being appointed to this post. He also wrote several lengthy letters to various individual and organisations, including to the Chairperson and Board of Directors of Legal Aid SA. In his letter to the Board, Adv Brink also made allegations relating to multiple contraventions of the PFMA, including the presentation of false financial information in our 2009/10 Annual Report.

2. Adv Brink's discontent with non-appointment to Senior Litigator Position

From the many letters received from Adv Brink, it is clear that he believes that he was not appointed because of a racial and political bias against him resulting in a conspiracy to exclude him from Legal Aid SA. The conspiracy he alleges relates to his political views against the use of anti-retro viral drugs for HIV AIDS and also discrimination against him as a white male. He incorrectly believes that the second round of interviews was simply a confirmation process where he appears before the Chairperson of our Board who must ratify his appointment. This however is incorrect. All executives involved in this matter have confirmed that this individual was not known to them, nor his political views or publications, and that the first time they came across his name was when his letter of complaint about his non-appointment was received.

The reason for freezing of senior litigator posts was that Legal Aid SA was going through a very uncertain period with regards the provision of funding by the DoJ to finance our OSD phase 1 implementation, which was resulting in an unbalanced budget for 2010/11. As a result various options to make up for the shortfall in our funding, including the freezing of posts, were considered. Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time, as well as contingency measures that we were contemplating to cater for this, including the freezing of many positions, were shared with Adv Brink in response to his request for information in terms of PAIA.

Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he remains convinced that there is a conspiracy against him. Legal Aid SA, has under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views. He is currently pursuing his requests for further information with the Human Rights Commission and has threatened litigation. We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA.

3. Allegations of multiple contraventions of the PFMA

In Adv Brink's November correspondence to the Board Chairperson and members of the Board, he draws attention to the fact that Table 3 in Section 4.1 at page 106 of Legal Aid SA's Annual Report for 2009/10,relating to executives remuneration, contains incorrect column totals for basic salaries, total bonuses and incentives, expenses/allowances and other unspecified payments.

An examination of this table has revealed that these four column totals are indeed incorrect, although the last column relating to total expenditure is correct. It must also be noted that the row totals which show individual executives remuneration is correct. We have since been able to determine that the source of this problem was caused by human error at the time when the annual report was being prepared for printing.

This table is however not a part of the Annual Financial Statements (AFS) nor is it material to the AFS presented later in that section. They therefore do not alter any of the AFS, which do not have any errors. These are the AFS that were audited by the Auditor-General and found to 'present fairly, in all material respects, the financial position of Legal Aid SA as at 31 March 2010…".

The executive's remuneration is also referred to in Note 18.2 of the AFS (page 145 of the Annual Report) in which the total per executive as well as the overall total is indicated. The total per executive as well as the overall total in Note 18.2 of the AFS is the same as the row totals and overall total in Table 3. This confirms that the material amount included in the AFS was not incorrect and therefore our AFS 2009/10 remain correct.

Given that the AFS remain correct and that the error in Table 3 is not material to the AFS, the allegations by Brink of 'false and misleading figures' being a serious criminal offence and that our Annual Financial Statements in our Annual Report are not a 'true and fair representation' are unfounded.

4. Conclusion

Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems in this matter that Adv Brink would be well advised to approach the courts on

this matter of his alleged non appointment. We are however comfortable that we would be able to show to a court of law that our decisions taken on this matter made good business sense and was in the best interests of our organisation at the time. As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

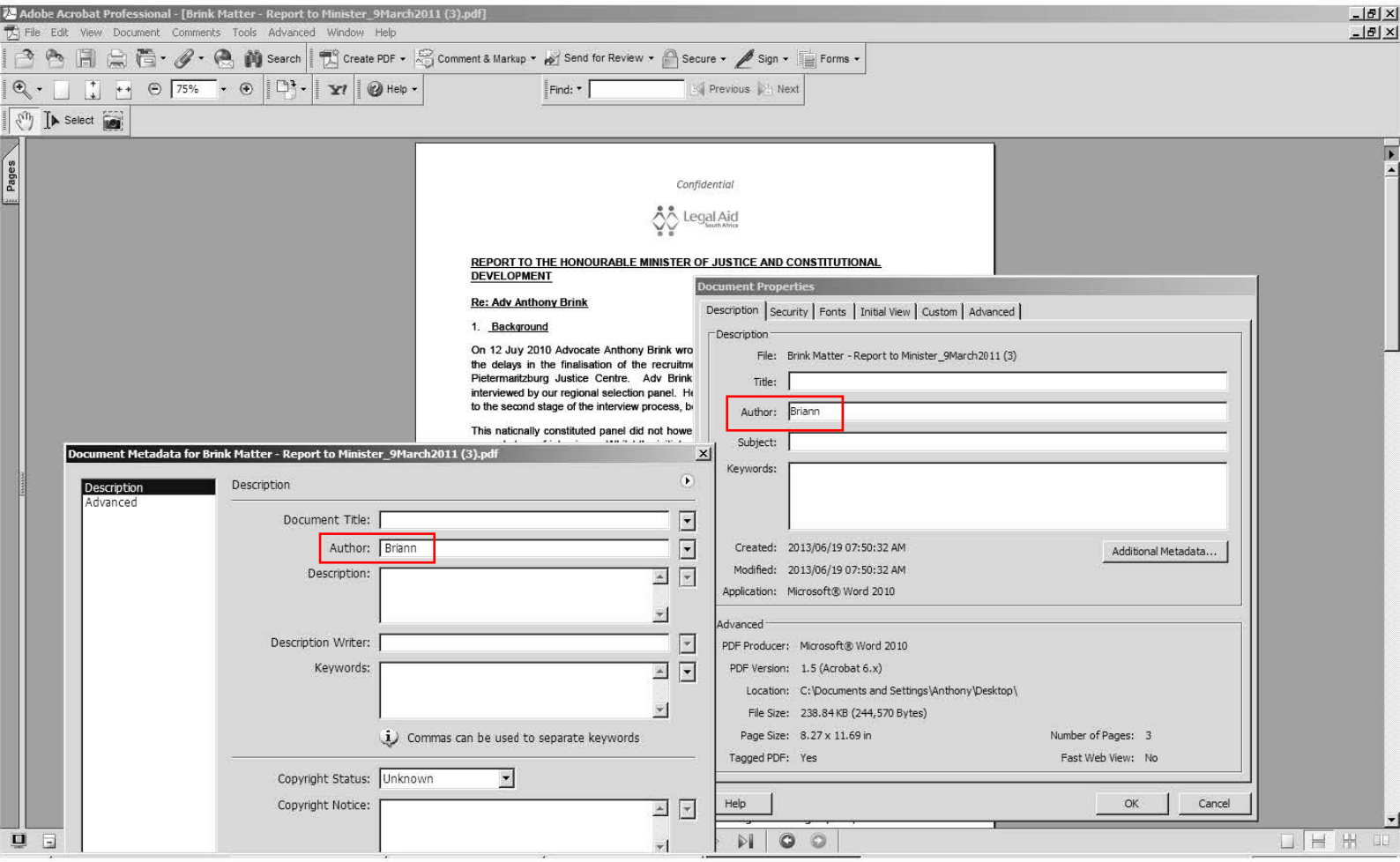
This report is sent to the Ministry to provide the necessary background to this matter as well as to contextualise and clarify the allegations by Brink re contravention of the PFMA and provides the necessary reassurance that in fact the PFMA has not been contravened.

Judge D Mlambo

Chairperson

Legal Aid SA

9 March 2011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Legal Aid South Africa
REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
Re: Adv Anthony Brink
1. Background
On 12 July 2010 Advocate Anthony Brink wro
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Pietermaritzburg Justice Centre. Adv Brink
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Location: C:\Documents and Settings\Anthony\Desktop\
File Size: 238.84 KB (244,570 Bytes)
Page Size: 8.27 x 11.69 in
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SEVENTH 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. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act, in lying to the Portfolio Committee of the National Assembly on Justice and Constitutional Development (as it was then called; hereinafter 'the Committee') in a 'confidential' report, under a covering letter quoting a dishonest and disparaging email he'd sent me, to pervert the Committee's enquiry into my complaint repeated in my third petition to the respondent, which I'd copied to the Committee, that LASA CEO and information officer Vidhu Vedalankar had persistently and repeatedly illegally refused to comply with my requests in August and December 2010 under the Promotion of Access to Information Act 2 of 2000 ('PAIA') for access to specified LASA records, and that she'd thereby violated my fundamental right to public body information entrenched by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution.

4. By perverting the Committee's enquiry with his lies, the respondent:

   4.1. obstructed and successfully defeated the National Assembly's policing duty imposed by section 55(2)(b)(ii) of the Constitution 'to maintain oversight of ... organ[s] of state', and thereby prevented it from holding LASA's most senior public officers to account for their repeated and persistent fundamental right violations – an extraordinarily serious matter after apartheid; and,

   4.2. 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.

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

6. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to deal with this Seventh Complaint.

7. Section 56(d) of the Constitution provides that 'The National Assembly or any of its committees may ... receive, petitions, representations or

submissions from any interested persons' – such as my third petition to the respondent and the Board on 25 February 2011, copied to the Committee, protesting Vedalankar's repeated illegal total refusals of my PAIA requests and pleading for their intervention and remediation. (I detail this in paragraphs 6–9 of my Fifth Complaint, to which my third petition is annexure 'A'.)

8. Section 56(b) of the Constitution provides that 'The National Assembly or any of its committees may ... require any person to report to it' – and duly acting under this constitutional power, after reading my third petition to the respondent, which I copied to the chairperson of the Committee, the latter wrote to the respondent on 23 March 2011 to 'ask you, your Board and the [Legal Aid] Board's[1] CEO for a formal response to these allegations please' concerning the latter's 'refusal to comply with the Promotion of Access to Information Act amongst other things.' A copy of the Committee chairperson's demand for a report about this from the respondent is annexed marked 'A'.

    1. The 'Legal Aid Board' to which the Committee chairperson referred, and explicitly named as such in the inside address of his letter, was LASA's previous name.

9. As just mentioned, the Committee specifically required 'a formal response to these allegations' from the respondent, from the Board, and from Vedalankar. Disobeying his clear instruction to obtain it, however, the respondent didn't seek the Board's response to my fundamental rights violation complaints protested in my three petitions; and the likely reason he didn't do so is that he didn't want the Board discussing the grave illegality and constitutional rights violations in which he was personally and directly complicit.

10. The respondent responded the Committee chairperson by letter on 22 June 2011:

> Attached please find a report on this matter which was submitted to the Minister of Justice and Constitutional Development in March 2011 and which has since been updated. In summary I wish to reiterate what I said to Mr Brink when he wrote and complained to me: [The respondent here quoted his untruthful and abusive email to me of 24 January 2011, annexure 'C' to my First Complaint.] I trust that the attached report and this letter clarify the matter concerning Mr Brink.

11. A copy of the respondent's covering letter is annexed marked 'B'; and a copy of his 'updated' report is annexed marked 'C'.

12. By quoting to the Committee his lie told me in his January 2011 email that he still saw nothing remiss in Vedalankar's illegal and unconstitutional refusals of my PAIA requests made in August and December 2010, notwithstanding my detailed complaints about this in my repeated petitions to him, the respondent thereby repeated this lie to the Committee, and thus lied to it with the dishonest object of discrediting my entirely proper, duly made complaint to him in my third petition about Vedalankar's ongoing violation of my fundamental right to information.

13. And by quoting to the Committee his false charges against me of personal and professional misconduct, the respondent defamed me with the dishonest object of misleading the Committee by discrediting me personally.

14. The respondent's corrupt intention in repeating his said lie and in defaming me to the Committee was to prejudice it against me and my complaint, the better to pervert its enquiry inter alia into Vedalankar's repeated illegal and unconstitutional refusals of my duly made requests for sight of LASA's public records, about which I'd repeatedly protested to the respondent and sought his intervention to remedy it.

15. By the time the respondent wrote and reported to the Committee in June 2011, three months after his report to the Minister in March 2011:

    15.1. I'd made a third PAIA request on 9 March 2011, testing Vedalankar's stories told me in her 28 January 2011 letter, in which she'd again refused my first PAIA request made in August 2010; and,

    15.2. a month later on 8 April 2011, deputy information officer Brian Nair had responded to my third PAIA request, and at the same time had revisited my August and December 2010 PAIA requests, which on 3 March 2011 I'd narrowed and reduced to focus on testing the specific budgetary excuse for cancelling my appointment that Vedalankar had cooked up and fed me in her October 2010 letter and reheated in her January 2011 one.

        1. Nair persisted in unlawfully refusing most of my record requests on factually and legally spurious grounds (the South African Human Rights Commission ('SAHRC') later agreed, and LASA itself conceded; see below), but at last he furnished an affidavit under section 23 of PAIA, certifying that certain requested records didn't exist – records that would have existed had I been told the truth. Crucially, he confirmed that no record whatsoever existed to support Vedalankar's brazen, ridiculous lie to me in October 2010, repeated in January 2011 and contradicted by the very records she put up 'to demonstrate' this, that 'in July 2010' she and Nair had 'immediately' frozen LASA's remaining three vacant critical Senior Litigator posts, after suitable candidates had been selected and recommended for them, for lack, 'due to the recession', of sufficient budget provided by the Department to fill them. Refuting Vedalankar's blatant lie to me, LASA's Senior Litigator salary budget applications for five years from 2010/11 to 2015/16, which I requested from the Department in 2015 (after LASA had, as usual, illegally refused me access to such information requested for one financial year) prove the posts have always been and remain fully budgeted. Also, by 2010 the global 'recession' of 2008 was long over.

16. The respondent's 'updated' report to the Committee repeated the lies he told the Minister about the handling of my PAIA requests, and told him two more new lies about this.

17. The original lies told to the Minister to put down my complaints about Vedalankar's persistent illegal refusals of my PAIA requests, which the respondent repeated to the Committee, are quoted in paragraph 14 of my Sixth Complaint, and are glossed in its paragraph 15.

18. Concerning PAIA, the report to the Committee contained the fresh allegation (among other lies unrelated to PAIA): 'We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act.'

19. In truth and in fact, and contrary to this glib, smooth-sounding criminal lie told to misinform and mislead the Committee, and to conceal from it the fact that Vedalankar and Nair had persistently and repeatedly illegally refused to comply with my duly made PAIA requests in violation of my fundamental right to information:

    19.1. my main PAIA request, my first one in August 2010, had been ignored in the 30 calendar days allowed by section 25 of the Act to respond to it – a deemed refusal under section 27; then expressly refused in October 2010 for unlawful reasons, three weeks outside 'the timeframe stipulated in the Act'; then refused again three months later in January 2011 for different unlawful reasons; and then refused again in April 2011 three months after that for more unlawful reasons;

    19.2. my second PAIA request in December 2010 had been timeously responded to in January 2011, but also unlawfully refused in toto, on the false basis that it was a mere repetition of my first August request; and,

19.3. my third PAIA request in March 2011 was similarly responded to in April 2011 within the prescribed timeframe, but was unlawfully substantially refused (as the SAHRC confirmed and LASA conceded, both quoted below doing so).

20. Again, like his false report to the Minister, the respondent's 'updated' report to the Committee contained no indication that LASA was persistently and repeatedly illegally denying me access to LASA's business records that I'd duly requested.

21. Quite the opposite, to falsely and deceptively imply to the Committee that my PAIA requests had been duly complied with, the respondent's report to it made the meretricious new statement, true on its face but false in substance: 'We copied these responses to the SA Human Rights Commission to confirm our compliance with PAIA.'

22. To the contrary, four days later on 26 June 2011, the SAHRC disconfirmed LASA's 'compliance with PAIA', as the respondent had falsely alleged to the Committee. Responding to my 'Second Memorandum' that I'd submitted, showing the factual and legal vacancy of Nair's reasons for withholding records I'd duly requested, the SAHRC concurred: 'A cogent opinion demonstrating the unlawfulness of the action of the deputy information officer is made in your memorandum.'

23. The SAHRC, together with ODAC (the Open Democracy Advice Centre, a PAIA watchdog NGO), then stepped in to try remedying the crisis (the persistent, repeated violation of the Constitution by LASA's top two management executives Vedalankar and Nair) and on 6 October 2011 held a special remedial class for the clueless 'key personnel' in LASA's national office, during which extra lesson they admitted that 'they had previously been misapplying the provisions of PAIA in certain instances' – i.e. to my requests, the only ones refused – and had 'identified [this] misinterpretation

and misapplication … as of high risk to LASA ... [They] reacted to the reporting of LASA as non-compliant to Parliament with concern'. A copy of the SAHRC's workshop report recording this is annexed marked 'D'.

24. Whereas at the trial of my labour claim in mid-2013 Nair finally admitted he'd ghost-written the report to the Minister, as proved by the 'Author' properties of the document given me in PDF (discussed and shown in paragraphs 1 and 2 of Part Two of the Endnote to my Sixth Complaint), he denied having 'updated' it for the Committee by adding any further information to it, and said could 'only assume the Judge personally wrote that' – although later he wasn't sure: he couldn't say 'If the Judge wrote it himself', implying it could have been Vedalankar to whom he'd passed the original report he'd drawn for the respondent to sign and give the Minister. Material excerpts from the trial record in this regard are annexed marked 'E'.

25. As with his report to the Minister, the respondent's 'updated' report to the Committee was clearly calculated to pervert its enquiry, by misleading it and inducing it to believe incorrectly that:

    25.1. my three complaints to the respondent in November and December 2010 and in February 2011 about Vedalankar's illegal refusals of my PAIA requests were baseless;

    25.2. Vedalankar and Nair had duly complied with my PAIA requests and had refused me nothing;

    25.3. a few outstanding records that they'd agreed to provide me were still being gathered for delivery;

    25.4. they'd duly responded to all my PAIA requests timeously under the Act;

25.5. they'd duly furnished me with all the documents I needed to see for myself that the financial insufficiency explanation Vedalankar had given me for the abortion of my appointment was true;

25.6. I was mentally perturbed (a) for not accepting Vedalankar's budgetary explanation for the abortion of my appointment (which in an affidavit confirming Nair's section 23 affidavit in April 2011 she falsely confirmed as true under penalty of perjury, as did Nair, who later went on to tell several other completely different stories, also under oath), and (b) for complaining that the documents that she'd put up, and others I'd sourced, did not support and quite obviously contradicted her claim that LASA's three remaining vacant critical Senior Litigator posts had been frozen indefinitely for want of sufficient budget to fill them;

25.7. I'd asked for and was wasting Vedalankar's and Nair's time in seeking access to irrelevant documents that had no bearing on the abortion of my appointment;

25.8. my 'requests for further information' (in fact the same illegally denied information) that I was 'currently pursuing ... with the Human Rights Commission' were an equal waste of time;

25.9. my 'threatened litigation' to compel the production of the records I'd requested was meritless and bound to fail;

25.10. my correspondence with LASA's executive management and Board was 'insulting and malicious' and my 'conduct ... invasive' – which is to say, in repeatedly entreating the respondent and the Board to see to Vedalankar's compliance with my PAIA requests, and thereby respect my fundamental right to information held by the state guaranteed by

section 32(1)(a) in the Bill of Rights of the Constitution, I'd grievously misconducted myself and was continuing to do so; and,

25.11. in my communications with LASA's officers, as I was pursuing entirely misconceived claims and complaints, I was raving like a demented person.

26. All the respondent's claims and clear implications to the Committee in his report about my complaint, repeated again in my third petition, that Vedalankar had illegally and unconstitutionally refused to comply with my PAIA requests, were lies.

27. The respondent well knew it, because, as said in paragraphs 17–19 of my Sixth Complaint, he'd received, had read, had well understood, and had very deliberately spurned my three petitions to him about Vedalankar's obviously illegal and unconstitutional refusals of my PAIA requests and her ongoing violation of my fundamental right to information.

28. And as said in my Second Complaint, the respondent cannot reasonably and credibly answer as a senior judge that he was so ignorant of a pivotal, core fundamental civil right entrenched in our democracy by the Constitution – essential, the courts have repeatedly emphasized, for the enforcement and protection of other rights – that my repeated petitions to him, especially my first one, finely detailing Vedalankar's illegal refusal to allow me access to LASA records that I wanted to examine, went right over his head, because he couldn't and didn't understand what I was complaining about.

29. The fact is, the respondent understood perfectly that I was being illegally denied duly requested records in violation of my fundamental constitutional right to information. And he was quite happy about this, because what he wanted was that I should just push off, and stop:

29.1. requesting documentary information about why my appointment to LASA's top legal professional post in Kwazulu-Natal had been cancelled off the record;

29.2. testing with PAIA the already obviously false say-so information Vedalankar had given me about it in her letters refusing me access to the records I'd requested; and,

29.3. investigating with PAIA the true reason my recruitment had been aborted.

30. Nor can the respondent reasonably and credibly contend that in repeating to the Committee the several lies he told the Minister, plus two more new ones told the Committee, all to the effect that my PAIA requests had been lawfully handled and acceded to, he was deferring to and relying on the professional legal advice of a junior advocate; which is to say, in the language of the Nkandla judgment, 'He might have been following wrong legal advice and therefore acting in good faith'.

31. Paragraph 75.2 of the respondent's answering affidavit in my application for leave to subpoena him for cross-examination at the trial of my labour claim on the reason he dismissed my petitions and lied to the Minister and Portfolio Committee, made on his behalf by LASA's lead in-house attorney Corporate Services Executive Thembile Mtati, following 'consultations' with him, records that counsel in private practice was briefed to opine on how my PAIA requests should be answered, 'to be safe', and that 'Counsel advised that limited access to information be given to the Applicant.' A material excerpt of this affidavit is annexed marked 'F'. (Its title and signature pages are part of annexure 'A' to my First Complaint.)

32. Nair's responses to my PAIA requests in April 2011 show that this young good-news lawyer's advice to LASA was that besides providing me with a

long overdue section 23 affidavit certifying non-existent records, I should be given nothing else; because for various plainly spurious reasons Nair persisted in illegally refusing my requests.

33. As said, the SAHRC confirmed this illegality soon afterwards in June 2011; and in October 2011, LASA admitted it: The SAHRC's report of the PAIA workshop (annexure 'D') records that LASA's abysmally ignorant head office 'personnel from the Legal Department' repeatedly conceded their 'lack of application based knowledge' and 'challenges complying with PAIA ... Most participants had no prior knowledge of PAIA' and 'were a little overwhelmed by the requirements of the legislation', which 'led to inconsistent application in the organisation'. So they 'were able to gain value from the training. They have as a result undertaken to review decisions which may not have had justification in terms of PAIA' – namely Vedalankar's and Nair's illegal refusals of my PAIA requests, since only mine were refused. (How the special remedial lesson was completely lost on LASA's top attorneys; how they reneged on their undertaking to review the illegal refusals of my PAIA requests; and how my subsequent PAIA requests continued being illegally refused is described in my Endnote.)

34. It bears mentioning that unlike the respondent, Satchwell J in the Gauteng Division of the High Court, under his leadership as head of that court, but following a very different, correctly dissenting line on PAIA, has sharply deplored the deliberate employment of inexperienced and incompetent junior lawyers by public bodies to obstruct access to their public records duly requested for the purpose of exposing evidence of their corruption. A news report of this is annexed marked 'G'.

35. The respondent thus 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) yet again.

36. Since the lies told in the report and covering letter were subscribed by a senior judge, the chairperson of the Committee naturally believed them to be true; concluded that my PAIA complaints were devoid of merit and that I was a personal and professional reprobate as the respondent alleged; and fairly wrote back to me on 29 June 2011: 'In light of the facts set out in Justice Mlambo's response, I now regard this matter as closed.' A copy of his letter is annexed marked 'H'.

37. The respondent thus succeeded in corruptly misleading the Committee, and thereby perverting its enquiry inter alia into my complaint – reiterated in my third petition to him on 25 February 2011, copied to the Committee – that LASA CEO and information officer Vidhu Vedalankar had repeatedly and persistently illegally refused to comply with my duly made requests for access to LASA's records, and was thereby violating my fundamental right to public body information entrenched by section 32(1)(a) of the Bill of Rights in the Constitution.

38. Plainly the reason the chairperson of the Committee decided to close his enquiry is that it was unimaginable to him that 'the facts set out in Justice Mlambo's response' – namely his covering letter and report – were actually lies told to mislead him, so as to pervert the Committee's enquiry and defeat its oversight function over LASA under section 55(2) of the Constitution, in:

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

    38.2. manifold criminal contraventions of section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, cited in paragraph 4.2 above; and,

38.3. violation of the respondent's judicial oath to 'uphold and protect the Constitution and the human rights entrenched in it' in that he deliberately 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) in twice colluding in, twice conniving at, and then twice covering up Vedalankar's illegal and unconstitutional refusals of my PAIA requests with the object of: (a) obstructing my access to records testing the lying budgetary insufficiency story she'd eventually told me, under rising pressure to account, eleven months after my successful interview for the Pietermaritzburg Senior Litigator post, as the reason my recruitment had been aborted; and,
(b) concealing the true reason for it, the respondent's wish that his former long-time judicial colleague in the Labour Court be appointed to the post for which I'd been recommended instead of me.

ENDNOTE

The SAHRC's tutorial for LASA's head office lawyers on how PAIA works entirely failed, and their undertaking to the SAHRC was promptly dishonoured: Not only were the illegal refusals of my requests not reviewed as promised, LASA continued illegally refusing virtually all my further PAIA requests made after the trial of my labour claim in mid-2013, inter alia testing the veracity of some surprising, unexpected, brand-new stories Nair told in his evidence, one of them radically contradicting and changing the previous story Vedalankar had told me twice in her letters of October 2010 and January 2011, and then confirmed on affidavit in April 2011, just as he did, namely that she and he had frozen LASA's three remaining vacant Senior Litigator posts at Pietermaritzburg, Durban and Mthatha 'immediately ... in July 2010' for want of sufficient budget from the Department to fill them 'due to the recession'.

Flatly contradicting the story he'd sworn to in April 2011, Nair testified at trial in mid-2013 that the Mthatha post was not frozen for financial reasons or at all. His new story in court was that despite his repeated appeals to Vedalankar, she'd refused to approve the abolition of the redundant Kimberley post and the creation of the sorely needed Mthatha post – *after* the new Mthatha post had been created, advertised, interviewed for, and a suitable candidate selected and recommended for it. An obvious new lie, told on oath.

One of junior counsel's fee-notes, his fourth in the matter of my PAIA requests, reflects a charge of R159 600 for spending, he claimed, eight days in the period 11–31 March 2011 'researching the law' and writing his advice, based on his new learning about PAIA, of which he'd previously had zero, into a 'memo'.

After Corporate Legal Manager Solly Sekgota 'Recommended for payment' this magnificent charge for advising LASA to continue illegally refusing me access to the records I'd duly requested, rather than just handing them over as the Constitution and PAIA required, and junior counsel was paid his fabulous fee, LASA strangely presented me with this bill for reimbursement. A copy is annexed marked 'J'.

Under PAIA I duly requested copies of all this junior counsel's other fee-notes reflecting his charges – likely millions of rands – for his services to LASA, from early 2011 on, in recommending that my PAIA requests be illegally refused and that my several applications to court to compel LASA's delivery of duly requested records be opposed with many lever-arch files full of worthless papers he drew and ultimately abandoned at the point of argument in court after reading my pre-trial conference agenda taking them to pieces.

When I stated my intention to pass these invoices on to the Auditor General for the personal recovery of this massive public revenue squandered on violating my constitutional rights – 'irregular and fruitless and wasteful expenditure' prohibited by section 38(1)(1)(c)(ii) of the Public Finance Management Act 1 of 1999 – LASA's head office executives anxiously changed their mind about showing me any more of them; refused to hand them over; is now hiding them from me and the Auditor General:

Vedalankar authorised Mtati to answer my application brought in the Pietermaritzburg High Court in October 2016 to compel their production (case 1118/16) – and to answer my application brought in the Magistrate's Court in July 2016 to compel LASA's full and proper compliance with its obligations under its settlement agreement in February 2016 to hand over all requested records or duly certify any that don't exist – with an application of its own three weeks later (case 12124/16), at further enormous wasted cost (at least 'R350 000', it was said in the Magistrate's Court) to have me banned as a vexatious litigant.

Such is the fantastic corruption of this organisation, descending to the standard last resort the world over in a major cover-up: seeking a court order to neutralise its investigator or whistleblower.

The respondent is well aware of this latest corrupt gambit to block my access to the records I've duly requested, including records LASA formally agreed in writing to give me, because all major litigation by and against LASA is reported to the Board.

Not having queried it, and not having called it out for the outrageous abuse of court process that it is, the respondent is evidently happy with executive management's move to block me in this way.

Investigative journalist Andrew Jennings, who exposed the massive corruption at the top of FIFA, explains why: 'I'm a document hound. If I've got your documents, I know all about you. ... You just find some disgraceful, disgustingly corrupt people and you work on it! ... Our job is to investigate, acquire evidence.' A material excerpt of a Washington Post article quoting him is annexed marked 'K'.

Signed at Mtunzini on 2 July 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 2 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

Name:

Address:

Capacity:

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Ref.: Brink(1)

Judge D. Mlambo
Chairperson: Legal Aid Board of S.A.
P/Bag X76
BRAAMFONTEIN 2017

23 March 2011

Dear Judge Mlambo

ADVOCATE ANTHONY BRINK

Attached for your attention please find copies of correspondence relating to a complaint comprising allegations made against the Legal Aid Board and it's CEO, Ms. Vidhu Vedalanker, with specific reference to his recruitment as Senior Litigator in Pietermaritzburg and refusal to comply with the provisions of the Promotion of Access to Information Act, amongst other things.

Having received Advocate Brink's letter you will understand that I must ask you, your Board and the Board's CEO for a formal response to these allegations, please.

Thank you.

Yours faithfully

_____

LUWELLYN LANDERS MP
Chairperson:
Justice Portfolio Committee,
National Assembly

Legal Aid South Africa

National Office
29 De Beer Street
Braamfontein
2017
Tel: 011-877-2055
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22 June 2011

Mr L Landers MP
Chairperson Justice Portfolio Committee
National Assembly
P O Box 15
Cape Town
8000

Dear Mr Landers

Adv A Brink

Your letter dated 23 March 2011 on the above matter refers. Please accept my sincere apology for the delay in responding to your letter. Attached please find a report on this matter which was submitted to the Minister of Justice and Constitutional Development in March 2011 and which has since been updated. In summary I wish to reiterate what I said to Mr Brink when he wrote and complained to me :

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

I trust that the attached report and this letter clarify the matter concerning Mr Brink.

Yours faithfully

Judge Dumisani Mlambo
Chairperson
Legal Aid South Africa

Confidential

Legal Aid South Africa

REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Re: Adv Anthony Brink

1. Background

On 12 July 2010 Advocate Anthony Brink wrote to the CEO expressing his concern with regards the delays in the finalisation of the recruitment process for the senior litigator position at our Pietermaritzburg Justice Centre. Adv Brink was an applicant for this position and he was interviewed by our regional selection panel. He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted interview panel.

This nationally constituted panel did not however sit to consider applicants recommended for the second stage of interviews. Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts. Adv Brink was subsequently informed of this decision.

This resulted in him generating numerous requests for information in terms of PAIA, arising from his discontent with not being appointed to this post. He also wrote several lengthy letters to various individuals and organisations, including to the Chairperson and other Directors of the Board of Legal Aid SA. In his letter to the Board, Adv Brink also made allegations relating to multiple contraventions of the PFMA, including the presentation of false financial information in our 2009/10 Annual Report.

2. Adv Brink's discontent with non-appointment to Senior Litigator Position

From the many letters received from Adv Brink, it is clear that he believes that he was not appointed because of a racial and political bias against him resulting in a conspiracy to exclude him from Legal Aid SA. The conspiracy he alleges relates to his political views against the use of anti-retro viral drugs for HIV AIDS and also discrimination against him as a white male. He incorrectly believes that the second round of interviews was simply a confirmation process where he appears before the Chairperson of our Board who must ratify his appointment. This however is incorrect. All executives involved in this matter have confirmed that this individual was not known to them, nor his political views or publications, and that the first time they came across his name was when his letter of complaint about his non-appointment was received.

The reason for freezing of senior litigator posts was that Legal Aid SA was going through a very uncertain period with regards the provision of funding by the DoJ to finance our OSD phase 1 implementation, which was resulting in an unbalanced budget for 2010/11. As a result various options to make up for the shortfall in our funding, including the freezing of posts, were considered. Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time, as well as contingency measures that we were contemplating to cater for this, including

the freezing of many positions, were shared with Adv Brink in response to his request for information in terms of PAIA.

Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he remains convinced that there is a conspiracy against him. Legal Aid SA, has under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views. He is currently pursuing his requests for further information with the Human Rights Commission and has threatened litigation. We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA. We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act. We copied these responses to the SA Human Rights Commission to confirm our compliance with PAIA.

Adv A Brink subsequently referred a dispute against Legal Aid SA in the CCMA on 20 April 2011. He alleged unfair discrimination on the basis of political conscience, belief and activism on the issue of HIV Aids and to a lesser extent race. He further contended that he held the belief that this alleged unfair discrimination resulted in him not being appointed to the position of Senior Litigator at Legal Aid SA – a position for which he applied and was interviewed. The relief he sought was monetary in the amount of R55 000 per month from January 2011 (he avers to have become aware of the alleged discrimination at this point) to the date of the conciliation which totalled R220 000. The dispute could not be resolved as Legal Aid SA submitted that it believed that it had not directly or indirectly discriminated unfairly against Mr Brink on the basis averred by him or on any other basis. A certificate of non-resolution was thus issued by the CCMA on 20 April 2011 which paved the way for Mr Brink to refer the dispute for adjudication to the Labour Court, a route he has to date not pursued.

3. <u>Allegations of multiple contraventions of the PFMA</u>

In Adv Brink's November correspondence to the Board Chairperson and members of the Board, he draws attention to the fact that Table 3 in Section 4.1 at page 106 of Legal Aid SA's Annual Report for 2009/10,relating to executives remuneration, contains incorrect column totals for basic salaries, bonuses, incentives, expenses/allowances and other unspecified payments.

An examination of this table has revealed that these four column totals are indeed incorrect, although the last column relating to total expenditure is correct. It must also be noted that the row totals which show individual executives remuneration is correct. We have since been able to determine that the source of this problem was caused by human error at the time when the annual report was being prepared for printing.

This table is however not a part of the Annual Financial Statements (AFS) nor is it material to the AFS presented later in that section. They therefore do not alter any of the AFS, which do not have any errors. These are the AFS that were audited by the Auditor-General and found to 'present fairly, in all material respects, the financial position of Legal Aid SA as at 31 March 2010…".

The executives' remuneration is also referred to in Note 18.2 of the AFS (page 145 of the Annual Report) in which the total per executive as well as the overall total is indicated. The total per

executive as well as the overall total in Note 18.2 of the AFS is the same as the row totals and overall total in Table 3. This confirms that the material amount included in the AFS was not incorrect and therefore our AFS 2009/10 remain correct.

Given that the AFS remain correct and that the error in Table 3 is not material to the AFS, the allegations by Brink of 'false and misleading figures' being a serious criminal offence and that our Annual Financial Statements in our Annual Report are not a 'true and fair representation' are unfounded.

4. Conclusion

Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems in this matter that Adv Brink would be well advised to approach the courts to ventilate his issues. We are however comfortable that we would be able to show to a court of law that the decisions we took on this matter made good business sense and were in the best interests of our organisation at the time. As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

This report is sent to the Ministry to provide the necessary background to this matter as well as to contextualise and clarify the allegations by Mr Brink re contravention of the PFMA and provides the necessary reassurance that no contravention occurred in this regard.

Judge D Mlambo

Chairperson

Legal Aid SA

9 March 2011

Updated with sections in blue font

22 June 2011

Workshop Report: PAIA

Date of Event: 06.10.2011

Venue: Braampark, Forum III, Braamfontien

Body Trained: Legal Aid South Africa

Contact Person: Ricardo

Number of Participants: 20

Materials Distributed: Handbooks, PAIA legislation and Frontline Training Manual and ODAC information packs

INTRODUCTION

The Commission and the Open Democracy Advice Centre (ODAC) co-hosted training for personnel of Legal Aid South Africa (LASA). The Rationale for the training rested on the critical services provided by the board to vulnerable groups in society and to ensure that personnel of the board had an awareness of the legislation to increase their resource base, the quality of service and advise provided to their stakeholders. It is has also been deemed important on the basis of the Commission's monitoring of LASA institutional compliance with PAIA and the need to ensure that clients who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants with recognised rights.

A number of personnel were identified for training, including personnel ranging from the head of the legal department, internal audit, national operations, call centre as well as corporate services.

LASA has experienced an increased number of requests over the past financial year. The status and contestation with some of these requests prompted the need for training to its key personnel.

LASA falls under the type "B" category of public bodies in terms of PAIA. LASA has this year complied with mandatory compliance obligations satisfactorily and has compiled its section 14 manual. It has also submitted its section 32 report in terms of PAIA for the first time this year.

In delivering the presentation the Commission made use of a power point presentation as well as case studies and interactive engagement with participants. These presentations were supported with the distribution of frontline training manuals, PAIA legislation and PAIA handbooks as a resource to the delegates for onward use.

Most participants had no prior knowledge of PAIA, although these personnel had been with their respective organization for a period in excess of three years. In this regard it should also be noted that LASA has ad hoc PAIA functionaries in their legal department. Participants agreed during discussions that this was not ideal since PAIA application was time consuming and compliance required dedicated personnel. The lack of application based knowledge; general awareness and organisational design were identified as key reasons why LASA would have challenges complying with PAIA. Other formal compliance obligations were noted in terms of DIO delegations, Section 15 automatic records lists and the provision of DIO information to the DG of GCIS in terms of section 16.

The frontline training manual was welcomed as a tool for ongoing awareness raising of frontline officials. Similarly the recommendations for induction processes of new on-boarding personnel were welcomed as a means of ensuring continued awareness of PAIA for all personnel.

Interpretation and application of definition sections of PAIA were discussed with participants through actual case examples.

All participants were appreciative of this discussion due to their own experiences in particular instances and due to the fact that they had previously been misapplying the provisions of PAIA. In certain instances, this has led to inconsistent application in the organisation. The misinterpretation and misapplication was identified as being high risk to LASA on the basis of the sensitive information and reports it generates for its clients.

The presentation provided a detailed contextual background of the legislation, emphasizing the need to break the culture of secrecy which shrouds the public service in general. Commencing

with the status of PAIA as a fundamental right, its status was reiterated and emphasized at different points of the training.

Once the primacy of the legislation was addressed, key provisions and definitions were provided and these were contextualized in hypothetical cases for application. These included defining what constituted a record, type of public body, personal requests and types of fees. Key rules of PAIA application were also shared in the course of the presentation to ensure that the PAIA principles were easily identifiable and made easy to apply.

The result of the training session apart from increased awareness of personnel included an increased appreciation by participants that a review of the organizational response to PAIA was necessary to improve compliance and efficacy.

PRESENTATION AND DISCUSSION

The Commission's needs assessment revealed a number of areas of critical need for training. Key amongst these was the following:

- PAIA objectives and its connection to records management and delivery
- Overall mechanics of the request procedure
- Responses to requests and technical application of process
- Centralizing of certain obligations e.g. the collection and auditing of request fees
- Scope of the legislation
- Exemption provisions particularly with regard to investigative reports
- Status of preliminary findings
- Transfer provisions and
- Confidentiality of reports

The session provided an in depth view of the global move toward the adoption of access to information laws in the context of accountability, the responsibility of public bodies as repositories of information, transparency and public participation to align to this move. The latter was stressed as a fundamental cornerstone of sound democracies. Through discussion of

hypothetical examples participants were able to contextualize the objectives of the legislation in their professional and personal lives. These applications were brought to bear largely on examples involving the sharing of information with employees of LASA.

Further contextualisation occurred through the location of PAIA within the bill of rights and the need for organisations to be constitutionally compliant. The primacy of the legislation and constitutional status was also discussed with participants, together with a basic information cycle to reinforce the obligation to comply with the legislation and incorporate it in the range of rights for which legal aid is offered. In this regard participants expressed difficulties in having to provide information within the stipulated timelines since most requests required information which included third party information and requests for reports of other public bodies. Similarly the addition of PAIA functions to the legal department was also identified as a challenge.

The discussion also provided the opportunity to consider the risks in litigation for unjustified refusals of information, negative imaging and drop in confidence associated with law suits of this nature.

The presentation was phased into three brief interactive sessions, each ending with a discussion session, where implementers raised issues for further clarity within the context of particular cases they had been engaging with. Most were of the view that the need for consistent records management policies and PAIA protocols were necessary, together with the need to have dedicated DIOs.

A number of other interesting challenges were noted with regard to timeframes and duties of DIO's. Key amongst these challenges was the ability to interpret and apply PAIA with confidence based on thorough knowledge. Organisational design to facilitate PAIA delivery was also raised and discussed. Participants indicated that personnel through-out the department could not identify with confidence the identity of their DIO's, nor could they agree on the identity of the IO.

The need to change levels of awareness internally was accepted and these issues were flagged on an agenda for the core PAIA personnel to respond to. Emphasis was also placed on the role of staff to be trained and briefed on PAIA more intensively since these personnel will be the

interface between high volumes of requesters and LASA. The frontline training manual was provided to the participants to assist further in this regard.

The training session was concluded with a review of current legislation before Parliament and its impact on records being held and processed by the institutions.

The following two key forms of compliance were stressed:

i. S32 PAIA Report

The mandatory obligation for all government organizations to compile a report in terms of section 32 of PAIA was discussed. LASA compliance history was flagged with participants and most responded to the reporting of LASA as non compliant to Parliament with concern.

ii. S14 PAIA Manual

The objectives and purpose of the section 14 manual was discussed. It was explained that it was mandatory for LASA to create a S14 PAIA manual. LASA had complied with this requirement but it was stressed that it should be maintained in at least three of the official languages and that it should be constantly updated to increase its relevance and accessibility. It was stressed that the development of a S14 manual is easy but was dependant on proper records management and therefore LASA had to ensure that their records management system was fully functional.

OTHER TRAINING MECHANISMS

The PAIA DVD was used as a tool to place PAIA in context for delegates. Most participants were a little overwhelmed by the requirements of the legislation and welcomed the contextualization and illustration of the purposes and objectives of PAIA through the two case examples in the DVD. They were able to identify the provisions in the formal context to identify and relate to access decisions impacting on practical delivery.

Hypothetical Case Study

2 case studies were presented to participants for group work after the presentations. These case studies extended the process of information assimilation and application. Most participants demonstrated through guidance and facilitation a grasp of the key concepts and basic response needs to the issues raised in the hypotheticals.

RECOMMENDATIONS

A critical feature of the training was that the participants comprised various departments of LASA. Although no dedicated DIO exists within the Department with an exclusive focus on PAIA, personnel from the Legal Department were able to gain value from the training. They have as a result undertaken to review decisions which may not have had justification in terms of PAIA and to create guidelines within the organization to ensure misapplication does not recur. The initial training intervention by the Commission and ODAC has yielded some gains as non traditional PAIA personnel were included to increase organisation wide awareness. The diversity of participants was therefore an excellent point of commencement and will contribute to internal promotion of PAIA across departments within LASA. It was strongly recommended by consensus of the participants that a PAIA protocol be developed and implemented.

The session has also created a heightened awareness by personnel of the need for ongoing training and engagement with the Commission to reach optimal implementation if it is to be a point of reference to other public bodies. Similarly, LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation which will allow internal interventions like training and the provision of increased accessibility of information to be addressed.

Emerging from the session is the urgent and critical need for the sector to create a structure to facilitate integrated responses to PAIA. Such a structure could at minimum consist of representatives from the legal and records management structures in each department to ensure that the processes within each department are PAIA aligned and to further enhance the process of implementation and compliance. Widespread training at regional offices was also

flagged as a need by participants. This recommendation is one which both ODAC and the Commission regard as critical for organisational wide awareness of PAIA at LASA and for fulfilment of the PAIA mandate.

that paragraph? --- My Lord, when I did the draft I would have sent it to the CEO for her to discuss further with our Chairperson. So I cannot say for sure who actually (indistinct) it, but it was certainly not me. There are also other changes.

Are there? --- Yes, if you look at background under paragraph, under background, the second paragraph, second sentence. In my initial draft I had:

"Whilst the initial reason of this panel (indistinct) sitting was caused by delays..." (intervenes)

COURT: You said the second, under paragraph 1, the second paragraph? --- Second paragraph, second sentence.

Oh, second paragraph, second sentence, the reason for freezing? --- No, we are dealing with background. Second paragraph, second sentence starts with:

"Whilst."

Yes. Yes. ---

"Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting in time suitable for all members of the panel, other pressing financial..."

If you look at that part that I read, in the version that was signed by Judge:

"Whilst the initial reason for the panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel [and then this is in addition] of which the Chairperson of the Board of Directors is one."

I can only assume the Judge personally wrote that. And... (intervenes)

Just a minute. Yes.

MR DU TOIT: Right, whatever the position (indistinct) wrote it, it was, this document was amended after you did it, right? --- Yes.

Now, we know that you had been accused of lying more than one, on more than one occasion, but in this document a number of alleged lies were identified by the applicant. And I would like just to direct your attention to them. The first is the one which is in that very paragraph that you have just dealt with. And it says:

"Other pressing financial constraints facing Legal Aid resulted in (indistinct)."

And you have testified both about the financial constraints and also about the delay between the end of November and February? --- Correct.

Yes. So what is your answer if it is suggested that this is a lie? --- It is preposterous.

Thank you. Now, the second one is at the bottom of the page:

"As I recall, as a result of the various options to make up the shortfall I find (indistinct) freezing of posts were considered various documents which clearly demonstrate the financial uncertainty that we have experienced at times, as well as, the contingency measures that we were (indistinct) to cater for this including the freezing of many positions were shared with Advocate Brink in response to his request for information in

Okay. I had by this stage commenced proceedings in the CCMA, right, in March/April, Mr Nahir? --- [No audible reply].

Because you talk about:

"He subsequently referred a dispute to the CCMA on 20 April."

--- May I bring it to your attention that in my evidence yesterday... (intervenes)

Ja. --- This paragraph was specifically not in my original letter, so I am not the one who (indistinct).

That is very interesting. Now let me ask you, are you suggesting that Judge Mlambo is the author of this information in this particular paragraph? --- I have not read the paragraph in... (intervenes)

Have a look, have a look. --- Okay, I have read it.

Okay. Let me reframe it, My Lord. As I understand it from what you said previously, this must have been inserted by either Judge Mlambo or Vedalankar? --- It is not either or, it could be anyone else the Judge wanted the information from. I am not in the position... (intervenes)

Okay. --- To indicate who wrote it.

Okay. --- If the Judge wrote it himself.

Okay. --- Or the CEO or anyone else.

Fair enough. But the allegation to Parliament is that mine is a money claim, mine is a money claim:

"The relief is sought is monetary..."

And there is a figure here:

I admit the contents of this paragraph.

73. **AD PARAGRAPH 25.**

73.1 I deny the correctness of the contents of this paragraph.

73.2 I have set out the background facts leading to the abortion of the recruitment of the Applicant's application. I will not answer to the Applicant's speculation regarding the reasons why his application was aborted.

74. **AD PARAGRAPH 26.**

74.1 I have stated that none of these institutions that the Applicant has referred this matter to have seen it necessary to contact the Respondent or LASA for any response.

74.2 Accordingly, I have no knowledge of the facts set out herein.

75. **AD PARAGRAPHS 27 – 29.**

75.1 I deny the correctness of the contents of these paragraphs.

75.2 I submit that the CEO considered the Applicant's requests for access to information in terms of PAIA and felt justified to refuse him access thereto. Thereafter and to be safe, the same request was given to counsel for his opinion. Counsel advised that limited access to information be granted to the Applicant.

Judge tells City Power: You f****d up!

May 23 2015 at 09:15am
By Thabiso Thakali

Comment on this story

Joburg High Court Judge Kathy Satchwell. Photo: Sharon Seretlo

Johannesburg - A Joburg High Court judge has launched a scathing attack on the City of Joburg and its power utility City Power, calling them “idiots” and accusing them of “f***ing up” over their reluctance to reveal information about a R800-million solar geyser deal.

In a Promotion of Access to Information case brought by Numsa, the metal workers union, against City Power, Judge Kathy Satchwell accused the utility’s officials of “covering up fraud and corruption” over its refusal to hand over documents relating to the contract on solar geyser heaters.

Judge Satchwell was unimpressed with City Power’s failure to respond to Numsa’s requests for information since 2013. She said that City Power had replaced the Road Accident Fund “in so far as incompetence and fraud is concerned”.

Lawyers representing City Power argued that the judge was “biased” after she had ordered that legal costs be paid by the utility’s officials responsible for the litigation out of their own pockets, and not the ratepayers’. The lawyers argued that Satchwell had used “profanities” in her chambers against the utility’s attorneys by calling them “idiots” and remarking that someone had “f***ed up”.

“Some person” within City Power, she remarked, was “lazy, covering up, hiding things, and idiots and the like” and the “knowledge of such things comes to one like a dagger in the night”.

“The learned judge stated that the City… only uses young incompetent black attorneys or little grey old white men sucking up to the black people in the city,” read the application by City Power’s lawyers.

City Power said that the judge had suggested that these attorneys were used in order to cover up fraud and corruption. “The learned judge stated that the city believes that it is a tail wagging the dog and that ‘I should decide whether or not I am going to allow this’.”

The utility’s lawyers said this was an indication of bias because the judge had not heard the merits of the case.

The utterances were apparently made in April in Judge Satchwell’s chambers when she granted an order of costs to Numsa.

At the heart of the matter is Numsa’s request for information on an R800-million contract for the supply and installation of solar geysers in 2012.

Numsa had sought the court’s intervention after its requests for information in August 2014 had been ignored.

The union previously alleged that the contract was awarded to companies that imported the geysers from

China while the same were made in the East Rand. According to the recusal application by City Power, Judge Satchwell also stated that, by not disclosing the documents sought by Numsa, “You are being tarred by the tar of President (Jacob) Zuma. Go think about this”.

But on Friday Satchwell was unapologetic as she refused the application to recuse herself. She told the defence lawyers she was only prepared to amend patent errors in her judgement. The City Power attorney, she remarked, had tried to set her up but “I don’t care”.

City Power has people “who don’t know how to do their job. That sounds like incompetence – so my ‘bias’ remains”.

Satchwell added that profanities she was accused of using “would worry my mother but not my father”.

She said that her order for costs to be paid by officials of City Power was meant to “look to see if anybody has placed City Power in the dwang”.

“City Power might have been badly done by its staff,” she said. “Look to see if there should be any employees held responsible.” She dismissed the application for her recusal but the order for City Power to pay the legal costs remained.

Judge Satchwell instructed the attorneys to write to Sicelo Xulu, City Power’s managing director, to put his house in order. She said that City Power’s refusal to disclose information was made without reading the relevant provisions of the Promotion of Access to Information Act.

Judge Satchwell said City Power's information officer had refused Numsa’s request in 2013 and 2014 unprocedurally and without full information before him. The utility had been “contemptuous” to the court, she said. Judge Satchwell said Numsa may appeal the refusal through internal processes before turning to the court for assistance.

In 2001, Satchwell, a lesbian, won the right for her partner to enjoy the same benefits as those previously reserved for spouses of married heterosexual judges, a right confirmed by the Constitutional Court the following year.

Saturday Star

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LUWELLYN LANDERS MP
National Assembly
e-mail:
llanders@parliament.gov.za
29 June 2011

Ref.: Brink (29-06-11)

Adv. Anthony Brink
25 Baker Road
Prestbury
PIETERMARITZBURG

Dear Advocate Brink

Your e-mail dated Tuesday, 28 June 2011 refers.

On receipt of your original letter I submitted a letter to the Chairperson: Legal Aid South Africa (LASA), Judge D. Mlambo dated 23 March 2011 (please see Annexure **A**).

On 22 June 2011 I received a written response from Judge Mlambo, Chairperson: LASA, a copy of which I have attached (please see Annexure **B**) which serves as a formal response to your complaint.

It is important to note that whilst I have sought to comply with your request for intervention in this matter, normally neither I nor the Justice Portfolio Committee becomes involved in the day-to-day operational matters of LASA, or any other entity of the Justice family.

If I have been tardy in not responding to you sooner, do forgive me. In light of the facts set out in Justice Mlambo's response, I now regard this matter as closed. Thank you.

Yours faithfully

_____
LUWELLYN LANDERS MP
Chairperson: Justice & Constitutional Development
Portfolio Committee

10 years in the business of satisfying legal practice

ADV. THABISO MACHABA BA LLB LLM LLM (TAX LAW) WITS†

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TAX INVOICE NO: 13/11

To: THE LEGAL AID BOARD

Attention: Mr Solly Sekgota

Your Fax: (011) 887 2000

Your Tel: (011) 887 2011

Date: 31 Mar. 2011

Your Ref: Mr Sekgota

My Ref: 4TH Acc/LAB/A.BRINK PAIA/INV. 13/11

Re: **ACCOUNT IN THE SETTLING OF DRAFT MEMORANDUM IN VIEW OF THIRD REQUEST BY A BRINK AND CONSEQUENT CONSULTATION WITH MR T. MTATI IN A BRINK'S APPLICATION FOR ACCESSTO INFORMATION I.T.O. PAIA 2000**

HEREWITH IS MY FOURTH ACCOUNT FOR YOUR SETTLEMENT

Activity	Dates	Fees
On consultation with Mr Mtati and on considering the papers afresh and preparing to settle a memo to the LASA in view of Mr Brink's 3rd request for access for information	**11 Mar. 2011**	**@ R10000.00**
On researching the law after consideration of Mr Brink's third request and on settling the required memorandum in answer to various questions posed by Mr Mthati o.b.o LASA and on emailing same to Mr Mthati and Mr Sekgota for 3.5 days	**16 – 19 Mar. 2011**	**@ R60000.00**

† *"Forgiveness is the key to action and freedom."* – Hannah Arendt

On perusal of Mr Brink's referral of a complaint to the Human Rights Commission and considering same; and incorporating its contents to the final memo and on settling memo on whether the LAB completely responded to Mr Brink's 15 December 20101 request for access to information.	**26 – 28 Mar. 2011**	**@ R30000.00**
On perusal of Mr Brian Nair's affidavits and considering the laws that arise therefrom and researching the law to see if same complies with PAIA and administrative law principles for 2.5 days.	**29 – 31 Mar. 2011**	**@ R40000.00**

TOTAL BALANCE DUE TO ADV. T MACHABA: R140000.00

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Herewith are Adv. Machaba's banking details for effecting payment.

Bank and branch: Standard Bank (Small Street City Branch)
Account type: Cheque Account
Account No: 001087673

Thank you for the above brief and do enjoy words of wisdom below.

Please provide proof of payment to Adv. Machaba for filing and records.

THABISO MACHABA
PITJE CHAMBERS
JOHANNESBURG

Recommended for payment subject to proof from legal practitioner

The Washington Post

Morning Mix

How a curmudgeonly old reporter exposed the FIFA scandal that toppled Sepp Blatter

By Michael E. Miller June 3 at 5:03 AM

The biggest news story of the year was breaking, but the journalist responsible was fast asleep.

It was just after dawn on May 27 when Andrew Jennings's phone began ringing. Swiss police had just launched a startling raid on a luxury hotel in Zurich, arresting seven top FIFA officials and charging them and others with running a $150 million racket. The world was stunned.

The waking world, that is. If Jennings had bothered to climb out of bed, he wouldn't have been surprised at the news. After all, he was the man who set the investigation in motion, with a book in 2006, "FOUL! The Secret World of FIFA: Bribes, Vote Rigging and Ticket Scandals," followed by an exposé aired on the BBC's "Panorama" program that same year, and then another book in 2014, called "Omerta: Sepp Blatter's FIFA Organised Crime Family."

"My phone started ringing at six in the morning," Jennings said Tuesday from his farm in the hilly north of England. "I turned it off actually to get some more sleep, because whatever is happening at six in the morning is still going to be there at lunch time, isn't it?"

If you can't tell already, Jennings is an advocate of slow, methodical journalism. For half a century, the 71-year-old investigative reporter has been digging into complex, time-consuming stories about organized crime. In the 1980s, it was bad cops, the Thai heroin trade and the Italian mob. In the '90s, he turned to sports, exposing corruption with the International Olympic Committee.

For the past 15 years, Jennings has focused on the Federation Internationale de Football Association (FIFA), international soccer's governing body. As other journalists were ball watching — reporting scorelines or writing player profiles — Jennings was digging into the dirty deals underpinning the world's most popular game.

"Credit in this saga should go to the dogged obsession of a single reporter, Andrew Jennings," the Guardian's Simon Jenkins wrote last week, citing in particular Jennings's BBC "Panorama" film called "The Beautiful Bung: Corruption and the World Cup."

Now, after decades of threats, suspicions about tapped phones and intermittent paychecks, Jennings is being vindicated with every twist and turn in the FIFA scandal.

[Interpol issues 'red notices' for 6 people tied to the scandal: Who they are and what that means]

During a phone interview Tuesday morning with The Washington Post, he called FIFA President Sepp Blatter "a dead man walking." Two hours later, Blatter announced he was stepping down, just days after being reelected.

"I know that they are criminal scum, and I've known it for years," he said. "And that is a thoughtful summation. That is not an insult. That is not throwing about wild words."

"These scum have stolen the people's sport. They've stolen it, the cynical thieving bastards," he said. "So, yes, it's nice to see the fear on their faces."

A 'document hound'

The best way for Americans to imagine Andrew Jennings is to roll Bob Woodward and Carl Bernstein together, then add a touch of a Scottish burr and plenty of flannel. Jennings was born in Scotland but moved to London as a child. His grandfather played for a prominent London soccer team, Clapton Orient (now called Leyton Orient), but Jennings had little interest in the sport. He did, however, have a nose for journalism.

After finishing school, Jennings joined the Sunday Times in London, where he got a taste of investigative journalism. He went to work for the BBC, but when the network wouldn't air his documentary on corruption within Scotland Yard, he quit and joined a rival program called "World in Action." He turned his police investigation into his first book, "Scotland Yard's Cocaine Connection," and a documentary.

"I'm a document hound. If I've got your documents, I know all about you," he said. "This journalism business is easy, you know. You just find some disgraceful, disgustingly corrupt people and you work on it! You have to. That's what we do. The rest of the media gets far too cozy with them. It's wrong. Your mother told you what was wrong. You know what's wrong. Our job is to investigate, acquire evidence."

That is, essentially, Jennings's mantra: Take time, dig up dirt and don't trust those in power. He applied the same logic to international drug smuggling rings and Italian mafiosi.

Then sports. After the Scotland Yard exposé, a colleague at "World In Action" named Paul Greengrass — who later became a Hollywood filmmaker, directing several Jason Bourne films as well as the recent blockbuster "Captain Phillips" — suggested investigating the IOC.

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

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].

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.

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

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

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,

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.

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

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.

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,

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.**

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

> **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

> 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,

> 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

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].

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.

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:

> 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

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].

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].

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

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:

> 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

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.

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

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

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.

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

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].'

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.

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.

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

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

(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.

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.'

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].)

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.

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

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

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

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

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.

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

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:

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

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,

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

Name:

Address:

Capacity:

Complaints 1-8 against Mlambo JP

Proof of post to the Judicial Service Commission on 23 June (complaints 1–5), 3 July (complaints 6 & 7) and 14 July 2017 (complaint 8)

(Complaint 1 was emailed in PDF on 4 June, and acknowledged on 6 June, and the original followed by post along with complaints 2–5)

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA
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JUDICIAL CONDUCT COMMITTEE

Enq: Lynette Bios
Tel: (010) 493 2500(switchboard)
Fax: 086 640 9601

Mr. A Brink
25 Balcomb Avenue
Zini River Estate
Mtunzini

Per email: anthonybrink.sa@gmail.com

Our Ref: JSC/533/17

Dear Mr. Brink

RE: COMPLAINT AGAINST JUDGE PRESIDENT MLAMBO OF THE GAUTENG DIVISION OF THE HIGH COURT

The Judicial Service Commission (JSC) hereby acknowledges receipt of your complaint.

Your complaint will be forwarded to the Judicial Conduct Committee for consideration.

The Secretariat will notify you of the outcome of your complaint in due course.

Yours sincerely,

L BIOS
Secretariat for the Judicial Service Commission
Date: 06/06/17

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

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Mr. A Brink

25 Balcomb Avenue

Zini River Estate

Mtunzini

Per email: anthonybrink.sa@gmail.com

Our Ref: JSC/533/17

Dear Mr. Brink

RE: FURTHER COMPLAINTS AGAINST JUDGE PRESIDENT MLAMBO OF THE GAUTENG DIVISION OF THE HIGH COURT AND JUDGE PRESIDENT WAGLAY

The Judicial Service Commission (JSC) hereby acknowledges receipt of your complaints.

Your complaints will be forwarded to the Judicial Conduct Committee for consideration.

The Secretariat will notify you of the outcome of your complaint in due course.

Yours sincerely,

L BIOS

Secretariat for the Judicial Service Commission

Date: 29/08/2017

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case No: 1118/16

In the matter between:

ANTHONY BRINK Applicant

and

THEMBILE MTATI N.O.
DEPUTY INFORMATION OFFICER
LEGAL AID SOUTH AFRICA Respondent

AND

Case no: 12124/16

In the matter between:

LEGAL AID SOUTH AFRICA Applicant

and

ANTHONY ROBIN BRINK Respondent

UNCONDITIONAL OFFER TO SETTLE
UNDER RULE 34(14)

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1. This is an unconditional offer by the applicant in case 1118/16, also the respondent in case 12124/16, ('Brink') to settle both cases, with the object of achieving a global final total settlement and bringing an absolute end to all his disputes with and his claims and complaints against Legal Aid South Africa ('LASA') and its top officers – principally Board chairperson Dunstan Mlambo JP; Chief Executive Officer Vidhu Vedalankar; National Operations Executive Brian Nair; Human Resources Executive Amanda Clark; and Legal Executive Thembile Mtati.

2. Whereas:

   2.1. In November 2009, following its interviews of four short-listed candidates, a duly constituted selection panel comprised of LASA's most senior lawyers in KwaZulu-Natal unanimously selected and recommended Brink for its long-vacant, repeatedly advertised Senior Litigator post at Pietermaritzburg ('the post'), and duly certified that his appointment to it would conform to LASA's employment equity targets.

   2.2. The specialist post at the apex of LASA's legal professional staff establishment, and one of just nine in the country, was created by resolution of LASA's Board of Directors on 24 November 2006 with the object of 'Increasing Senior Litigation capacity' 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' – so executive management duly motivated the creation of the posts.

   2.3. In her CEO report for 2012/13, CEO Vedalankar repeatedly emphasized that employing Senior Litigators was a key component of LASA's Strategic Plan 2009–12 – duly submitted to the Department of Justice

and Correctional Services ('the Department') under section 52 of the Public Finance Management Act 1 of 1999 ('PFMA'), and thereafter presented to the Justice Portfolio Committee in the National Assembly.

2.4. LASA's High Court Unit Manager at its Durban Justice Centre, Bongani Mngadi, was recommended for promotion to the simultaneously advertised equivalent post at Durban.

2.5. One of the other two unsuccessful applicants, also short-listed and interviewed for the posts, was former acting judge Mzochithwayo Ngcamu, Board chairperson Mlambo JP's long-time judicial colleague in the Labour Court, which he headed at the time, and with whom he'd worked as a fellow judge for about six years. (The former acting judge, for whom the qualifying criteria for the posts appear to have been gerrymandered in his favour by making them uniquely high relative to all other such posts in the country, was then unexpectedly eliminated by the selection panel for lack of right of appearance in the High Court as an attorney, meaning he'd never litigated a case on his feet there.)

2.6. This potently relevant information about the Board chairperson's long professional relationship with Brink's rival for the post, recorded by the selection panel in its recommendation report, was illegally concealed from Brink, in criminal contravention of section 90(1) of the Promotion of Access to Information Act 2 of 2000 ('PAIA'), by blacking it out with a Koki pen before the thus censored report was finally surrendered to him under renewed SAHRC pressure in January 2011 – after his request for sight of it in August 2010 under PAIA was initially illegally refused, first mutely and then expressly; and it was disclosed to Brink only in April 2016 (years after trial and judgment in his correctly dismissed (see below) unfair discrimination claim in the Durban Labour Court) following LASA's capitulation just before argument to Brink's

application to the Eshowe Magistrate's Court to compel its compliance with another PAIA request for a copy of the full uncensored report.

2.7. At all material times:

2.7.1. LASA has budgeted for salary for the post;

2.7.2. LASA has applied to the Department for such salary funding;

2.7.3. The Department has approved such salary funding for the post under section 53(1) of the PFMA;

2.7.4. the National Assembly has voted such salary funding for the post; and,

2.7.5. the Department has paid LASA such salary funding for the post,

– and all this, year after year, to date.

2.8. For over ten years now, the duly budgeted and fully funded critical specialist legal professional post has remained unfilled – with the result that KwaZulu-Natal still has no 'professional staff that are senior enough to take on … cases of a highly complex nature' and 'able to undertake more complex work as well as support and mentor our other High Court staff', as LASA's management executives and Board both considered necessary when motivating and approving the creation of the post in 2006.

2.9. No record exists of any decision not to fill the post taken by any competent authority at LASA or by anyone at all.

2.10. Section 53(4) of the PFMA holds LASA's 'accounting officer [CEO Vedalankar] ... responsible for ensuring that expenditure of that public entity is in accordance with the approved budget', i.e. budgeted funding be applied to the purpose for which it's been approved and paid by the Department.

2.11. In dereliction of this financial responsibility, and in breach of the PFMA, CEO Vedalankar has failed since 2010 to ensure that the salary budget for the post, for which LASA annually applies and which the Department annually provides – many millions of rands to date – is applied to the employment of a duly selected, recommended and approved candidate to fill it.

2.12. The rule of law requires that in recruiting staff LASA's management executives comply with and act in accordance with two internal regulations promulgated by LASA's Board of Directors, namely:

2.12.1. the 'Policies and Procedures on Recruitment, Induction, Probation and Relocation' – governing the short-listing and interviewing of applicants for vacant posts, and the selection and recommendation of 'the most suitable candidate for appointment in a post' by a duly constituted selection panel, following which its recommendation must be forwarded to the executive authority/ies delegated for approval; and,

2.12.2. the 'Approval Framework' – delegating to various specified national management executives the power to approve or reject a selection panel's recommendation, according to the seniority of the post in question; and in the case of Senior Litigator posts at the top of LASA's legal professional ranks, delegating it jointly to LASA's most senior executives, CEO Vedalankar and NOE Nair.

2.13. Under these regulations:

2.13.1. besides CEO Vedalankar and NOE Nair, no other national executive – such as Legal Executive Patrick Hundermark and/or Human Resources Executive Amanda Clark – has any legal authority to approve or reject a candidate duly recommended by

a selection panel for a Senior Litigator post, even less to hold another interview of him/her to decide whether or not to appoint him/her; and,

2.13.2. no *non-executive* member of LASA's Board of Directors – such as its chairperson Mlambo JP – has any legal authority to intrude himself into executive management's recruitment operations, and to re-interview and approve or reject a candidate duly recommended by a selection panel for a Senior Litigator post. (The Approval Framework limits the power of non-executive Board directors in staff recruitment to approving the appointment of the CEO and NOE.)

2.13.3. It's manifestly illegal for *non-executive* Board chairperson Mlambo JP, sitting in committee with the above-mentioned and other LASA executives, to re-interview a candidate duly selected and recommended after a duly conducted interview by a duly constituted selection panel for a Senior Litigator post, and then to reject him/her, and appoint a candidate not recommended by the selection panel, even disqualified by it;

2.13.4. Brink is not legally subject to any further interview for the post by any of these persons, or at all.

2.14. Nothing in fact or in law prevents CEO Vedalankar and NOE Nair from carrying out their joint approval function delegated to them by the Approval Framework, and approving the selection panel's unanimous selection and recommendation of Brink for the still vacant, budgeted and funded, critical, top echelon specialist legal professional post, so that the indigent in KwaZulu-Natal might have the benefit of 'professional staff that are senior enough to take on … cases of a highly complex nature' and who are 'able to undertake more complex work as

well as support and mentor our other High Court staff', thus 'Increasing Senior Litigation capacity' in the province.

3. Against this background, Brink proposes that LASA:

   3.1. appoints him to the post; and,

   3.2. compensates him for lost income and other benefits arising from its failure to appoint him on 1 January 2010 (being the earliest date he indicated to the selection panel that he'd be able to commence in the post, if recommended) in a sum and on terms to be negotiated, compromised and agreed. If no accord can be reached, an arbitrator will determine these questions and his award, including as to costs, will be final.

4. In which event:

   4.1. Brink will abandon all his claims to sight of LASA's public records which he's duly requested under PAIA in the exercise of his fundamental right to information in our open democracy entrenched by section 32(1)(a) of the Constitution – which records LASA has either illegally refused him outright or has failed to deliver in breach of its undertaking to do so recorded in the settlement agreement it signed in the Eshowe Magistrate's Court on 11 February 2016. Brink will likewise abandon his claim to the delivery of a compliant PAIA section 23 affidavit regarding requested documents that don't exist or can't be found.

   4.2. Brink and LASA will withdraw their respective applications to this court under case numbers 1118/16 and 12124/16; and the parties will bear their own costs to date.

   4.3. Brink will withdraw his pending application to the Eshowe Magistrate's Court to compel LASA's full and proper compliance with the said settlement agreement; and the parties will bear their own costs to date.

4.4. Brink will abandon his further intended complaints to the several authorities mentioned in his affidavits in the two applications between himself and LASA in this court and in the Eshowe Magistrate's Court.

4.5. Brink will abandon his similarly stated intention to apply to the Durban Labour Court for an order rescinding its judgment in his labour case under case number 529/11, on the grounds that LASA's defence was a fraud on the court – proved inter alia by documents disgorged from LASA after trial via PAIA and via an application to court to compel compliance with it, showing categorically that the evidence of its single witness at the trial, NOE Brian Nair, was materially perjured in multiple respects.

4.6. LASA will consent to rescission of judgment in Brink's said labour case, and to the substitution of the court's order dismissing his claim* with costs, with an order of absolution from the instance, no order as to costs. (*Brink concedes he incorrectly founded his claim on unfair discrimination, ignorant when he sued of his true cause of action: jobs for pals corruption (the intent foiled by his determined pursuit of the post) which LASA succeeded in illegally concealing from him until long after the trial and judgment, in the manner described in paragaph 2.6 above.)

4.7. LASA will abandon its costs order awarded by this court in case 12977/15 (dismissed only for want of urgency in the court's view and not on the merits).

4.8. Brink and LASA's officers will withdraw all pending complaints made against each another, on the basis that they've reached a complete settlement of their nearly eight year dispute arising from the irregular off-the-record silent abortion of Brink's appointment to the post following the selection panel's unanimous recommendation of him for it, and that they are content to proceed from a clean slate.

Signed at Mtunzini on 26 September 2017.

ANTHONY BRINK
APPLICANT in case 1118/16
RESPONDENT in case 12124/16

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TO:
Legal Aid South Africa
c/o Pietermaritzburg Justice Centre
183 Church St
Pietermaritzburg
(Mr Kaloo)

AND TO:
The Registrar, High Court of South Africa
KwaZulu-Natal Division, Pietermaritzburg
301 Church Street
Pietermaritzburg

PO Box 565
Empangeni 3800
2 November 2017

Vidhu Vedalankar,
CEO and Information Officer
Legal Aid South Africa
29 De Beer Street
Braamfontein

By email: vidhuv@legal-aid.co.za

And cc to the authorities and interested parties mentioned herein.

Dear Ms Vedalankar

MY SEVERAL PAIA REQUESTS FOR ACCESS TO LASA'S RECORDS, CURRENTLY PENDING YOUR DECISION, AND PREVIOUSLY ILLEGALLY REFUSED AND BEFORE THE COURTS: PROPOSALS FOR EXPEDITIOUS, LAWFUL DISPOSAL

A. LASA'S ABORTIVE APPLICATION TO HAVE ME DECLARED A VEXATIOUS LITIGANT

1. You'll have heard from your Chief Legal Executive Patrick Hundermark that his scheme to derail my investigation, using PAIA, of serious financial irregularity involving many millions of rands, and recruitment and other corruption at LASA, including criminal corruption (perjury, lying and false reporting to Parliament), by blocking my access to incriminating records – duly requested, illegally refused, and therefore sued for – with an application to have me declared a vexatious litigant failed dismally on Friday.

2. Did he also tell you that the judge thought the application so obviously meritless that he dismissed it without even calling on me to argue?

B. MY JUST-SUBMITTED PAIA REQUEST

3. On Monday I delivered a PAIA request to you, inter alia for records of the colossal wasted cost of the application (it's online at https://goo.gl/ExRZrA).

4. Under section 11(3) of PAIA, the stated purpose of my request, or whatever you might think it is, is irrelevant to your decision of it. Likewise what my request 'relates to', LASA's favourite phrase, ignorantly repeated over the years to illegally refuse my duly made PAIA requests, despite the SAHRC's unsuccessful attempts on 6 October 2011 and 22 August 2012 to teach it that what a PAIA request 'relates to' – including to past, pending, or future litigation – is immaterial, unless it's hit by a ground for refusal allowed by sections 34 to 45 in Chapter 4 of Part 2 of the Act. And section 7, which ordinarily bars the use of a document in legal proceedings obtained via PAIA after they've commenced, unless the court permits it, isn't in that chapter. (Sadly the point is beyond your head office lawyers' grasp, and their ongoing misconception about this showed up in the vexatious application yet again.)

5. Nonetheless, to pre-empt the usual dishonestly false blanket justification I've come to expect from LASA for refusing my PAIA requests, duly made in the exercise of my constitutional right to information, namely that they're all 'manifestly frivolous and vexatious' (per section 45 of PAIA), despite my expressly stated serious purposes – a justification ultimately abandoned in the Magistrate's Court in February 2016, then obtusely revived in September that year – I'm spelling out for you the serious purposes of my latest PAIA request.

6. Before doing so, let me recapitulate:

   6.1. To compel your and your deputy information officers' compliance with several illegally and unconstitutionally refused PAIA requests duly made in 2013–15, I brought five applications in Eshowe Magistrate's Court under section 78 of the Act. All were opposed with several lever-arch files of answering affidavits full of fatuous defences, drawn

by junior counsel in private practice, who obviously had no idea what he was doing and was subsequently fired. After milking LASA of a fortune.

6.2. At the point of argument in court on 11 February 2016, Hundermark instructed Legal Executive Thembile Mtati – present at court and doing what he was being told to do over the telephone – to drop LASA's opposition to my five applications, which I'd set down together, reverse the refusals of my requests, and agree to hand over all requested documents, or duly certify under section 23 those that don't exist. After years of illegal obstruction and delay.

6.3. Mtati then failed to do honour the agreement. Numerous promised documents weren't delivered, and his two section 23 affidavits were both non-compliant and defective. As the magistrate later pointed out in court.

6.4. I detailed all these problems in three notices of breach, requesting full and proper compliance with the settlement agreement.

6.5. When these were spurned and then ignored, I returned to court under the default clause of the settlement agreement to apply for orders compelling full and proper compliance with it.

6.6. Mtati responded by supplying me with some of the outstanding documents, and then annexed more of them to his answering affidavit.

6.7. But many important, certainly extant documents remained outstanding, and likewise a compliant section 23 affidavit.

6.8. On 8 September 2016, I was on the point of moving for orders compelling full and proper compliance with the settlement agreement, when Mtati, present in court, informed the magistrate via counsel that in view of its expected high cost you and Hundermark had specially authorised an application to the High Court to have me declared a vexatious litigant; and for this purpose sought an adjournment of my application to compel.

6.9. Opposing the adjournment, I protested to the magistrate in vain that no basis whatsoever had been shown for the application. And when the case came up in the High Court a year later the judge entirely agreed.

7. Besides being corruptly motivated to block my access to incriminating records proving further perjury and recruitment corruption at LASA, over and above the perjury and recruitment corruption that I've already uncovered with PAIA, your vexatious application against me was an enormous waste of public money.

8. In my letter to you of 15 September 2016, I cautioned you that the PFMA requires you as accounting officer to 'take effective and appropriate steps' to 'prevent … irregular and fruitless and wasteful expenditure' at LASA, like bringing baseless vexatious litigation proceedings to block access to its public records.

9. Yet you carried on with your vexatious application, disregarding section 83(1)(b) of the PFMA, which provides that an accounting officer who 'wilfully or negligently makes or permits an irregular expenditure' commits an act of 'financial misconduct' – a 'ground for dismissal or suspension' under section 83(4).

10. In sum, instead of respecting my fundamental right to information entrenched by the Constitution, and fully and properly honouring the settlement agreement that Mtati concluded on your and Hundermark's behalf, like honest people who mean what they say and say what they mean, you and Hundermark tried having me stripped of my ordinary constitutional right to seek relief from the courts, banned as a vexatious litigant, and listed in the Government Gazette like a 'Communist' during apartheid.

11. I intend reporting and ventilating the massive unlawful fruitless and wasteful expenditure squandered on the malicious application that you and Hundermark authorised to obstruct my exercise of my fundamental right to information with the object of smothering or at least seriously hindering my investigation and reporting of (a) gross maladministration at LASA involving

millions of rands and directly affecting critical service delivery; (b) the wholesale breakdown of the rule of law and due process at LASA, involving, inter alia, the routine illegal flouting of LASA's internal regulations by Board chairperson Mlambo JP and national management executives; (c) pervasive systemic corruption in the conduct of LASA's recruitment operations; and (d) a criminal cover-up of the same, involving perjury, conflicting sworn statements, and lying and false reporting to the Minister and to the Portfolio Committee on multiple scores.

12. The authorities and interested parties to whom I intend reporting your and Hundermark's corruptly motivated abuse of the courts to block my access to public records for which I'd had to sue are: the Auditor General; the Public Protector; the SAHRC; the Information Regulator; the Minister; the Portfolio Committee; the International Legal Aid Group; the media, including two of our country's leading investigative journalists watching the case; and several nationally prominent corruption fighting and information transparency NGOs who've expressed their support for my struggle against the corruption at LASA and its contempt for constitutional information transparency that I've encountered.

13. One of which NGOs wrote to me on 23 October, a few days before the judge threw your vexatious application into the dustbin:

> In addition to the steps already taken by you, you should also consider laying criminal charges against the relevant individuals implicated.

14. Another wrote on the 26th, the day before the case, to 'wish [me] well with tomorrow's hearing', and observed about my own simultaneously set down application to compel LASA's compliance with my PAIA requests in August 2016:

> [Y]our application is very important and highlights the impunity with which government agencies who are supposed to be accountable to the public disregard lawful requests for information and withhold information when it is not legally justified to do so.

15. This then is my serious reason for Part A of my PAIA request on Monday, namely the records of how much public money you and Hundermark wasted on your vexatious application against me. I intend seeing to it that all the above authorities and interested parties are told.

16. Part B of the request is for, inter alia, LASA's response to my answer to its complaint to the Society of Advocates of KwaZulu-Natal that I'd disgracefully impugned the integrity of its chairperson Mlambo JP. (My answer took the form of eight capital gross misconduct complaints against him to the Judicial Service Commission, copied to the Society.)

17. Like his affidavits in my labour and PAIA litigation, Mtati's sworn complaint to the Society was perjured, and I intend seeing him prosecuted for it. My serious purpose in requesting his response to my answer to the complaint is, inter alia, to ascertain whether it contains any more perjury, if it's sworn, or just plain lies. And if so, the police and/or the Law Society for the Northern Provinces will be interested.

18. On 31 October, the secretary of the Judicial Service Commission conveyed the Judicial Conduct Committee's request that I resubmit my misconduct complaints against Mlambo JP in the form of a single indexed and paginated bundle 'to avoid a piecemeal consideration and determination of these matters'. Easily done, because I long ago made an indexed and paginated bundle for most of the authorities and interested parties mentioned above, to whom I sent it (goo.gl/5KQ7RV).

19. Isn't this a better time than ever to reconsider my very amicable and conciliatory total settlement offer on 26 September 2017 (goo.gl/HrFnUH), especially its last paragraph 4.8:

> Brink and LASA's officers will withdraw all pending complaints made against each another, on the basis that they've reached a complete settlement of their nearly eight year dispute arising from the irregular off-the-record silent abortion of Brink's appointment to the [Pietermaritzburg Senior Litigator] post following the selection panel's

unanimous recommendation of him for it, and that they are content to proceed from a clean slate.

20. Having spent an entire week reading the papers, the judge told us, especially my answering affidavit in which I detailed and objectively proved your National Operations Executive Brian Nair's many successful perjuries committed at the trial of my labour claim in mid-2013, the judge understood very well that 'he told a pack of lies' (the judge's words) – a sound basis, he confirmed, for my intended rescission application on the grounds of fraud successfully practised on the court.

21. Which rescission application will also be based on potently cogent information long concealed from me since 2010 by carefully blacking it out with a Koki pen – illegally under section 90 of PAIA – but finally flushed out in April 2016, long after the trial and judgment in my labour case, namely that my rival applicant for the post had been an acting judge of the Labour Court for about six years and a long-time judicial colleague of Board chairperson Mlambo JP, who headed it at the time.

22. That is, as the judge correctly appreciated and observed in court on Friday, the real reason I wasn't appointed to the post wasn't unfair discrimination against me, as I'd wrongly apprehended and pleaded, but simple recruitment corruption in the form of cronyism, in that Mlambo JP's former brother in the Labour Court was preferred for the post instead of me, only to be unexpectedly bounced by the selection panel for not having right of appearance in the High Court.

23. If you consult your Senior Litigators (rather than Hundermark and Mtati), all will confirm to you that none of the records I requested on Monday are hit by any of the grounds for refusal allowed by PAIA, and that all of them must be handed over accordingly.

24. In the situation, section 25 requires you to notify your decision to grant my request for access to these records 'as soon as reasonably possible'.

25. Please note that if you again contemptuously traduce my constitutional right to public body information by refusing my latest PAIA requests, as you've been doing since 2010 (goo.gl/21GgSf), I'll immediately sue out of the High Court to compel your compliance with them, just as I did in October 2016, three weeks after Mtati's illegal refusal of my August PAIA requests in September; and I'll set the new case down for hearing together with my pending case 11187/16. You can bet the combined judgment will be reported.

C. MY APPLICATION PENDING IN THE MAGISTRATES COURT TO COMPEL LASA'S FULL AND PROPER COMPLIANCE WITH IT'S SETTLEMENT AGREEMENT ON 11 FEBRUARY 2016, FOLLOWING ITS TOTAL CAPITULATION TO MY FIVE APPLICATIONS TO COMPEL COMPLIANCE WITH MY SEVERAL PAIA REQUESTS IN 2013–15, ILLEGALLY REFUSED

26. I'm aware from LASA's failed attempt to have my subpoenas set aside in the Labour Court that you and your fellow head office executives are terrified of being cross-examined on oath under penalty of imprisonment for perjury. (Relevant to the credibility of your claims about documents not supplied me, prior perjuries will be canvassed.) Fortunately there's a simple way for you to avoid this dangerous prospect. To escape the waiting noose, all you have to do is instruct Mtati to give me all the records he undertook on your behalf in the February 2016 settlement agreement to give me, or to certify those that don't exist, in an affidavit complying with section 23 of PAIA, and stating simply and unambiguously: '**No such record exists**.' And nothing more: no further waffle to fudge the blunt fact that the requested record doesn't exist.

27. If a requested record exists but can't be found (and we both know this isn't the case, because record-keeping at LASA is digitised), section 23 prescribes very precisely all the detailed information that it's necessary to include in the affidavit, and no more or less.

28. If Mtati and his Corporate Services attorneys would just apply their minds to my Second Amended Draft Order (goo.gl/tzZ98F) and its Schedule

(goo.gl/ij3Loj) and turn over the remaining promised but outstanding records and give me a duly compliant section 23 affidavit, there'll be no need for me to again set my application down to compel full and proper compliance with the settlement agreement (goo.gl/DDua4x), now that your vexatious application has been dismissed. Further substantial wasted costs can be avoided.

29. If, on the other hand, Mtati can't be bothered with honouring the recorded undertakings that he made on your, Hundermark's, and other deputy information officers' behalf, and couldn't care less about respecting section 32 of the Constitution, I'll see you all in court soon for cross-examination under oath on the missing and improperly certified documents.

D. MY APPLICATION PENDING IN THE PIETERMARITZBURG HIGH COURT TO COMPEL COMPLIANCE WITH MY PAIA REQUESTS IN AUGUST 2016, ILLEGALLY REFUSED

30. Now that the High Court has considered and rejected Hundermark's and your false charge that I'm a vexatious litigant, do you really think it's going to find I'm a vexatious requester – as falsely and dishonestly charged by Mtati in his September 2016 refusal of my PAIA requests the month before – one of which was a final request in my investigation of general corruption in Senior Litigator recruitment that was specifically contemplated in the February 2016 settlement agreement; and the other was for all the wasted costs LASA incurred in indefensibly and insupportably opposing my five applications in the Magistrate's Court all the way to argument, only to totally surrender on the big day.

31. Please teach your Legal Executives Hundermark and Mtati that contrary to their misconception about this asserted by Mtati in his illegal refusal of my August 2016 requests, and again in the vexatious application, the number of records I've requested since 2010, including many I'm confident don't exist (which would exist if the truth had been told), is not a lawful ground under PAIA for refusing access to public records, and doesn't itself show that my

requests are 'frivolous and vexatious' or unreasonably time-consuming to deal with, as contemplated by section 45.

32. So it's hardly necessary to mention that actually the number of my PAIA requests and the total number of records I've requested over the past seven years is tiny considered against other PAIA requests and the huge numbers of individual records requested:

    32.1. In its investigation of the Inkandla scandal, the Mail & Guardian successfully applied to court to compel the delivery of further documents over and above 'the tendered documents in excess of 12000, copies of which were provided to the applicants', as the judge in that case put it, rejecting the argument that this 'crossed "the line between a legitimate request in terms of PAIA and abuse of the Act"' – per paragraph 18 of the judgment in Mandag Centre for Investigative Journalism and another v Minister of Public Works and another (67574/12) [2014] ZAGPPHC 226 (29 April 2014);

    32.2. Since its formation in 2011, the Freedom of Information Programme of the South African History Archive ('SAHA') has made 'over 1800 requests for information from predominantly government departments' and 'numerous applications in the High Court' – per paragraph 19 of the just cited judgment;

    32.3. The 'hundreds of thousands of documents' obtained by Open Secrets 'form much of the evidence presented in Apartheid Guns and Money: A tale of profit' by Hennie van Vuuren on the arms trade during apartheid. 'We relied on the heavy lifting by SAHA and Lawyers for Human Rights to open the door to many apartheid archives ... [T]hey were met with stiff resistance' – per page 25 of the Access to Information Network's Shadow Report 2017 (goo.gl/hRHJvR).

    32.4. 'In mid-2013, 48 requests were lodged with state agencies under PAIA' – per page 19 of Apartheid Guns and Money.

33. Following the dismissal of your vexatious application, I agreed in court to give LASA thirty days to file its answering affidavit in my opposed but unanswered application to compel its compliance with my August 2016 PAIA requests (goo.gl/j53UTb).

34. Since there's no intelligent defence to raise against my application (and I suggest you confirm this with your Senior Litigators rather than with Hundermark and Mtati), you can end the litigation by notifying me of your reversal of Mtati's obviously illegal total refusal of my requests and by simply providing me with the records I've asked for or a section 23 affidavit where any don't exist. This will avoid further unnecessary fruitless and wasteful expenditure on hopeless litigation prohibited by the PFMA.

35. Failing which, I call your attention to the punitive costs order made against the Department of Defence (discussed at page 26 of the above-mentioned Shadow Report 2017 by Corruption Watch, SAHA, et al.) for pulling the state's characteristic trick of opposing a PAIA application all the way to argument and then capitulating just before it. Like LASA did in all five of my cases in the Magistrate's Court.

Yours sincerely

ANTHONY BRINK
anthonybrink.sa@gmail.com

LASAGATE

> '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.'
> – Oscar Wilde

> 'Oh! what a tangled web we weave
> When first we practice to deceive!'
> – Sir Walter Scott

> 'It's the perjury that gets them in the end. It's not so much the deed itself, but the lying about it afterwards.'
> – The district attorney in *The Walker*, feature film written and directed by Paul Schrader

> 'I had grasped the significance of the silence of the dog, for one true inference invariably suggests others ... Obviously the midnight visitor was someone whom the dog knew well. It was Straker who removed Silver Blaze from his stall and led him out on to the moor.'
> – Sherlock Holmes in Silver Blaze by Sir Arthur Conan Doyle

'The Watergate scandal was a major political scandal that occurred in the United States during the early 1970s, following a break-in ... at the Democratic National Committee (DNC) headquarters at the Watergate office complex in Washington, D.C. on June 17, 1972, and President Richard Nixon's administration's subsequent attempt to cover up its involvement. After the 5 burglars were caught and the conspiracy was discovered, Watergate was investigated by the U.S. Congress; meanwhile Nixon's administration resisted its probes, which led to a constitutional crisis. ... The scandal led to the discovery of multiple abuses of power by members of the Nixon administration, an impeachment process against the president that led to articles of impeachment, and the resignation of Nixon. The scandal also resulted in the indictment of 69 people, with trials or pleas resulting in 48 being found guilty, many of whom were Nixon's top administration officials.' **Wikipedia: 'Watergate scandal'**

On 7 November 1972, President Richard Nixon was re-elected to a second term in a landslide election victory.

'I don't give a shit. I want you all to stonewall it, let them plead the Fifth Amendment, cover up, or anything else, if it'll save it, save this plan. That's the

whole point. We're going to protect our people if we can.' **President Richard Nixon to aide Bob Haldeman (Oval Office tape recording), 22 March 1973**

'I condemn any attempts to cover up in this case, no matter who is involved.' **President Richard Nixon, news conference, 17 April 1973**

'And I pledge to you tonight, from this office, that I will do everything in my power to ensure that the guilty are brought to justice and that such abuses are purged from our political processes in the years to come, long after I have left this office.' **President Richard Nixon, televised speech, 30 April 1973**

'I had no prior knowledge of the Watergate operation. I took no part in, nor was I aware of, any subsequent efforts that may have been made to cover up Watergate.' **President Richard Nixon, public statement, 17 May 1973.**

In July 1973, Nixon refused to comply with a subpoena to hand over his Oval Office tapes – ultimately compelled to do so by order of the US Supreme Court. Eighteen and half minutes of the tapes were then found to have been erased – recording Nixon's discussion with Haldeman of the arrest of the Watergate burglars, according to Haldeman's notes.

Cf. LASA's (a) failed application to set aside Brink's subpoenas of its top officers in the Labour Court to explain why he was not appointed to LASA's Senior Litigator post at Pietermaritzburg for which he'd been unanimously selected and recommended; (b) failure to have him declared a vexatious litigant on the ground inter alia that he'd applied to subpoena its top officers to explain why duly requested records had not been surrendered after access was finally granted to them following Brink's application to court for them; (c) ongoing refusal to comply with Brink's requests under PAIA for access to its public records; and (d) delivery of a pivotal record, initially illegally refused, then surrendered under SAHRC pressure, but illegally redacted with a Koki pen to conceal the potently cogent evidence of Mlambo JP's long professional relationship with Brink's rival applicant for the post: a former fellow judge. (The full uncensored document was finally disgorged after Brink sued for it, and was about to argue for it, after it was illegally refused again.)

'What really hurts in matters of this sort is not the fact that they occur, because overzealous people in campaigns do things that are wrong. What really hurts is if you try to cover it up. … it is my constitutional responsibility to defend the integrity of this great office against false charges. … I have today issued another

written statement, which addresses the charges that have been made since then as they relate to my own conduct, and which describes the efforts that I made to discover the facts about the matter. On May 22, I stated in very specific terms – and I state again to every one of you listening tonight these facts – I had no prior knowledge of the Watergate break-in; I neither took part in nor knew about any of the subsequent cover-up activities; I neither authorized nor encouraged subordinates to engage in illegal or improper campaign tactics. That was and that is the simple truth. … From the time when the break-in occurred, I pressed repeatedly to know the facts, and particularly whether there was any involvement of anyone in the White House. I considered two things essential: First, that the investigation should be thorough and aboveboard; and second, that if there were any higher involvement, we should get the facts out first. As I said at my August 29 press conference last year, "What really hurts in matters of this sort is not the fact that they occur, because overzealous people in campaigns do things that are wrong. What really hurts is if you try to cover it up." I believed that then, and certainly the experience of this last year has proved that to be true. … I did not believe the newspaper accounts that suggested a cover-up. I was convinced there was no cover-up, because I was convinced that no one had anything to cover up. … Those acts cannot be defended. Those who were guilty of abuses must be punished. But ultimately, the answer does not lie merely in the jailing of a few overzealous persons who mistakenly thought their cause justified their violations of the law.' **President Richard Nixon, address to the nation, 15 August 1973**

'Counsel to the President, Mr. Dean, has conducted a complete investigation of all leads which might involve any present members of the White House Staff or anybody in the Government. [*Dean hadn't conducted any investigation.*] I can say categorically that his investigation indicates that no one in the White House Staff, no one in this Administration, presently employed, was involved in this very bizarre incident [the Watergate break-in]. **President Richard Nixon, news conference, 29 August 1972**

'I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as alleged by you or at all.' **LASA chairperson Dunstan Mlambo JP, dismissing Brink's 59-page petition, (a) complaining of CEO Vidhu Vedalankar's illegal and unconstitutional blanket refusal of his request under the Promotion of Access to Information Act for**

records, on the basis of false, irrelevant grounds ostensibly supported by a faked excerpt from a reported judgment, in which words were put in the judge's mouth that she never spoke, and which judgment squarely supported Brink's entitlement to the records he'd requested; and,
(b) presenting all the early already clear indications that Vedalankar's budgetary insufficiency justification advanced for the abortion of his appointment to the Pietermaritzburg Senior Litigator post for which he'd been duly selected and recommended by a professional selection panel ten months earlier was a false cover-story to camouflage the true reason (according to the PDF 'Author' properties of Mlambo's letter, Vedalankar herself wrote it on her computer; Mlambo was overseas at the time), 15 December 2010 (sent by Mlambo JP on the 30th)

'Your conduct is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view.' **LASA chairperson Dunstan Mlambo JP, rejecting Brink's second petition concerning Vedalankar's illegal and unconstitutional refusal to comply with his request for access to records under PAIA and the early already clear indications that his appointment had been blocked under cover of a bogus financial reason, and pointing out the evidence that Vedalankar had ghost-written his letter rejecting Brink's complaint to him about her refusal of his PAIA request and the irregular abortion of his appointment, 24 January 2011**

- 'Whilst the initial reason for this ['nationally constituted' second interview] panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts' (*after being exposed as a lie, this story that Mlambo JP told the Minister and the Portfolio Committee was retracted by his attorney on affidavit as 'an error', 'palpably an error'*);
- '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' (*no record of any such decision exists*);

- 'Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he remains convinced there is a conspiracy against him' (*no record exists vouching that the post was frozen*);
- 'We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint' (*records Brink requested under PAIA were illegally refused in toto; lying information was given him instead*);
- 'we remain confident that we have acted properly in this matter' (*multiple illegalities, including of the Public Finance Management Act*);
- 'we have complied with the provisions of PAIA' (*PAIA requests refused*);
- 'We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act' (*false*);
- 'many of his requests do not relate to his complaint regarding non appointment' (*false, but in any event irrelevant under section 11(3) of PAIA*);
- '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' (*false, it was for appointment to the post; and LASA's exposure in damages for lost income was massively understated*);
- 'most of Adv Brink's correspondence with us [has had an] insulting and malicious tone' (*false*);
- 'we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded' (*the records that LASA provided refuted the budgetary insufficiency justification for the false claim that the post had been duly frozen*);
- '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 organization at the time' (*no record exists of a decision to freeze the still vacant, still budgeted, still funded critical specialist legal professional post – irregularly frozen off the record in contravention of several provisions of the PFMA*).

LASA chairperson Dunstan Mlambo JP, 'Confidential … Report … Re: Adv Anthony Brink' to the Minister of Justice and Constitutional Development, 9 March 2011 (submitted behind Brink's back), and 'updated' for the chairperson of the Justice Portfolio Committee on 22 June 2011

'He's our Corporate [Services] Executive. He's the man who looks at our legal health in terms of those who want to sue us. He protects us.' **LASA chairperson Dunstan Mlambo JP introducing CSE Thembile Mtati to the Portfolio Committee on Justice and Constitutional Development, 8 May 2012**

'The Respondent rejects the Applicant's fabricated conspiracy theory with a wave of a hand. ... The Respondent rejects the Applicant's malicious and untruthful allegation that the Respondent's Chairperson could hatch; be part of; and sustain such an unlawful and unethical conduct of unfairly and maliciously plotting with any person to unfairly discriminate against the Applicant in respect of a position to which he had applied. ... Mlambo JP has never been involved in the decision to abort any recruitment process ... The persistent malicious insinuations against the person of the Chairperson are regretted and uncalled for. … The Applicant is incorrect in suggesting that the Chairperson of the Board did not apply his mind independently in dealing with his complaint. ... The Chairperson investigated the matter by discussing same with the CEO in order to gather information and upon forming a view that there was nothing untoward that the Respondent's executive officials did to the Applicant, requested the CEO to draft a letter in the terms required by the Chairperson. ... The Respondent avers that the Chairperson did not lie to the Minister or the Portfolio Committee regarding the reasons why there was a delay in dealing with the Applicant's application. ... Accordingly, the Respondent denies the malicious accusations of dishonesty and wantonly trampling of the Applicant's constitutional rights levelled against Mlambo JP and the Respondent's executive members. ... The Respondent further rejects, as contemptuous, any suggestion that the Applicant will not have a fair hearing in this Court solely because the Respondent's Chairperson is also the head of this honourable Court. ... The Respondent opposes the relief sought herein and seeks an order: ... That the Court impose punitive costs at the highest scale permissible regard being had to the Applicant's reprehensible conduct of insulting the Chairperson of the Respondent's Board and certain members of the Executive and persistently imputing impropriety, fraud and dishonesty on them throughout the entire content of his Statement of Claim ... Referring the record of this action to the relevant Bar Council for its investigation and recommendation or action, if needs be.' **Corporate Services Executive Thembile Mtati, response to Brink's statement of claim in the Labour Court, 9 September 2011**

'The Saturday Night Massacre refers to U.S. President Richard Nixon's orders to fire independent special prosecutor Archibald Cox, which led to the resignations of Attorney General Elliot Richardson and Deputy Attorney General William Ruckelshaus on October 20, 1973, during the Watergate scandal. ... U.S. Attorney General Elliot Richardson had appointed Cox in May, after promising the House Judiciary Committee that he would appoint a special prosecutor to investigate the events surrounding the break-in of the Democratic National Committee's offices at the Watergate Hotel in Washington, D.C., on June 17, 1972. ... When Cox issued a subpoena to Nixon, asking for copies of taped conversations recorded in the Oval Office, the president refused to comply. ... Nixon ordered Attorney General Richardson to fire Cox. Richardson refused and resigned in protest. Nixon then ordered Deputy Attorney General William Ruckelshaus to fire Cox. Ruckelshaus also refused and resigned. Nixon then ordered the Solicitor General of the United States, Robert Bork, as acting head of the Justice Department, to fire Cox. ... Bork wrote the letter firing Cox – and the Saturday Night Massacre was complete. ... On November 14, 1973, federal district judge Gerhard Gesell ruled firing Cox was illegal absent a finding of extraordinary impropriety as specified in the regulation establishing the special prosecutor's office. ... The Ethics in Government Act of 1978 was a direct result of the Saturday Night Massacre.' **Wikipedia: 'Saturday Night Massacre'**

Cf. LASA's attempt to rub Brink out with:

- *a complaint of unprofessional conduct to the Society of Advocates of KwaZulu-Natal, arising from Brink's criticism of Mlambo JP's gross misconduct as chairperson of LASA, initially upheld by the Society (without hearing Brink) with a recommendation that Brink be struck off the roll of advocates, then reversed;*
- *to the Magistrate's Commission (which got Brink fired from his post as a magistrate on contract, without a hearing); and,*
- *an application to the High Court at Pietermaritzburg (i) to declare Brink a vexatious litigant, so as to prevent his access to records duly requested under PAIA for which he'd had to sue, and (ii) to 'excuse' LASA from complying with other pending PAIA requests (the spurious application was quickly dismissed by the judge without calling on Brink to argue against it).*

'... in all of my years of public life, I have never obstructed justice. ... I'm not a crook.' **President Richard Nixon, 17 November 1973**

‘RESOLVED, That Richard M. Nixon, President of the United States, is impeached for high crimes and misdemeanours, and that the following articles of impeachment to be exhibited to the Senate:

ARTICLES OF IMPEACHMENT EXHIBITED BY THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN THE NAME OF ITSELF AND OF ALL OF THE PEOPLE OF THE UNITED STATES OF AMERICA, AGAINST RICHARD M. NIXON, PRESIDENT OF THE UNITED STATES OF AMERICA, IN MAINTENANCE AND SUPPORT OF ITS IMPEACHMENT AGAINST HIM FOR HIGH CRIMES AND MISDEMEANOURS.

ARTICLE ONE

In his conduct of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States, and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed and impeded the administration of justice, in that: On June 17, 1972, and prior thereto, agents of the Committee for the Re-election of the President committed unlawful entry of the headquarters of the Democratic National Committee in Washington, District of Columbia, for the purpose of securing political intelligence. Subsequent thereto, Richard M. Nixon using the powers of his high office, engaged personally and through his subordinates and agents in a course of conduct or plan designed to delay, impede, and obstruct the investigation of [the Watergate burglary]; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.’

The means used to implement this course of conduct or plan included one or more of the following:

1. making false or misleading statements to lawfully authorized investigative officers and employees of the United States;

2. withholding relevant and material evidence or information from lawfully authorized investigative officers and employees of the United States;

3. approving, condoning, acquiescing in, and counselling witnesses with respect to the giving of false or misleading statements to lawfully authorized

investigative officers and employees of the United States and false or misleading testimony in duly instituted judicial and congressional proceedings;

4. interfering or endeavouring to interfere with the conduct of investigations by the Department of Justice of the United States, the Federal Bureau of Investigation, the office of Watergate Special Prosecution Force, and Congressional Committees;

5. approving, condoning, and acquiescing in, the surreptitious payment of substantial sums of money for the purpose of obtaining the silence or influencing the testimony of witnesses, potential witnesses or individuals who participated in such unlawful entry and other illegal activities;

6. endeavouring to misuse the Central Intelligence Agency, an agency of the United States;

7. disseminating information received from officers of the Department of Justice of the United States to subjects of investigations conducted by lawfully authorized investigative officers and employees of the United States, for the purpose of aiding and assisting such subjects in their attempts to avoid criminal liability;

8. making or causing to be made false or misleading public statements for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation had been conducted with respect to allegations of misconduct on the part of personnel of the executive branch of the United States and personnel of the Committee for the Re-election of the President, and that there was no involvement of such personnel in such misconduct: or

9. endeavouring to cause prospective defendants, and individuals duly tried and convicted, to expect favoured treatment and consideration in return for their silence or false testimony, or rewarding individuals for their silence or false testimony.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

ARTICLE 2

Using the powers of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in disregard of his constitutional duty to take care that the laws be faithfully executed, has repeatedly engaged in conduct violating the constitutional rights of citizens, impairing the due and proper administration of justice and the conduct of lawful inquiries, or contravening the laws governing agencies of the executive branch and the purposed of these agencies.

This conduct has included one or more of the following:

He has, acting personally and through his subordinates and agents, endeavoured to obtain from the Internal Revenue Service, in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposed not authorized by law, and to cause, in violation of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner.

He misused the Federal Bureau of Investigation, the Secret Service, and other executive personnel, in violation or disregard of the constitutional rights of citizens, by directing or authorizing such agencies or personnel to conduct or continue electronic surveillance or other investigations for purposes unrelated to national security, the enforcement of laws, or any other lawful function of his office; he did direct, authorize, or permit the use of information obtained thereby for purposes unrelated to national security, the enforcement of laws, or any other lawful function of his office; and he did direct the concealment of certain records made by the Federal Bureau of Investigation of electronic surveillance.

He has, acting personally and through his subordinates and agents, in violation or disregard of the constitutional rights of citizens, authorized and permitted to be maintained a secret investigative unit within the office of the President, financed in part with money derived from campaign contributions, which unlawfully utilized the resources of the Central Intelligence Agency, engaged in

covert and unlawful activities, and attempted to prejudice the constitutional right of an accused to a fair trial.

He has failed to take care that the laws were faithfully executed by failing to act when he knew or had reason to know that his close subordinates endeavoured to impede and frustrate lawful inquiries by duly constituted executive, judicial and legislative entities concerning the unlawful entry into the headquarters of the Democratic National Committee, and the cover-up thereof, and concerning other unlawful activities including those relating to the confirmation of Richard Kleindienst as Attorney General of the United States, the electronic surveillance of private citizens, the break-in into the offices of Dr. Lewis Fielding, and the campaign financing practices of the Committee to Re-elect the President.

In disregard of the rule of law, he knowingly misused the executive power by interfering with agencies of the executive branch, including the Federal Bureau of Investigation, the Criminal Division, and the Office of Watergate Special Prosecution Force, of the Department of Justice, and the Central Intelligence Agency, in violation of his duty to take care that the laws be faithfully executed.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

ARTICLE 3

In his conduct of the office of President of the United States, Richard M. Nixon, contrary to his oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has failed without lawful cause or excuse to produce papers and things as directed by duly authorized subpoenas issued by the Committee on the Judiciary of the House of Representatives on April 11, 1974, May 15, 1974, May 30, 1974, and June 24, 1974, and wilfully disobeyed such subpoenas. The subpoenaed papers and things were deemed necessary by the Committee in order to resolve by direct evidence fundamental, factual questions relating to Presidential direction, knowledge or approval of

actions demonstrated by other evidence to be substantial grounds for impeachment of the President. In refusing to produce these papers and things Richard M. Nixon, substituting his judgment as to what materials were necessary for the inquiry, interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States.

Wherefore, Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.'

Articles of Impeachment adopted by the House Judiciary Committee, 27 July 1974

Nixon resigned twelve days later on 8 August 1974.

'Well, when the President does it that means that it is not illegal.' **Former President Richard Nixon, television interview by David Frost, 19 May 1977**

'"I've always maintained I'm a new generation judge. I do not shy away from dirtying my hands in my judicial work. That explains my philosophy when it comes to what a court should be doing," said Mlambo. … I want to believe that Legal Aid SA is a shining example of how things should have been done constitutionally in terms of access to justice," he told the JSC.' **Mlambo JP quoted in 'I'm a new-generation judge', *City Press*, 13 May 2012**

LASA Board chairperson Mlambo JP promoted from Judge President of the Labour Court to Judge President of the Gauteng Division of the High Court, with effect from 1 November 2012.

On … the Judicial Conduct Committee of the Judicial Service Commission found … . On …. Mlambo JP was … .

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24 November 2015

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R B G Choudree SC

The Society of Advocates of KwaZulu Natal

3rd Floor, Durban Club Place

Durban,

KwaZulu-Natal, 4001

Email: kznbar@law.co.za;

Dear Choudree SC,

RE: COMPLAINT ON THE UNPROFESSIONAL CONDUCT OF ADVOCATE ANTHONY ROBIN BRINK

Please find the complaint which is self-explanatory.

Yours Faithfully,

Thembile Mtati

Attorney of Legal Aid South Africa

THEMBILE VUYO MTATI COMPLAINANT

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AND

ANTHONY ROBIN BRINK RESPONDENT

WRITTEN DECLARATION UNDER OATH INSTITUTING A COMPLAINT AGAINST ADVOCATE ANTHONY ROBIN BRINK

I, the undersigned

THEMBILE VUYO MTATI,

do hereby make oath and state as follows:-

1.

1.1 I am an adult male Attorney employed as the Corporate Services Executive by Legal Aid South Africa with its offices situated at Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg, and I am duly authorised to depose to this affidavit.

1.2 The facts contained herein fall within my personal knowledge and are both true and correct, except where it appears otherwise from the context.

2.

2.1 The purpose of this affidavit is to institute a complaint against Advocate Anthony Robin Brink, a major male Advocate of the High Court of South Africa currently employed in the capacity of an acting magistrate in Eshowe Magistrates Court.

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2.2. This complaint is brought in terms of section 7 (2) of the Admission of Advocates Act 74 of 1964 as amended.

2.3 The nature of the complaint deals with the manner in which Advocate Brink conducts his litigation, unwarranted, abusive and defamatory statements made against members of the bench including his colleagues and other officials.

2.4. The statements referred to above relate to, among others, Judge President Mlambo of North and South Gauteng Divisions of High Court, Judge President Waglay of the Labour Court Division and Judge Cele of the Labour Court.

2.5. I deal below with the specific causes of my complaint but deem it appropriate to start with the background of the matter.

3.

BCKGROUND

3.1 Advocate Brink applied for a vacant position of a Senior Litigator in our Pietermaritzburg Justice Centre. He was interviewed and recommended to proceed to the second round of interviews which was to be held at Johannesburg consisting of Senior Executives of Legal Aid SA including the Chairperson of the Board of Legal Aid SA, Judge President D. Mlambo.

3.2. The second round of interviews was not proceeded with as a result of budget uncertainties facing the organisation at the time. The budget uncertainties led to ultimate freezing of all recruitment of the Senior Litigators. All candidates recommended for the second round of interviews were duly informed of the position.

4.

ADVOCATE BRINK'S CASE

4.1. Advocate Brink wrote a number of letters through electronic mail enquiring of progress on his recruitment which were responded to. He then resorted to sending requests in terms of Promotion of Access to Information Act (PAIA) seeking certain information.

4.2. Every response given in terms of PAIA led to another until when Advocate Brink instituted action against Legal Aid SA in the Durban Labour Court. His case was briefly that he was not appointed to the position of Senior Litigator because of his stance against provision of anti-retrovirals and race. The statement of claim, which forms part of the complaint to which I will revert, is attached marked **"TVM1"**. All other annexures are separately binded and annexed to this affidavit.

4.3. Advocate Brink's claim was dismissed with costs at the Labour Court, Durban by Honourable Judge Cele. Application for Leave to Appeal was also dismissed. Advocate Brink filed a petition which was also dismissed.

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4.4. Towards the end of September 2015, we received an urgent application from Advocate Brink seeking to interdict the Taxing Master from finalising taxation of the Labour Court case to enable us to get our *allocator*. In this urgent application, Advocate Brink made further unwarranted allegations against the Honourable Judge President Waglay.

4.5. The urgent application was dismissed with costs accompanied by concerns by Honourable Judge Pillay about the conduct of Advocate Brink.

4.6. Advocate Brink also sends his concerns about his non-appointment to the Office of the Public Protector, South African Human Rights Commission, Portfolio Committee on Justice and Constitutional Development (as it then was) and to every other person he thinks might agree with his view that he was discriminated against.

4.7. Without unnecessarily compounding this affidavit with all annexures, below we make reference to specific letters, record of the trial and pleadings and all these will be separately attached to this complaint. The annexures only are just over 2000 pages.

5.

COMPLAINT

5.1. It is my submission that the conduct of Advocate Brink is not befitting of an officer of the Court more so to act as a Magistrate. The language used is unprofessional, the manner he relates to colleagues and Judges requires sanction. Below is an extract of statements and language used against fellow Advocates, Judges, Attorneys and other professionals.

UNFOUNDED DEFAMATORY, DEMEANING AND INSULTING ALLEGATIONS MADE BY ADVOCATE BRINK IN HIS STATEMENT OF CASE AT THE LABOUR COURT UNDER CASE D529/11 AGAINST MLAMBO JP AND VEDALANKAR.

5.2. Advocate Brink, in his statement of case before the Labour Court, made several defamatory, derogatory, demeaning and insulting allegations including the following:

Paragraph Number	Excerpts
Par 4	*The applicant will show on a conspectus of the open facts weighed with the probabilities that following his selection and recommendation by the professional selection panel for appointment as Senior Litigator, Pietermaritzburg, the respondent's chairperson Dunstan Mlambo and Chief Executive*

	*Officer Vidhu Vedalankar, motivated by unlawful political (or alternatively racial) prejudice aborted his appointment off the record and without announcing the fact; and that many months later, under pressure to account, Mlambo and Vedalankar attempted to camouflage their direct discrimination against the applicant on prohibited grounds by concocting and advancing a false cover story for it based on a fake financial justification- unsupported and contradicted by the respondent's business record; conflicting with Vedalankar's CEO report for 2009/10; conflicting with deliberately misleading statements Vedalankar made on two occasions to the Portfolio Committee on Justice and Constitutional Development (**as it then was**); and contradicting the express wishes of the Minister of Justice and Constitutional Development known to both Mlambo and Vedalankar.*
Par 5	*The Applicant will further show that in furtherance of Mlambo's and Vedalankar's scheme to cover up their unfair discrimination against the Applicant, Mlambo lied to the Minister on several scores in a "Confidential report to him Re: Adv Anthony Brink, which lies Mlambo repeated to the Chairperson of the Portfolio Committee and by so doing Mlambo deliberately misled the respondent's executive authority and Parliament in order to (a) allay their further enquiries into the complaints against the Respondent, which he had copied to the Minister and Committee Chairperson, of unfair discrimination against him and unlawful refusal to surrender material records duly requested under the Promotion of Access to Information Act and (b) to put them off discovering the falsity of the bogus financial justification for their abortion of the Applicant's recruitment dishonestly advanced by Vedalankar to the applicant and by Mlambo to the Minister and to the Committee chairperson."*
Par 31	*Because Vedalankar informed Nair that she did not agree with the applicant's recruitment as a political (or racial) undesirable, Nair never 'signed off' the Motivation to record 'RECOMMENDATION ACCEPTED' by him of the professional selection panel's selection and recommendation of the applicant for appointment, and the recruitment process to appoint the applicant was thus brought to an end.*
Par 33	*The first strategy adopted by Mlambo and Vedalankar to conceal from the applicant their unfair discrimination against him was deliberate inaction and silence.*
Par 34	*The reason Mlambo and Vedalankar opted for this initial simple strategy was because:*

	(a) it entailed the minimum possible risk that the applicant would discover their unfair discrimination against him; and, *(b) they bargained that after being kept waiting in the dark for several months, the applicant would lose hope, conclude that he had been unsuccessful at his interview, give up pursuing the post for which he had applied, and withdraw himself from the recruitment process of his own accord, thus achieving Mlambo's and Vedalankar's objectives in shutting him out and concealing their decision to do so."*
Par 55	*Appreciating (a) that the applicant had not been put off by Mlambo's and Vedalankar's inaction and silence strategy, and that half a year after his interview he was still agitating for the finalisation of his appointment, and (b) that Mlambo's and Vedalankar's scheme to covertly discriminate against the applicant therefore needed elaboration, the complication posed by Mngadi's stalled internal promotion to the Durban Senior Litigator post was disposed of by Vedalankar's and Mlambo's decision to finally abort his appointment too; and in April/May 2010 Mngadi was notified seemingly by Brijlal by e-mail that the respondent had decided not to fill the post for which he had applied, alternatively that the respondent had decided not to fill its remaining vacant Senior Litigator posts, no reason given him (Mngadi assumed some 'internal restructuring' had taken place)."*

RECORD OF THE PROCEEDINGS UNDER CASE NUMBER: 529/11

5.3. It is worth mentioning that at the hearing of his case and under cross examination (**it is on record**), Advocate Brink withdrew all the defamatory, derogatory, demeaning, and insulting allegations against Mlambo JP and Vedalankar. His only explanation was that he was at all times under the impression that both Mlambo JP and V. Vedalankar were involved and had now (**in court**) realised that it was only Brian Nair(National Operations Executive).

5.4. For the purpose of convenience, I refer to the following relevant pages and paragraphs of the record:-

Page 133 Lines 2 to 5	***Mr Du Toit*** *"Then just by the way, Judge Mlambo you say is one of the top judges in the country is the person you called a liar about 30 times?"---* ***Mr Brink*** *"This is before I discovered that Nair was abusing his office, abusing his name to convey falsehoods to Parliament and to the Minister."*
Page 137 Lines 7 to 9	***Mr Du Toit*** *"What are you saying?"* ***Mr Brink*** *"I am saying that Judge Mlambo and I mean it with absolutely no disrespect and I really rule about my misconceptions about Judge Mlambo's role in this matter."*

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Page 154 Lines 5 to 14	***Mr Du Toit*** *"Okay. By the way, Mr Brink, having called Ms Vedalankar a liar and dishonest in concocting defenses, do you really think that you could possibly be appointed in an organisation where she continues to be the chief executive officer?"---* ***Mr Brink*** *"It is my conclusion from reading her two letters to me, that they were written by Brian Nair, consequently it is my relatively late conclusion, after the case began and consequently I believe that the CEO as Judge Mlambo was, the CEO's higher office and Gormy abused by Nair to convey lies to me. Sir I hold CEO Vedalankar clear in this matter."*
Page 158 Lines 3 to 8	***Mr Du Toit*** *"But you have said that it was the chief executive officer who was involved in this plot"---* ***Mr Brink*** *"But I thought so; I thought so, because of her letters to me. But later I discovered I faulted and I am sure it will be confirmed, but she did not write those letters, so I was misled."*
Page 159 Lines 1 to 24.	***Mr Brink*** *"In the early days for the better, before one discover that Judge Mlambo was innocent in this thing and I have since formed the conclusion that Vedalankar too. You see, I had her letters to me, full of lies. Judge Mlambo's report to the Minister, full of lies, what could I conclude, it was a nightmare, it was very shocking, so I had to draw what conclusion but that they are the authors, but now I know they are not the authors."---* ***Mr Du Toit*** *"Well let us clarify exactly what you are withdrawing now. You are saying firstly that Ms. Vedalankar not plot or struck your appointment, is that what you are saying?"---* ***Mr Brink*** *"This is my current conclusion in the fullness of the evidence."---* ***Mr Du Toit*** *"And you are saying that Judge Mlambo did not plot to obstruct your appointment"---* ***Mr Brink*** *"Correct"* ***Mr Du Toit*** *"That is right, okay. So she is out of the picture, she did not discriminate against you that is what you say now?"---* ***Mr Brink*** *"That is the look of it to me now, neither (**I think it meant Nair**) may well surprise us all and say, no, no, I neatly discussed it with Vedalankar and she agreed. He may tell us that, I do not know, but the look of it on the evidence before me, that I have assembled, the look of it now, that Vedalankar was not involved, not involved."*

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Pages 172(Lines 1-25) Continue at Lines 1 to 2 page 173.	***Mr Du Toit*** *"But you now say this falls away?"---* ***Mr Brink*** *"It does. I hold her clear, unless Mr Nair implicates her, but we will have to see, but I have no knowledge here."---* ***Mr Du Toit*** *"And then in paragraph 17, you again say that the chairperson of the respondent's board, Dunstan Mlambo, supported and was partied to the decisions took, to abort the applicant's recruitment and thereafter to camouflage the true reason for doing so, under the cover of a lying alibi"---* ***Mr Brink*** *"That is right, and that conclusion was founded on my receipt from the chairperson, the portfolio of Judge Mlambo's updated report to parliament, a pack of lies, including the manifestly untruthful alibi."---* ***Mr Du Toit*** *"And this falls away as well?"---* ***Mr Brink*** *"Oh yes"---* *"Then"---(intervene)* *"Just about everything falls away in my first claim."* ***Mr Du Toit.*** *"I see---"* ***Mr Brink***- *"Ja"* ***Mr Du Toit*** *"Well, let's just get it clear, because I think it is necessary both for your sake and for the sake of Judge Mlambo at least to get this absolutely clear"---* ***Mr Brink*** *"Yes, yes"---* ***Mr Du Toit*** *"And then in paragraph 18, we refer to the grounds, Mlambo and Vedalankar rejected was because you were politically undesirable and well, if there was no plot, then this must fall away as well."---* ***Mr Brink*** *"Right. It falls away to the extent that they were not the actors, but Nair was."---* ***Mr Du Toit*** *"I see, okay. And then in 19 Mlambo's and Vedalankar's decision to reject the applicant's appointment on prohibited ground was taken, communicated to Nair behind the scenes and off the record and accordingly no record exists. Now if there was no decision by them, then it could not have been communicated."--* ***Mr Brink*** *"It is quite obvious."--*
Page 173 Lines 3 to 8	***Mr Du Toit*** *"Okay, so that falls away. I just want to make a note of these allegations that now are…Withdrawn?"---* ***Mr Brink*** *"Withdrawn, yes.* ***Mr Du Toit*** *"Then in paragraph 20 you have here at page 44, Mlambo neither consulted nor informed the rest of the board of his decision jointly, Ms. Vedalankar's discriminate, does that also fall away?"* ***Mr Brink*** *"Ja"*
Page 188 Lines 15 to 20	***Mr Du Toit*** *"Now why would Ms. Vedalankar who you have exonerated already from any participation and any unfair discrimination against you why would she tell you a lie?"--*

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	Mr Brink *"Because she did not write the letter; I am pretty sure she did not write the letter. I could be surprised by this, but I do not think she wrote the letter; I think it was Nair who wrote the letter"*
Pages 205-206 Lines 21 to line 11 on page 206.	***Mr Du Toit*** *"Then you go on in paragraph 32 at page 49, not only had you expand on this, you say, Nair having been instructed as it were by Vedalankar, informed by Vedalankar, he then deliberately does not do something, because he is now carrying out his CEO's instruction. He is astute not to note, because appreciating the decision to abort was unlawful, so in other words he is now part of the plot, construed by Ms. Vedalankar."---* ***Mr Brink*** *"This is my conclusion, because I am many miles away, I am on the other end of the world and I am peacefully developing about bits and pieces that the American Right is taller than these things, bits and pieces. And the accumulation evidence, someone required quite recently as profoundly shifted my understanding of what actually happened in this matter. Now, sir, you can hammer away that my early statement declare but I tell you it was based on numerous fundamental misconceptions to which I had been led by Nair."*
Page 213 Lines 14 to 16	***Mr Du Toit*** *"But she could not have joined Vedalankar's scheme, because you already accepted that there was no scheme by Vedalankar."---* ***Mr Brink*** *"Correct."---*
Page 214 Line 4 to 5	***Mr Du Toit*** *"Paragraph 48 stands, paragraph 49 stands, 50 stands, 51 stands, save that is no longer Mlambo and Vedalankar's scheme, but Nair's"*
Page 215 Lines 18 to 20	***Mr Du Toit*** *"And then the heading, page 57, the scheme, that is also wrong."---* ***Mr Brink*** *"Ja, it was wrong to the extent that Mlambo and Vedalankar are named the Nair scheme."*
Page 219 Lines 23 to 24	***Mr Du Toit*** *"Right, and in paragraph 90, or 89 you attribute lies to Ms. Vedalankar."---* ***Mr Brink*** *"Ja."*
Page 220 Lines 1 to 2	***Mr Du Toit*** *"That must fall away?---* ***Mr Brink*** *"No you must reallocate the blame to Nair."*
Page 221 Lines 5 to 8	***Mr Du Toit*** *"In paragraph 99 on page 68, you describe to Judge Mlambo a desire to obstruct your efforts under the Promotional Access to Information Act. Do you stand by those contentions?"---* ***Mr Brink*** *"You know I do not."* ----------
Page 221 Lines 22 to 24	***Mr Du Toit*** *"You really are challenging, I asked you, are you still attributing falsity against Judge Mlambo?"---*

	Mr Brink *"I have said it a hundred times, that I am not doing so, I am not attributing."*
Page 223 Lines 8 to 10	***Mr Brink*** *"Really, I have no quarrel with Judge Mlambo, I think he was misled, he was given a bad picture and that is the start of this irritable e-mail on the…"*
Page 224 Lines 3 to 5	***Mr Du Toit*** *"Now, in paragraph 108, page 73, you have accused Judge Mlambo of a blatant lie."---* ***Mr Brink*** *"Ja, it is Nair's blatant lie, it is so easy to show and indeed it is going to be retracted."*
Page 227 Lines 11 to 13	***Mr Brink*** *"I do not, do you want me to repeat bluntly, I do not think Judge Mlambo is a liar, and that is it, I used to I mean what else was there to conclude from the secret report?"*
Page 228 Lines 22 to 24	***Mr Du Toit*** *"You slandered a senior judge in a most disgraceful way."---* ***Mr Brink*** *"I agree, I agree, M'Lord, I agree and I tell you it was inadvertent and I regret it."*
Page 231 Lines 10 to 14	***Mr Du Toit*** *"You make the allegation that Judge Mlambo made a false allegation concerning the knowledge of the executives; do you attribute falsity against Judge Mlambo?"* ***Mr Brink*** *"I do not. But the rest of the paragraph is absolutely sound, to the actual extent that it is Nair's false allegation via Judge Mlambo."*
Page 241 Lines 23 to 24	***Mr Brink*** *"Well, we got over and over, but you know I hold Judge Mlambo clear…"*
Page 242 Lines11 to 13	***Mr Brink*** *"No. The financial cover story and the report were fake, but Judge Mlambo is not the author of that lie."*
Page 264 Lines 10 to 11 and lines 19 to 22.	***Mr Du Toit*** *"Paragraph 265, 122 and I imagine you do not attribute falsity to Judge Mlambo."---* ***Mr Brink*** *"That is right"* --- ***Mr Du Toit*** *"Well, just to save us the agony of going through the rest, can we assume that for the rest you have assume I think, exonerated Judge Mlambo and Mrs Vedalankar from any accusation of dishonesty and discrimination?"---* ***Mr Brink*** *"Yes"*
Page 269 Lines 1 to 3	***Mr Du Toit*** *"And you have attributed delinquency to persons involved in this matter."---* ***Mr Brink*** *"Correct. My scope was broaden, it was broader then than it is now. Because I thought Vedalankar was involved and so on."*

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UNFOUNDED DEFAMATORY, DEMEANING AND INSULTING ALLEGATIONS MADE BY ADVOCATE BRINK IN HIS PETITION FOR LEAVE TO APPEAL TO LABOUR APPEAL COURT UNDER CASE D529/11 AGAINST MLAMBO JP, CELE J, V. VEDALAKAR, AND B. NAIR.

Par 2	*"This is an extraordinarily serious matter with colossal implications extending way beyond my personal interest in its resolution. It concerns the personal and professional integrity of a sitting judge president, formerly of this court, and that of the most senior management executives of a major public entity. I speak of the perversion of separate Ministerial and Parliamentary enquiries by dint of multiple, objectively demonstrable lies, and different lies told to me, to the LASA Board, to the SAHRC, and to court(different lies told in the pleadings and interlocutory affidavits, and then at trial), and of the gross breakdown of proper corporate governance and the rule of law at LASA, all of which the trial judge looked past in his seemingly clear and definitive, but in fact deplorably inattentive, glib, crude and perfunctory judgement, riddled with the most basic legal and factual misdirection, omissions and non-sequiturs, and characterized by his failures over and over again to consider the radical contradictions and the ludicrously improbable, manifestly untruthful, and objectively contradicted evidence of LASA's single witness at trial, National Operations Executive Brian Nair"*
Par 3	*"I'll advert later in this affidavit to the capital misconduct and massive and pervasive corruption to which I allude here, as well as to the judge's own gravely prejudicial misconduct in the case that thwarted a full and proper ventilation of the issues that I looked to him and trusted him to try."*
Par 4	*"In his refusal the judge didn't treat the clear-cut new evidence surfaced after trial showing unequivocally that Nair had lied to him on oath in two respects. To the judge, Nair's categorically proven repeated mendacity in court made no difference to his assessment of the credibility of his evidence."*
Par 5	*"The judge elliptically conceded his fundamental legal misdirection, identified in my application, that in deciding the case he'd misallocated the final onus of proof, which he'd placed on me instead of on LASA. He then sought to avoid the fatal ramifications of the radical error by two means:"*
Par 6	*"The judge's response was to silently look away."*
Par 7	*"And second by asserting that even if I was right about the incidence of onus, irrespective of where it lay his decision wouldn't have been any different-notwithstanding that LASA relied on the mere say-so of its single witness Nair, unsupported by any records, and indeed contradicted by them, a witness the judge acknowledged I'd shown to have been 'not generous with the truth' on numerous scores. Instead of considering the implications of this for Nair's credibility as a witness, he took him at his word, mechanically reciting his evidence as gospel, without any endeavor to assay its veracity. It seems to have been*

	inconceivable to the judge that such a high public officer could be a practiced, confident, spontaneously inventive, unctuous, bare-faced, abject liar."
Par 8	*"In his refusal, the judge failed utterly to address and deal with the rest of my attack on his judgment in my application, in which I demonstrated all his basic errors, too many to recite here, including the huge prejudice he caused me by refusing to allow me to cross-examine LASA's officers I'd subpoenaed for the purpose, thus depriving me of some major artillery I'd lined up; and he swept the whole thing-all 59 pages and 323 paragraphs-off the table in a single dismissive paragraph."*
Par 22	*"Nonetheless, in view of Nair's unbelievably foolish dissimulation at trial-he was a pathetic liar- contradicted by the documentary record and by LASA's pleaded case, that LASA's entry-level lower criminal court public defender posts were critical, and not its top professional echelon specialist Senior Litigator posts, I showed at trial and called the judge's attention in my heads to all the manifold evidence that Senior Litigator posts are indeed critical, and that the bottom-rung lower criminal court posts can't possibly be and aren't. The judge evidently didn't read that far."*
Par 24	*"And what they unequivocally show is that she* ***(Vedalankar)*** *lied to me in October 2010 about the reason my appointment was aborted. That is, to camouflage the true reason, she'd fed me a false cover-story, as very smooth and convincing as it sounded…The lies then multiplied chaotically in all directions in the classic dynamic of a disintegrating cover-up."*
Par 25	*"At trial I mentioned my conclusions from the evidence I'd found of this that Nair had ghost-written Vedalankar's letters, and Board chairperson Mlambo JP's subsequent false reports to the Minister and to Parliament to pervert their enquiries into my complaints, and for this reason I held them both clear.* ***(my underlining and this must be read with paragraph 13 above)****. But in his evidence, Nair denied any hand in Vedalankar's letters to me; and although in evidence he ultimately admitted writing Mlambo JP's reports, he could 'only assume the Judge personally wrote that' (having first insinuated it might have been Vedalankar and then again) i.e. that Mlambo JP had amplified the report for the Minister before sending it to Parliament, with its further lies added about LASA's compliance with my three PAIA requests, and the nature and scale of my claim I'd just referred to the CCMA for conciliation. (It's quite clear Nair lied to the judge about this, and that he, not Mlambo JP, amplified the report with these additional lies.) That is to say, after I'd told the Judge that I held them clear (more about this below), Nair went on to directly implicate Vedalankar and Mlambo JP in lying to me, to the Minister and to Parliament."*
Par 26	*"True to the Minister's assurance, the OSD money was indeed included in the mid-term budget in October 2010, as Vedalankar informed the Portfolio Committee on the 12th-but not me, from who she*

	concealed this hotly material fact in her letter to me six days late, the better to maintain her pretense that LASA was still too skint to hire me."
Par 28	*"In her second letter to me in January 2011, illegally refusing my second PAIA request testing her financial alibi for the abortion of my appointment, not only did Vedalankar conceal this payment from me, she positively lied to me, again and again, that LASA was still in a financial jam---------- (And Vedalankar, Nair and other national management executives took home magnificent, unprecedented bonuses.)*
Par 29	*"In March 2011, responding to my third PAIA application, Vedalankar, Nair and Clark all confirmed the lying budgetary excuse on affidavit. That is, LASA's CEO, NOE, and HRE all swore the lie was true."*
Par 30	*"Even though it was already obviously false, the financial alibi was inadequate to cover and explain Nair's inaction in finalizing my appointment in the initial three-and-a-half month period between the dates he received my recommendation on 26 November 2009 and when the OSD uncertainty arose on 10 March 2010. So to patch the gap he concocted another story-later twice retracted by him on affidavit as an obvious error, and consequently nowhere pleaded or alleged in any interlocutory affidavit, then contradicted with a different story he told the judge. Who didn't think to note any of this dismal shambles in his judgment"*
Par 31	*"In his reports written for Mlambo JP to sign and submit to pervert the ministerial and parliamentary enquiries I'd initiated, Nair now claimed that what initially held up the alleged next step in my recruitment-a so-called second round interview-was difficulty encountered in coordinating a date suitable for all members of this panel to meet. Another smooth and ostensibly convincing story. After I exposed and refuted it as an outright lie in my original statement of claim, Nair retracted it on oath as 'an error…palpably an error' that Mlambo JP had made. Except that Nair himself was the author of this brazen lie to the Minister and to Parliament; it was not Mlambo JP's 'error'.*
Par 32	*"But Mlambo JP knew full well that this new story was false, because as a member of this so-called second round interview panel he'd never been contacted for a date. At trial Nair claimed, quite absurdly, that he never opened the recommendation and CV email attachments that he'd specially telephoned for, not until more than a year later, when he did so out of simple curiosity. (The judge found this perfectly credible, even though Nair had told a different story on affidavit before trial, which destructive contradiction I pressed in my heads. The judge didn't note this, and accepted and believed Nair's childishly obvious, self-contradicted new lie told in court, which had featured nowhere in any correspondence, report, pleading or affidavit before trial, all justifying LASA's failure to proceed with my appointment. This was one of the fundamental failures of the judgment.)*
Par 33	*"So, contrary to his lie told to the Minister and Parliament in Mlambo JP's name about this, there was no difficulty fixing a date for it because*

	no attempt was ever made to do so…So Mlambo JP knew full well that the report, which Nair had written for him to sign and to give the Minister and the chairperson of the Portfolio Committee to put down my complaints and pervert their independent enquiries contained in a flagrant lie about why no steps were taken to finalise my recruitment in the first few months before the OSD uncertainty arose several months after my selection."
Par 34	*"Mlambo JP also knew full well that the budgetary justification Vedalankar had fed me to cover the true reason my appointment had been aborted, which Nair repeated in the reports he drew for him, was another lie, because he'd chaired the meeting of the Board in July 2010 at which it approved executive management's proposal to trim costs by temporarily freezing recruitment to some lower criminal court posts only…Deceptively silent about it, Vedalankar repeatedly falsely reported LASA's Strategic Plan 2009/12 to have been implemented and completed as regards the employment of Senior Litigators in her CEO report for 2011/12 to the Minister and the National Assembly."*
Par 35	*"My discoveries about Nair's authorship led me to inform the judge on the first day that I held them clear, and that I held Nair solely responsible for the lies these documents contained."* ***(my underlining and this statement must be read with paragraph 13 which he withdrew all allegations against Mlambo JP and Vedalankar)***
Par 36	*"In his chambers on the second day, when I told the judge I still had a lot more evidence to lead, having already blown the fake budgetary pretext to pieces on the facts set out in my Timeline, he warned me: 'I don't want to tell you how to run your case, but don't make the mistake of throwing your net so far out that you catch more than you can bring in.' These were his exact words, spoken off the record, but contemporaneously recorded that evening in emailed reports of the court day to my family and friends. I understood the judge was giving me an indication, as we lawyers say, and a severe indication at that, namely to limit the spray of my case, and keep it fixed on Nair alone, as I'd indicated I intended doing at commencement, and not present any further evidence implicating the big fish; for if I dared make the dangerous mistake of doing so, this would be too much, and it would doom my prospects of succeeding in his court with my claim. It seemed clear to me that the judge wanted the evidence contained. He did not want me to lead more evidence beyond the smaller fry."*
Par 38	*"After I'd discredited the budgetary pretext fed me for not appointing me, and then the initial delay pretext fed to the Minister and Parliament for not immediately proceeding with my appointment, Nair cooked up and fed the Board two brand-new, totally different stories to justify his failure to finalise my appointment at Pietermaritzburg, an internal candidate's promotion at Durban, and another internal candidate's transfer to Mthatha, namely 'recruitment challenges' encountered in filling the posts, and alleged uncertainty that the six incumbent Senior Litigators were up to professional scratch. Both lies. Waffling feebly,*

	Nair was unable to support his first new story and radically changed his second, before which it was repeatedly exposed as a lie by LASA's records."
Par 40	*"It was a risible new lie, sharply contradicting LASA's pleaded and sworn version before trial, unsupported by any record, not alleged in any affidavit or pleading, and contradicted by LASA's recruitment/vacancy statistics for June 2010. But Nair's new lie in evidence made no impression on the judge, as said, he didn't mention it."*
Par 41	*"The LAC is also certain to treat an important aspect of the case, entirely disregarded by the judge (notwithstanding his fine grasp of the specifics of public service appointment procedure displayed in his Baxter judgment), namely Nair's incompetent and illegal so-called second round interview scheme for Senior Litigator candidates-unauthorised by the Board's Recruitment code and inconsistent with its Approval Framework. Unlike the judge, the LAC is certain to remark on the disgraceful breakdown of lawful recruitment procedure at LASA, in blatant disregard of the Board's said regulatory instruments which precisely govern this, and on Mlambo JP's participation in a grossly irregular, prejudicial, and unlawful recruitment practice."*
Par 42	*"His lies proliferating in court as he was trying to shore up his collapsing story about why he never signed his approval (or disapproval) of my recommendation by the selection panel as the Approval Framework required of him, and as provided at the foot of the document (with its legal nonsense, at his instance, about a further interview), Nair claimed in court that he didn't have to-a lie repeatedly and squarely contradicted by LASA's pleadings and interlocutory affidavits. The judge didn't note this; again the LAC is sure to."*
Par 43	*"Unlike the judge who accepted and believed it, the LAC is also sure to find stupidly ridiculous and manifestly false Nair's evidence, building on his just-mentioned lie, but again explicitly contradicted by LASA's pleadings and interlocutory affidavits…"*
Par 44	*"The LAC is certain to find Nair's evidence to have been obviously untruthful just about whenever he opened his mouth…It failed to do so, because its various explanations given were obviously untrue. So what?"*
Par 47	*"I did not expect the judge to be nodding off during the afternoon sessions, and finally claiming perversely, but revealing to his negative animus, that I ought rather to have taken LASA's abortion of my appointment on 'review'. As if I shouldn't have come bothering him to deliver the justice I craved, and had laboured bitterly year after year before trial to achieve, in the face of every obstacle corruptly placed in my way, viciously defamed all the while, contemptuously redoubled when I complained of it. In a matter of such enormous importance, and with so much on the line extending far beyond my personal interest in the case, and with so much fact to traverse and complex argument to present, including relevant, applicable international labour law*

	jurisprudence mentioned in my opening address, I did not expect the judge to prescribe that our heads shouldn't exceed a manifestly insufficient 'fifteen to twenty pages' suggesting that he'd already made up his mind to toss my case. I did not expect that five months after I filed my replying argument the judge hadn't troubled himself to read our heads, and was hearing our oral argument without having prepared for it ten months after the evidence, and relying only on his fading and defective memory of it presented in the course of a nine-day trial concluded the best part of a year earlier. In giving judgment, I did not expect the judge to misstate my case, omitting critical facts and including irrelevant matter, and portray as maladroit and whimsical my precisely considered tactical and strategic decisions taken, wrongly forced by him on the record and improperly pressed by him off it. I did not expect the judge to sugar Nair's lies for his judgment, by stretching and exaggerating them to help them go down. And that besides getting the final onus wrong, he should also have placed on me an impossible, pivotal, evidential onus I very obviously didn't bear and couldn't possibly have discharged."
Par 48	*"Professional and personal networks and loyalties being what they are in the real world, I appreciated from the outset that I was up against very long odds, and that notwithstanding his oath of office it would be no easy thing for a judge to impeach the conduct of his own (then) court president, and now president of the biggest, most important high court in the country, and thereby trigger a gargantuan scandal. But the truth must be out, and justice needs doing fearlessly."*
Par 49	*"An unattended splinter, so easily removed, has led to a widespread gangrene at the top of a major public entity, generally perceived to be the jewel in the crown of the Justice cluster, and a model of good governance."*
Par 50	*"Having regard to the profusion of contradictory lies that have spewed out of LASA, including to the highest authorities, in the cover-up following the illegal abortion of my appointment, to get away with and escape accountability for it-successfully so far, like Nixon nearly did after Watergate-your lordships can expect absolutely any lie from LASA in its answering papers, any subterfuge to persuade you to shut down further enquiry into this matter by refusing this petition. Since in-house attorney Mtati acting on instruction can offer you no more than hearsay about the case, and hasn't stinted at committing the most grotesque, poisonous perjury on affidavit on Nair's instructions to prejudice me in the court's eyes before trial, and since the judge found Nair to have been untruthful under oath on any number of scores, I respectfully entreat your lordships to require CEO Vedalankar, and not the former discreditable and unreliable persons, to depose to any answering affidavit under LAC rule 4(6) in regard to why I should be denied leave to argue my case before three senior, experienced, and attentive judges of appeal…The prospect of being jailed may chill any*

	inclination she might have to repeat under oath to your lordship the lies she told me."

UNFOUNDED DEFAMATORY, DEMEANING AND INSULTING ALLEGATIONS MADE BY ADVOCATE BRINK IN HIS SUPPORTING AFFIDAVIT TO URGENT APPLICATION AT PIETERMARITZBURG HIGH COURT UNDER CASE 12977/15 AGAINST WAGLAY JP,

Par 14	*"…(ii) my covering letters to Labour Appeal Court judges Davis and Sutherland JJA, falsely implicated by the order in the perversion of my petition…"*
Par 21	*"I've been busy with my draft complaint to the JSC for months- it's quite intricate, and includes similar fact evidence of the surreptitious perversion, by dint of multiple easily demonstrable lies, of separate Ministerial and Parliamentary enquiries I'd caused to be initiated; the subornation of perjury; and other grave corruption, all clearly shown…"*
Par 22	*"…(ii) that the order is a demonstrable fake…"*
ANNEXURE A: LETTER DATED 7 SEPTEMBER 2015 TO REGISTRAR OF THE LABOUR COURT, THULANI VILAKAZI WHICH FORMS PART OF ADVOCATE BRINK'S SUPPORTING AFFIDAVIT	
Par 32	*"The document is a forgery."*
Par 5- page 2	*"The registrar of the Labour Appeal Court in Johannesburg isn't your superior; and doesn't have the power to issue orders on judicial decisions made in your court. Had my petition been decided in Durban, as alleged in Phophi's order, it would have been signed and issued by you, and not by him in Johannesburg."*
Par 6, page 3	*"Davis and Sutherland JJA wouldn't have associated themselves with such a dull contradictory order. Nor with the pitifully defective logic in its second paragraph."*
Par 11- page 4	*"…according to the fake order…"*
Par 13, page 4	*"…phoney dismissal order…"*
Par 14- page 4	*"(Unlike Cele J, who shamelessly admitted in his chambers before the argument of my case a whole ten months after the two-week trial-set down for three days since my main heads alone were a phone-book thick bristling with 857 footnotes to the 1037 pages of bundled trial documents and to LASA's dense, lengthy pleadings (tactically elicited) and several interlocutory affidavits contradicted again and again by its single trial witness, but which argument he cut to a few hours, saying he just wanted our leading points-that he hadn't troubled to prepare himself in this manner; as might have been expected of a highly paid judge trying an exceptionally serious case involving fundamental rights*

	violations, millions of rand in damages, and serious maladministration, abuse of power and pervasive corruption in the top echelons of a major public entity headed by a Judge President. It explains his abysmal judgment whitewashing it a further three-and-a-half months later, disgracefully enabling the guilty to evade accountability and to walk away smirking.)
Par 20-page 6	*"Contrary to the false implication of the order that the dismissal of my petition was the unanimous decision of the three named judges-and Phophi later repeated this lie to me expressly in a letter ghost-written for him (Annexure 'L'), his second paragraph perfectly irrelevant, his third a flourish of dismally obtuse contradiction and illogic…You've got the file in your office; you can see for yourself."*
Par 21, page 6	*"To pre-empt any tampering with the real evidence of judicial corruption that the file closes…"*
Par 23, page 6	*"Contrary to the false information uttered in the forged order; calculated to defraud me into abandoning my pursuit of justice after years of struggle-with criminal prosecution and terrible sanctions in store for those who brazenly lied to the Justice Portfolio Committee in the National Assembly about my matter, and perjured themselves in the Labour Court and in the Labour Appeal Court-Davis and Sutherland JJA weren't involved in rejecting my petition, and their names were abused in the perpetration of the fraud on me without their knowledge. Ask them, they'll tell you."*
Par 25, page 7	*"He then covered up his malicious obstruction of my right to appeal (if, under LAC rule 4(8), at least two designated appeal judges thought I was in with a chance), firstly by ordering his registrar in Johannesburg to issue a counterfeit order he'd ghost-written, pretending that he, Davis and Sutherland JJA had considered and unanimously rejected my petition in Durban on 18 February 2015, and secondly by ghost-writing a letter for the said registrar to send to me, repeating this lie and basically telling me to push off and stop asking dangerous questions threatening to blow the lid on his impeachable misconduct."*
Par 26, page 7	*"It isn't any mystery why Waglay JP intentionally violated my fundamental right to due process guaranteed by section 34 of the Constitution by blocking my access to the Labour Appeal Court to appeal and remedy the complete hash that Cele J made of my case. In a magnificent stroke of good fortune, I landed the written evidence of the stunningly dishonest improper influence that caused him to do so."*
Par 28, page 7	*"I've substantially completed drawing such a complaint regarding the perversion of my petition, identifying the other corrupt judges responsible for it and his motives, and I'll be filing it imminently."*
Par 29, page 8	*"…as the bogus order falsely implies…"*
Par 30, page 8	*"…in full knowledge that the so-called order on which it relies is a fraud, and that contrary to false appearances my case is still very much alive*

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	and has yet to be properly determined on petition and then on appeal, you'll be acting improperly, in bad faith and unlawfully."
Par 31, page 8	*"…and will put this letter up with my application to demonstrate that you turned a deliberate blind eye to the true facts that I brought to your attention, and proceeded to tax a bill you well knew is not yet due."*

Having set the excerpts above and in totality looking at the tone and language used by Brink, it is my submission that he has no respect to his office and other officers of Court. He is treading on the path of demeaning, insulting and defaming any person who holds a divergent view to his own. He is quick to make conclusions that are based on his delusionary theory and without any factual basis. It is my submission that, as an officer of the court, based on his conduct, the public can be susceptible to far reaching negative implications.

Deponent

THUS SWORN AND SIGNED BEFORE ME AT JOHANNESBURG ON THIS ___ DAY OF NOVEMBER 2015. THE DEPONENT HAVING ACKNOWLEDGED TO ME THAT SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, SHE CONSIDERS THE CONTENTS THEREIN TO BE BINDING ON HER CONSCIENCE AND SHE HAS NO OBJECTION TO THE TAKING OF THE PRESCRIBED OATH.

COMMISSIONER OF OATHS

FULL NAMES : Ronji Ko T/Chaka

DESIGNTION : ST

ADDRESS No 01 Clarendon Place

Hillbrow Saps

SUID-AFRIKAANSE POLISIE
STATION COMMANDER
SOUTH AFRICA

S.7 R7

TO: **G. O. VAN NIEKERK SC**

CHAIRMAN OF THE BAR COUNCIL, KZN

FROM: **R. J. A. CALLUM SC**

REPORT OF THE COMPLAINTS COMMITTEE

Dear Van Niekerk SC,

I have convened a number of meetings of the Complaints Committee since it was established for the purposes of determining the veracity of complaints which have been allocated to this Committee.

I report on the eleven complaints that have been referred to this Committee as follows:

1. **BRINK**

This matter arises out of a complaint lodged by the Legal Aid Board pursuant to review proceedings that Brink (a non-member) instituted in the Labour Court. The Complainant has furnished the Society with a record of the proceedings from which it is evident that Brink gratuitously defamed the Chairman of the Board, the Honourable Mr Justice Mlambo, and specifically alleged that he was manifestly dishonest and further that he colluded with other members of the Board to avoid appointing Brink to a position that had been advertised. He persisted with this version in the review and was ultimately forced to concede that he had been

1999

incorrect in his assessment of the Honourable Judge's conduct. He has not made any attempt to address the import of his disgraceful behaviour and this Committee is of the view that Brink's behaviour towards a respected member of the judiciary is so manifestly reprehensible that it would be appropriate to institute proceedings to have him struck off, alternatively suspended from practice due to his scurrilous attack on the dignity of the Court which he has a duty to uphold.

To that end, the Committee addressed a letter to Brink, a copy of which is annexed hereto for your ease of reference, calling upon him to make representations, if any, before the Society considers whether it would be an appropriate case for it to initiate strike-off proceedings.

Brink has failed to respond to this letter and this Committee, accordingly, is of the view that strike-off proceedings would be appropriate in the circumstances.

2. [redacted]

[redacted]

[redacted]

R7

Gmail Anthony Brink <anthonybrink.sa@gmail.com>

Re: Brink's second request for records under PAIA: Three issues.

4 messages

Anthony Brink <anthonybrink.sa@gmail.com> 12 January 2021 at 13:17
To: Kate Peniston - Society of Advocates of KZN <kznbar@law.co.za>

Dear Ms Penniston

Thanks for your response yesterday to my second PAIA request in November last year.

Three issues arise:

1.
The excerpt of the record you provided me headed 'Report of the Complaints Committee', addressed to Van Niekerk SC by Callum SC, marked '5.7' in manuscript in the top right corner, and presented at the meeting of the bar council in February 2017, is undated, inasmuch as the last signature and date page of the report was omitted. Please supply me the last page of the report showing its date.

2.
In the penultimate paragraph of Callum SC's said report on me, he states:

'the Committee addressed a letter to Brink, a copy of which is annexed for your ease of reference, calling on him to make representations, if any before the Society considers whether it would be an appropriate case for it to initiate strike-off proceedings. Brink has failed to respond ...'

Kindly furnish me with a copy of that 'letter to Brink, a copy of which is annexed' to the report.

(I didn't receive this letter, which is why I was amazed to learn by chance in April 2017 that the Council had resolved in February 2017 that I be struck off, before I'd been afforded an opportunity to answer LASA's complaint against me.)

3.
Your response to item 13 on my list of requested records, namely for:

'Any and all correspondence between the Society and the Judicial Service Commission regarding progress in the JCC's determination of Brink's gross misconduct complaints against Mlambo JP and Waglay JP'

was:

'please find attached ... Correspondence between the JSC and Society dated 18 August 2018, there is no other correspondence for this item.'

This correspondence supplied me comprises Society chairperson Van Niekerk SC's email on 8 August 2018 (not the 18th) to the late Lynette Bios, then secretary of the Judicial Service Commission ('JSC'), in response to her 'enquiry of today's date' (per the email).

The quoted phrase shows that Ms Bios enquired earlier in the day on 8 August 2018 regarding the Society's contemplated strike-off application against me, which Van Niekerk SC informed her would be finally decided upon once the JSC (actually the JSC's Judicial Conduct Committee) had decided my complaints against Mlambo JP.

(It's almost certain Ms Bios was the source of the information provided to the Society and repeated in the Litigation Sub-Committee reports of July and August 2018 that my complaints had been 'referred to the Judicial Misconduct Sub-Committee of the JSC.')

If written, Ms Bios's enquiry is responsive to my record specification under item 13 of my request, and I require a copy please. If telephonic, please advise me who took her call, recorded her enquiry, and referred it to Van Niekerk SC to answer.

And after this, I don't expect I'll be troubling you again.

Yours sincerely
Anthony Brink

On Mon, 11 Jan 2021, 12:05 Kate Peniston, <kznbar@law.co.za> wrote:

> Dear Mr Brink

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Please find attached herewith a letter for your attention.

Kind regards

Kate Peniston

Administrative Secretary

SOCIETY OF ADVOCATES OF KWAZULU-NATAL

3rd Floor

6 Durban Club Place

Durban

4001

Tel : 031 301 3099

Fax : 031 304 4415

Fax2Mail : 086 401 5567

From: Anthony Brink <anthonybrink.sa@gmail.com>
Sent: Wednesday, 18 November 2020 22:00
To: Kate Peniston - Society of Advocates of KZN <kznbar@law.co.za>
Subject: Brink's second request for records under PAIA

Dear Kate
I attach my second request for access to records under the Promotion of Access to Information Act 2 of 2000 for the attention of your chairperson.

Please see the 'Note' at the very end of it.
Sincerely
Anthony Brink

Anthony Brink <anthonybrink.sa@gmail.com> 28 January 2021 at 16:42
To: Kate Peniston - Society of Advocates of KZN <kznbar@law.co.za>

Dear Ms Peniston
More than a fortnight on, I write to request a reply to my email to you of the 12th.
Really important.
Yours sincerely
Anthony Brink
[Quoted text hidden]

Kate Peniston <kznbar@law.co.za> 17 February 2021 at 08:15
To: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Mr Brink

My apologies for the late reply.

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Item 1. The last page of the complaints committee report is attached.

Item 2. The letter is not annexed to the report that I have on file. I have enquired with the LPC and await their reply.

Item 3. Advocate van Niekerk SC has confirmed that he spoke with Ms Bois by telephone call and responded to her query with the email sent to her on 8 August 2018.

[Quoted text hidden]

SKM_36721021616570.pdf
38K

Anthony Brink <anthonybrink.sa@gmail.com> 17 February 2021 at 08:30
To: Kate Peniston - Society of Advocates of KZN <kznbar@law.co.za>

Thanks very much, Kate.
Best
Anthony
[Quoted text hidden]

5.8 R8

Report of Complaints Committee 2

Complaint against Advocate A. R. Brink

1. **Membership**

According to the latest membership list, Brink is no longer a member of the Society. Brink is apparently presently a contracted additional Magistrate, stationed in Eshowe.

2. **The identity of the complainant**

An attorney employed as a corporate services executive by Legal Aid South Africa (henceforth 'LASA').

3. **The nature of the complaint**

The complainant has alleged that Brink's conduct is not befitting of an officer of the court, nor that of a Magistrate. The complaint is in excess of 500 pages in length. The complainant alleges

R8

that Brink's language is '**unprofessional**' and he requires sanctioning.

4. Summary of facts

4.1 Brink applied for a job at LASA as a senior litigator at the Pietermaritzburg Justice Centre and progressed to the second round of interviews. The second round of interviews did not proceed as a result of budgetary uncertainties, according to LASA. Brink, however, believed that he had not been successful in securing employment because of his controversial views on the effect of anti-retroviral drugs in treating AIDS (he is a well known, self taught, dissident in this field, believing that ARV's kill rather than cure). He consequently instituted litigation against LASA in the Labour Court alleging, **inter alia**, that he had been unfairly discriminated against in terms of the Employment Equity Act 55 of 1998.

4.2 The litigation was conducted in Brink's name, he being the Applicant. It appears that he drafted the

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papers. Brink testified at the hearing. At the hearing in the Labour Court, Brink was initially represented by counsel (Hunt) and an attorney, but at the beginning of the matter dismissed both of them and represented himself.

4.3 The matter served before Mr. Justice Cele (henceforth 'Cele J'). On 18 September 2014, Brink's application was dismissed by Cele J, with costs. On 27 November 2014, Cele J refused Brink's application for leave to appeal and to lead new evidence on appeal.

4.4 On 7 December 2013 (this should perhaps have been dated 2014), Brink petitioned the Judge President of the Labour Court. His petition was refused on 18 February 2015.

4.5 On 7 October 2015, Brink brought an urgent application in the High Court in Pietermaritzburg in an attempt to interdict the Taxing Master in the Labour Court from finalising the taxation of the costs he was ordered to pay by Cele J in the Labour Court. The

R8

Order sought by Brink (who appears to have been represented on this occasion) was pending an application to declare that the dismissal of his petition to the Judge President was a nullity and that it be set aside (he claimed that the Registrar who signed the Order recording the dismissal of the petition was not a Registrar in Durban, that there was no evidence in his petition file that his petition had, in fact, been refused nor was there any evidence that the three Judges who considered it were in Durban on the date the Order issued). This application was dismissed on the day that it was first set down, with costs ordered against Brink on the attorney client scale.

5. **The specific complaints**

5.1 The conduct that the complainant refers to stems largely from allegations that Brink made in his '**Statement of Claim**' in the Labour Court. In that document Brink, **inter alia**, stated that:

R8

5.1.1 Mr. Justice Dunstan Mlambo, the Chairperson of LASA (henceforth 'the Judge'), and the CEO of LASA (henceforth 'the CEO) had been motivated by unlawful political prejudice, alternatively racial prejudice, directed at himself;

5.1.2 the Judge and the CEO had orchestrated a cover up in order to disguise the true reason why Brink was not appointed to the position in LASA;

5.1.3 the Judge had lied about the matter when reporting on the matter to the Minister of Justice and Constitutional Development in order to cover up his and the CEO's unfair discrimination against Brink;

5.1.4 the Judge lied to the chairperson of the Parliamentary Portfolio Committee when reporting to it on the matter and thereby misled, **inter alia**, parliament;

R8

5.1.5 the financial justification for not appointing him was a bogus reason concocted by the Judge and the CEO.

5.2 Under cross examination at the hearing, Brink was forced to retract all the allegations that he had made against the Judge and the CEO. He now indicated that he exonerated the Judge and the CEO from any accusations of dishonesty and discrimination. He, however, now stated that another person had concocted the plot against him.

5.3 Brink claimed his statements about the Judge and the CEO were based on '**misconceptions**'. He also stated that he had made the allegations against the Judge and the CEO '**inadvertently**'.

5.4 In his petition to the Judge President of the Labour Court Brink, notwithstanding his earlier retraction of all the allegations against the Judge and the CEO at the trial, stated that:

5.4.1 the matter continued to involve

'the personal and professional integrity of a sitting judge president, formerly of this court,

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and that of the the most senior management executives of a major public entity.'

This is clearly a continued reference to the Judge and the CEO.

5.4.2 as a consequence of

'multiple, objectively demonstrable lies'

there had been a perversion of separate Ministerial Parliamentary enquiries. This again refers to a proposition that he had allegedly previously distanced himself from.

5.4.3 the Judge had known that a

'new explanation'

that the Judge had advanced

'was false'

R8

and that the budgetary constraints reason advanced by him

'was another lie'.

5.4.4 The Judge had participated in

'a grossly irregular, prejudicial, and unlawful recruitment process.'

5.4.5 The Judge is an active political promoter of the American and European medical industrial complex's HIV-AIDS-ARV business model,

'under the mantle of human rights.'

5.4.6 Both the Judge and the CEO are partisans of pharmaceutical interests and

'the chemical merchandise they promote'.

5.4.7 The Judge and the CEO concocted a false explanation to cover the true reason for aborting Brink's recruitment.

R8

5.4.8 The Judge

> **'would later consciously and deliberately tell the same lies, and more lies of his own ... to the Minister of Justice and Constitutional Development, which lies he repeated some months later to the chairperson of the Portfolio Committee.'**

5.4.9 Cele J, who heard the matter in the Labour Court, was guilty of

> **'gravely prejudicial misconduct'**

that resulted in him thwarting a full and proper ventilation of the issues and had made several errors in law.

5.4.10 Cele J's judgment against him was a

> **'deplorably inattentive, glib, crude and perfunctory judgment...'**

6. Discussion

6.1 Brink has consistently identified himself as an advocate in the papers that he has drawn, even at a time when acting as a Magistrate. However, it is difficult to discern whether in making the allegations that he has made whether he was acting in his capacity as an advocate or in his capacity as a litigant in person. At best for Brink, the line between these capacities is blurred. He will no doubt allege that he was not expressing himself as an advocate but as a litigant. However, he ought to have conceived that the unsubstantiated allegations that he made might be attributed to him in his role as an advocate. Certainly this is the view adopted by the complainant, and he is justified in taking that view.

6.2 The allegations that Brink made are serious: to call the Judge dishonest and to allege that he has lied cannot be anything but serious. In addition, his disdain for the Bench is further demonstrated in the unpalatable way he has referred to Cele J. To wilfully impugn another's integrity in a profession, such as

R8

law, where integrity is crucial is impermissible. Such allegations ought not to have been made without any evidence justifying them being made. They appear to have been gratuitously made in order to advance Brink's personal agenda of a conspiracy against him.

6.3 The fact that the allegations were withdrawn in the proceedings before Cele J does not stand to Brink's credit. Firstly, in the absence of evidence, they ought not have been made at all. Secondly, it does not appear to have been a true withdrawal, as in his petition he appears to have persisted in the scandalous allegations he had apparently withdrawn. He had had time to reflect on what he had said and pleaded and decided, in drawing his petition, to continue with allegations that he had admitted under oath were not true.

6.4 The statement that Brink had '**inadvertently**' slandered the Judge in a most disgraceful way must be considered as a dishonest statement. There was nothing inadvertent about Brink's conduct: it was deliberate and formed part of his strategy.

R8

7. **Finding**

It is found that there is merit in the complaint.

8. **Recommendation**

Notwithstanding that Brink is not a member of the Society of Advocates, it is recommended that a striking off application be launched.

Complaints Committee 2

R. G. Mossop S.C.

M. Konigkramer

M. Manikam

17 February 2017.

2015

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MINUTES OF THE MEETING OF THE BAR COUNCIL OF THE SOCIETY OF ADVOCATES OF KWAZULU-NATAL HELD ON 23RD FEBRUARY 2017 IN THE MEETING ROOM, 15TH FLOOR, 6 DURBAN CLUB PLACE, DURBAN.

1. **WELCOME**

The Council meeting commenced at 17h00 and the chairman welcomed the members of the Council present.

2. **ATTENDANCE AND APOLOGIES**

Present:

GO van Niekerk SC (Chairman)
VM Naidoo SC (Deputy Chairman)
P Hemraj SC
TG Madonsela SC
W Nicholson
C Jaipal
S Mahabeer
KP Thango
K C McIntosh
GR Thatcher SC (Honorary Secretary)
D Pillay (Assistant Honorary Secretary)
K Peniston (Administrative Secretary)

Apologies:
AJ Troskie SC (Honorary Treasurer)
CG Van der Walt

3. **CONFIRMATION OF MINUTES OF MEETING ON 19 JANUARY 2017**

3.1. There were no amendments to the minutes.

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[redacted]

5.6. [redacted]

5.6.1. [redacted]

5.6.2. [redacted]

5.7. **Complaints Committee 1 Report (Annexure 5.7, pages 1-6)**

The report of complaints committee 1 was tabled and the following was resolved:

5.7.1. Brink: the complaint against Brink by the Legal Aid Board was considered by this complaints committee as well as complaints

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committee 2, both of which made the same recommendation, namely that an application for Brink's striking off ought to be brought.

Resolved:

It was resolved that the complaint against Brink would be referred to the Litigation Committee to launch an application for Brink's striking off.

5.7.2. [redacted]

5.7.3. [redacted]

5.8. [redacted]

5.8.1. [redacted]

5.8.2. [redacted]

6. **FINANCE (ANNEXURE 6, PAGES 1-5)**

6.1. [redacted]

Annexure "AA24"

R10

SOCIETY OF ADVOCATES OF KWAZULU-NATAL

3rd Floor, 6 Durban Club Place, Durban, 4001
Tel (031) 301 3099 Fax (031) 304 4415 Email kznbar@law.co.za

23 March 2013

Mr Solly Sekgota
Email: SollyS@legal-aid.co.za

Dear Sir

RE: COMPLAINT AGAINST ADVOCATE A R BRINK

I write to advise you that the report by the complaints committee dealing with your complaint against Advocate A R Brink was tabled before the Bar Council and was noted. A copy of the report is attached hereto.

The Bar Council has referred your complaint to the Litigation committee for a striking off application against Advocate A R Brink.

I trust you find the above in order.

Yours faithfully

KATE PENISTON
Administrative Secretary

cc: **Thembile Vuyo Mtati**
Legal Aid Board
ThembileM@legal-aid.co.za

2016/2017 BAR COUNCIL
GO VAN NIEKERK SC (Chairman): VM NAIDOO SC (Deputy Chairman): PD HEMRAJ SC: TG MADONSELA SC
CG van der Walt : KC McIntosh : KP Thango : S Mahabeer : AR Khan : WAJ Nicholson : C Jaipal : M Mazibuko
G R Thatcher SC (Hon. Secretary): AJ Troskie SC (Hon. Treasurer): D Pillay (Hon. Asst. Secretary)
KL Peniston (Administrative Secretary)

2019

25 Balcomb Ave
Zini River Estate
Mtunzini 3867

24 April 2017

Gardiner van Niekerk SC,
Chairman: KwaZulu-Natal Bar
3rd Floor, Durban Club Place
Durban

By email: kznbar@law.co.za

Cc: Venesen Naidoo SC,
Vice-Chairman: KwaZulu-Natal Bar
17 Prince Edward Street
Pietermaritzburg

By email: pmbbar@pmblaw.co.za

Dear Van Niekerk

REQUEST TO BE HEARD BEFORE THE BAR ACTS
ON AN UNPROFESSIONAL CONDUCT COMPLAINT

Imagine my amazement to learn from a replying affidavit filed last month (Pmb HC: 12124/16) that the Complaints Committee 2 (Mossop SC et al.) had just decided, on the strength of a complaint made in 2015 by Legal Aid South Africa ('LASA'), that I should be struck off for persistently slandering its chairperson Mlambo JP.

Without affording me a hearing.

The purpose of this letter is to request a copy of the complaint and that I be permitted to answer it before the Bar takes the matter any further. I'll be pointing out some basic factual mistakes in the Complaints Committee's finding, which it wouldn't have made had it heard me.

My enclosed letter to Corruption Watch on 6 March, particularly the last paragraph on page 3 et seq., points up the extraordinary gravity of this matter.

My answering affidavit in the above-mentioned application – 960 paragraphs, 270 pages, and 80 annexures – comprehensively traverses my disputes with LASA; addresses much of what LASA appears to have complained about; and anticipates what I'll have to say in my answering affidavit should the Bar decide

to proceed. I'll print and send it up on request. Alternatively it can be downloaded immediately from my Dropbox folder named 'For Corruption Watch' (https://goo.gl/sKooCO); it's item #4.

Still I'd like to see a copy of the complaint itself, and to answer it specifically.

I'll shortly be applying to the Judge President under section 13(1)(a) of the Supreme Court Act for the appointment of a full bench to hear LASA's said application (simultaneously with my own application against LASA (1118/16) brought three weeks earlier, opposed but unanswered; also in the Dropbox folder), in view of the factual density of the matter, and Mlambo JP's impeachable misconduct on multiple scores, detailed with supporting documents in my answering affidavit.

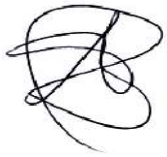
I mention this, because my capital complaints against Mlambo JP that LASA has complained about, are likely to come before court later this year. That is, they'll be aired, irrespective of the Bar's reconsidered decision of LASA's complaint, in light of the staggering documented facts set out in my answering affidavit that LASA almost certainly didn't share with the Bar when making its complaint.

To repeat my question:

Will the Bar let me see the complaint against me, and apply the audi alteram partem rule before proceeding?

Your reply by email would be preferred.

Yours sincerely



ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

R12

SOCIETY OF ADVOCATES OF KWAZULU-NATAL

3rd Floor, 6 Durban Club Place, Durban, 4001
Tel (031) 301 3099 Fax (031) 304 4415 Email kznbar@law.co.za

12 May 2017

Mr Anthony Brink
Per email : anthonybrink.sa@gmail.com

Dear Mr Brink

Your letter of 24 April 2017 refers.

In view of what is contained in your letter, the Society has decided that it will, at its next meeting, set aside its decision to bring an application for your striking-off and to provide you with an opportunity of a hearing. I will refer the complaint against you back to Complaints Committee 2 who are familiar with the case and request Mossop SC to consider any representations you wish to make to that committee. I will also request him to forward to you a copy of the complaint.

I do not wish the Society to become embroiled in a lengthy debate with you about the merits of the complaint and I will accordingly request your representations to be made expeditiously and as brief as you can possibly make them.

Yours faithfully

G O van Niekerk SC
Chairman

c.c. Advocate R Mossop SC
Per email : rgmossop@law.co.za

c.c. Kate Peniston
Society of Advocates
Per email : kznbar@law.co.za

2016/2017 BAR COUNCIL
GO VAN NIEKERK SC (Chairman): VM NAIDOO SC (Deputy Chairman): TG MADONSELA SC: J NXUSANI SC
CG van der Walt : KC McIntosh : KP Thango : S Mahabeer : AR Khan : WAJ Nicholson : C Jaipal : M Mazibuko
G R Thatcher SC (Hon. Secretary): AJ Troskie SC (Hon. Treasurer): D Pillay (Hon. Asst. Secretary)
KL Peniston (Administrative Secretary)

MINUTES OF THE MEETING OF THE BAR COUNCIL OF THE SOCIETY OF ADVOCATES OF KWAZULU-NATAL HELD ON THURSDAY 25 MAY 2017 IN THE DJ SHAW QC ROOM, 3RD FLOOR, 6 DURBAN CLUB PLACE, DURBAN.

1. **WELCOME**

The Council meeting commenced at 17h00 and the chairman welcomed everyone. He extended a special welcome to J Nxusani SC, a new member of the council who had replaced Hemraj SC following her resignation and who was attending his first council meeting.

2. **ATTENDANCE AND APOLOGIES**

Present:

GO van Niekerk SC (Chairman)
TG Madonsela SC
J Nxusani SC
CG van der Walt
M Mazibuko
C Jaipal
S Mahabeer
KP Thango
W Nicholson
AJ Troskie SC (Honorary Treasurer)
GR Thatcher SC (Honorary Secretary)
D Pillay (Assistant Honorary Secretary)
Ms K Peniston (Administrative Secretary)

Apologies:

VM Naidoo SC (Deputy Chairman)
KC McIntosh

R13

3. **CONFIRMATION OF MINUTES OF MEETING ON 20 APRIL 2017**

3.1. There were no amendments made to the minutes.

3.2. CG van der Walt proposed that the minutes be confirmed and adopted and S Mahabeer seconded this proposal.

4. **MATTERS ARISING / TRACKING ITEMS**

4.1. [redacted]

4.2. **Complaints register**

4.2.1. [redacted]

4.2.2. Committee 2

The council had resolved to bring an application to strike Brink, a non-member, from the roll of advocates. Brink had subsequently written requesting that he receive a hearing, contending that he ought to have received one before a resolution for his striking off was taken. After discussion:

It was resolved:

The resolution to strike Brink off is rescinded. He would be given a hearing after which the matter would be considered afresh.

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SOCIETY OF ADVOCATES OF KWAZULU-NATAL

3rd Floor, 6 Durban Club Place, Durban, 4001
Tel (031) 301 3099 Fax (031) 304 4415 Email kznbar@law.co.za

15 May 2017

Mr Anthony Brink
Per email: anthonybrink.sa@gmail.com

Dear Mr Brink

Complaint: Legal Aid South Africa

I refer to the abovementioned matter and van Niekerk SC's letter to you dated 12 May 2017.

Please find attached the complaint in pdf format. I assume that you have the source documents to which reference is made in the complaint. Should this not be the case, please let me know which documents you do not have.

Would you let us have your answer to the complaint at your earliest convenience.

Yours faithfully

R. G. Mossop SC
Convenor: Complaints Committee 2

c.c **Advocate G. van Niekerk SC**
Per email: michellemack@law.co.za

c.c **Kate Peniston**
Society of Advocates
Per email: kznbar@law.co.za

2016/2017 BAR COUNCIL
GO VAN NIEKERK SC (Chairman): VM NAIDOO SC (Deputy Chairman): PD HEMRAJ SC: TG MADONSELA SC
CG van der Walt : KC McIntosh : KP Thango : S Mahabeer : AR Khan : WAJ Nicholson : C Jaipal : M Mazibuko
G R Thatcher SC (Hon. Secretary): AJ Troskie SC (Hon. Treasurer): D Pillay (Hon. Asst. Secretary)
KL Peniston (Administrative Secretary)

2025

R15

SOCIETY OF ADVOCATES OF KWAZULU-NATAL

3rd Floor, 6 Durban Club Place, Durban, 4001
Tel (031) 301 3099 Fax (031) 304 4415 Email kznbar@law.co.za

25 July 2017

Mr. Solly Sekgota
Corporate Legal Manager
Legal Aid South Africa

Per email: SollyS@legal-aid.co.za

Dear Mr. Sekgota

Complaint: Advocate A. Brink

Further to the above, an answer has been received from Advocate Brink concerning the Society of Advocate's intention to remove his name from the Roll of Advocates. That response consists, at this stage, of eight volumes of complaints against the Honourable Mr. Justice Mlambo JP.

I have broken down those eight volumes into smaller scanned bundles to aid email transmission. The eight volumes are thus contained in eleven separate bundles of documents. I shall send each bundle to you by separate email in an attempt to ensure that it is not rejected by your server. The complaints thus run in sequence from bundle one to bundle eleven.

Could I ask you to consider the contents of the answer and let me know whether you have any response thereto.

A swift response would be appreciated, but may not be possible given the voluminous nature of the answer and the detail contained therein.

I look forward to receiving your response.

Yours sincerely

Rob Mossop SC*
Complaints Committee 2: Convenor

*Electronically transmitted and therefore not signed

2016/2017 BAR COUNCIL
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G R Thatcher SC (Hon. Secretary): AJ Troskie SC (Hon. Treasurer): D Pillay (Hon. Asst. Secretary)
KL Peniston (Administrative Secretary)

Legal Aid South Africa
Your voice. For justice.
Independent and within reach.

29 De Beer Street
Braamfontein
Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

Our Ref: Sollys/complaint/KZN

23 August 2017

Advocate Rob Mossop SC

c/o Society of Advocates of Kwa Zulu Natal

6 Durban Club Place

Durban

4001

Per e-mail: kznbar@law.co.za

Dear Advocate Mossop SC

Complaint: Advocate A. Brink

We acknowledge receipt of your letter dated 25 July 2017 and confirm having separately received 9 (nine) volumes of attachments consisting of 8 (eight) complaints by Advocate Brink to the Judicial Service Commission.

The complaints consist of 264 (two hundred and sixty four) pages in number and having read through all of them, it was apparent that there are no new issues that Advocate Brink is raising. The substantial part of the complaints have already been ventilated and dealt with at the Durban Labour Court and the Labour Appeal Court. Other matters raised arise out of the applications he made at Eshowe Magistrates Court which now form part of two applications set down for 27 October 2017 at the Pietermaritzburg High Court.

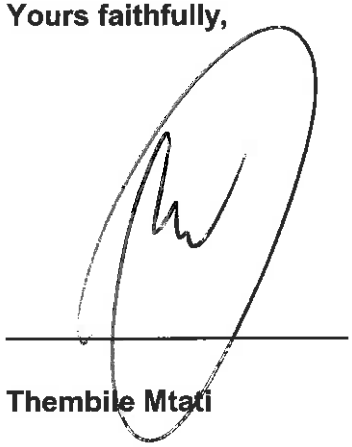
Advocate Brink does not respond to our complaint submitted to your Society but rather demonstrates that he has also lodged complaints against Judge President Mlambo.

It is not our intention to respond to his complaints, however it is interesting to note that he further makes unsubstantiated inflammatory statements against Judge President Wagley.

We have furnished you with a record of the Labour Court proceedings highlighting the causes of complaint and we affirm our position and request that the matter be finalised swiftly.

We also attach for your convenience, the answering affidavit of Advocate Brink in the pending proceedings scheduled for 27 October 2017 to indicate his continued unrepentance towards the judiciary.

Yours faithfully,



Thembile Mtati

Legal Executive

Legal Aid SA

R17

Gmail Anthony Brink <anthonybrink.sa@gmail.com>

Response of Legal Aid

12 messages

Rob Mossop <rgmossop@law.co.za> 29 November 2017 at 06:58
To: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Mr. Brink

I see that I omitted to send to you a copy of LASA's response to your representations.

Please find same attached.

Kind regards

Rob Mossop SC

2 attachments

PastedGraphic-1.png
16K

Complaint Advocate A Brink 23- August 2017.pdf
54K

Anthony Brink <anthonybrink.sa@gmail.com> 29 November 2017 at 09:37
To: Rob Mossop <rgmossop@law.co.za>

Thanks.
When did they come in?
Cheers
AB
[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 29 November 2017 at 09:39
To: Rob Mossop <rgmossop@law.co.za>

Scratch that.
I've just opened the doc to read it, and see it's dated 23 August.
[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 29 November 2017 at 09:41
To: Rob Mossop <rgmossop@law.co.za>

OK, read it.
Letter to follow.
[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 29 November 2017 at 20:33

2029

R17

To: Rob Mossop <rgmossop@law.co.za>

Dear Mossop
Please forward to me Legal Aid SA's recent communication with you which prompted you this morning to suddenly remember, three months on, to provide me with its letter to you of 23 August, in which it told you, 'It is not our intention to respond to his [my] complaints' to the JSC against Mlambo JP.
Please also forward your response to this recent communication by LASA.
I know you and LASA have indeed communicated about this, because around 4 this afternoon, several hours after your email to me, I received LASA's response to my PAIA request a month ago for a copy of its comment on my JSC complaints – which complaints you forwarded to LASA on 25 July – telling me that 'it has already been confirmed to us by the Society of Advocates that the requester is already in possession of this record.'
In fairness, I should disclose to you that anticipating LASA's routine illegal blanket refusal of my PAIA request for that record and several others, I've substantially completed drawing an application for imminent issue out of the Pietermaritzburg High Court and service on LASA, for an order compelling its production of the illegally refused records (see my letter to its CEO and information officer Vedalankar attached); and I intend putting up with my papers your email to me this morning – explaining why I'm not seeking an order for the production of LASA's comment on my JSC complaints, as I'd requested under PAIA, since I now have it.
I may also put up your and LASA's recent correspondence about LASA's non-response to my JSC complaints, which I'm requesting here.
And since your original, since reversed, professional misconduct finding against me, made before hearing me, was made after a very long delay, just in time for LASA to gleefully annex it to its replying affidavit in April in its recently failed application to have me declared a vexatious litigant (for repeatedly successfully suing to compel its compliance with earlier PAIA requests), the coincidence suggests that LASA urged you early this year to please make your finding against me at last – having complained about me to the Society way back in November 2015.
In the circumstances, please also forward to me all correspondence exchanged between LASA and the Society, in the period between LASA's complaint and your original lopsided finding against me, both of which documents I have.
You'll understand my interest in a completely transparent enquiry by your Complaints Committee into whether I'm the kind of guy who's a fit and proper person to be an advocate or not. Three and a half decades after I was admitted to practice, my reputation spotless until I ran into this fantastically corrupt bunch.
Looking forward
Cheers
Brink
PS: As said earlier, a letter will follow about LASA's characteristically evasive non-response just furnished me, and a recent pleasing development at the JSC.
[Quoted text hidden]

Vedalankar 2 November 2017.pdf
62K

Rob Mossop <rgmossop@law.co.za> 30 November 2017 at 09:38
To: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Mr. Brink

I received a telephone call from Mr. Solly Sekgota on the afternoon of 28 November 2017 whilst driving in my car on the M4. He inquired from me whether I had sent LASA 's response to your representations to you. He mentioned that you had an application pending wherein you asked for LASA to put up that document abut he believed you would have already received it from me. I was not able to immediately answer him about whether I had sent it to you, not

2030

R17

having access to my records as I drove. I undertook to revert to him first thing the next morning and further undertook that if I had not sent it on to you, that I would do so.

I saw the next morning that Mr. Sekgota had sent an email to the Society, a copy of which I received and which I attach.

A check that morning revealed that I had not let you have LASA's response (for which I apologize) and so, in keeping with my undertaking to Mr. Sekgota, I emailed it on to you. Mr. Sekgota was also a recipient on the email that I sent to you and I see no point in enclosing that email.

[Quoted text hidden]

On Nov 29, 2017, at 20:33, Anthony Brink <anthonybrink.sa@gmail.com> wrote:

Dear Mossop
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Looking forward
Cheers
Brink
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2031

R17

On 29/11/2017, Anthony Brink <anthonybrink.sa@gmail.com> wrote:

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Letter to follow.

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Kind regards

Rob Mossop SC

<Vedalankar 2 November 2017.pdf>

2 attachments

PastedGraphic-1.png
16K

Email from Sekgota.pdf
1027K

Anthony Brink <anthonybrink.sa@gmail.com> 30 November 2017 at 10:23
To: Rob Mossop <rgmossop@law.co.za>

Thanks, Mossop, for your prompt and completely satisfactory answer.
Might I have please the further correspondence I mention, namely, 'all correspondence exchanged between LASA and the Society, in the period between LASA's complaint and your original lopsided finding against me, both of which

R17

documents I have.'
Or were these earlier communications also over the telephone?
Regards
Brink

[Quoted text hidden]
[Quoted text hidden]

[Quoted text hidden]
[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]
Kind regards

Rob Mossop SC

<Vedalankar 2 November 2017.pdf>

Rob Mossop <rgmossop@law.co.za> 30 November 2017 at 11:00
To: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Mr. Brink

I enclose all the correspondence that I have had with LASA.

I specifically do not include your response to LASA's allegations, although I did send this through to LASA. I also do not include the email of 28 November 2017 which I have already sent to you.

I trust that this is what you were seeking.
[Quoted text hidden]

On Nov 30, 2017, at 10:23, Anthony Brink <anthonybrink.sa@gmail.com> wrote:

Thanks, Mossop, for your prompt and completely satisfactory answer.
Might I have please the further correspondence I mention, namely, 'all correspondence exchanged between LASA and the Society, in the period between LASA's complaint and your original lopsided finding against me, both of which documents I have.'
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R17

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Brink

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R17

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Cheers
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> Letter to follow.

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> > > Thanks.
> > > When did they come in?
> > > Cheers
> > > AB

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> > > > Please find same attached.

> > > > Kind regards

> > > > Rob Mossop SC

<Vedalankar 2 November 2017.pdf>

R17

2 attachments

PastedGraphic-1.png
16K

Correspondence.pdf
2183K

Anthony Brink <anthonybrink.sa@gmail.com> 30 November 2017 at 11:19
To: Rob Mossop <rgmossop@law.co.za>

Thanks so much, Mossop, for your time and trouble, and on the double!
If LASA were as transparent as the Society is, I wouldn't be suing to compel its compliance with my PAIA requests for the seventh time.
I'm dealing with complete morons.
Letter in the main matter to follow, like I said.
Best
Brink

[Quoted text hidden]
[Quoted text hidden]

On Nov 30, 2017, at 10:23, Anthony Brink <anthonybrink.sa@gmail.com> wrote:

Thanks, Mossop, for your prompt and completely satisfactory answer.
Might I have please the further correspondence I mention, namely, 'all correspondence exchanged between LASA and the Society, in the period between LASA's complaint and your original lopsided finding against me, both of which documents I have.'
Or were these earlier communications also over the telephone?
Regards
Brink

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Kind regards

Rob Mossop SC

R17

[Quoted text hidden]
[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]
Kind regards

Rob Mossop SC

<Vedalankar 2 November 2017.pdf>

Anthony Brink <anthonybrink.sa@gmail.com> 30 November 2017 at 11:41
To: Rob Mossop <rgmossop@law.co.za>

Dear Mossop
In your letter to Sekgota of 14 September 2017, I read that 'A recommendation will today be sent to the Bar Council after consideration of the detailed representations made by Adv. Brink.'
Please let me have a copy of your Complaints Committee's recommendation.
Obviously I don't want to waste time on writing that intended letter if LASA's complaint has already been determined.
Sincerely
Brink

[Quoted text hidden]

Rob Mossop <rgmossop@law.co.za> 30 November 2017 at 11:47
To: Anthony Brink <anthonybrink.sa@gmail.com>

Mr. Brink

You only asked for:

'all correspondence exchanged between LASA and the Society, in the period between LASA's complaint and your original lopsided finding against me, both of which documents I have.'

I have given you that.

R17

Kind regards

Rob Mossop SC

ROB MOSSOP SC
CHAMBERS THIRTEEN NORTH
SIX DURBAN CLUB PLACE DURBAN
T 031 304 8699/301 2262 F 031 304 9922
E rgmossop@law.co.za

[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 30 November 2017 at 11:50
To: Rob Mossop <rgmossop@law.co.za>

Indeed so.
Because I wasn't aware until minutes ago that your Committee had made its recommendation.
Looking forward to the recommendation in September please.
AB

[Quoted text hidden]

2038

REPORT TO THE BAR COUNCIL

COMPLAINT CONCERNING ADVOCATE A. R. BRINK

1. As the Bar Council will recall, Legal Aid South Africa laid a complaint against Advocate A. R. Brink concerning his conduct in certain litigation in which he, **inter alia**, called Mr Justice D. Mlambo a liar and claimed that the Judge had misled a select committee of parliament. The nature of the complaint is dealt with fully in the report of this committee dated 17 February 2017.

2. Advocate Brink is not a member of the Bar, but serves the State as an additional magistrate.

3. Following receipt of the complaint and its consideration by this committee, a decision was taken by the Bar Council to proceed with a striking off application against Advocate Brink.

4. When Advocate Brink was informed of this decision, he demanded a right to respond to the allegations made about him by Legal Aid South Africa. This had not been afforded him before the decision to strike off was taken.

5. The request of Advocate Brink was acceded to and he was

invited to make submissions in response to the allegations made by Legal Aid South Africa.

6. Ultimately, Advocate Brink submitted his representations. They consisted, primarily, of eight complaints that he has either submitted, or intends submitting, to the Judicial Services Commission concerning the conduct of Mr. Justice Mlambo. The eight complaints (and therefore the representations), contained in nine volumes, cover 264 pages.

7. Legal Aid South Africa were invited to reply to the answer of Advocate Brink and were sent his representations. After substantial reflection, Legal Aid South Africa decided that it would not reply in detail but contented itself with a general statement that Advocate Brink had raised nothing new in his answer but persisted in his allegations made against Mr. Justice Mlambo as well as another Judge.

8. This committee has considered the answer of Advocate Brink. He has persisted in his allegations against the Judge and has constructed the most elaborate conspiracy theory in an attempt to try and prove what he alleges. He has failed in this regard as the response is verbose and rambling but ultimately lacks substance. The committee, after a fresh consideration of the

matter, believes that the matter still warrants that a striking off application be brought.

9. The committee again comments that a striking off application will offer Advocate Brink the sort of platform (and, potentially, publicity) that he appears to relish in order to advance his theories. He has apparently made contact with international organisations seeking their support for his position and allegations and he has drawn the matter to the attention of Noseweek magazine.

10. The recommendation is therefore made to the Bar Council that the striking off application continues and that Advocate Brink be so advised, as well as Legal Aid South Africa.

Complaints Committee 2

R. G. Mossop SC

M. Sponneck

M. Manikam

14 September 2017.

Note from Mahen Manikam, member of Complaints Committee 2:

I agree with the views of Mossop SC in the report of committee 2 regarding Adv Brink. However, I raise a concern for consideration.

In terms of section 8 of the Judicial Service Commission Act 9 of 1994, the judicial conduct committee is chaired by the Chief Justice and the rest of the committee's members consist of judges. Therefore, by its nature such a disciplinary organ would be construed to be a higher forum than our committee and we would be expected to show deference to the former committee. Brink's allegations to the JSC overlap with his responses made by him to our committee. Gauging from the litigious history of the matter and noting also that Brink has made representations to the Human Rights Commission, he may consider it appropriate to take the decision of the bar council on review and he may contend that we ought to have allowed the JSC to rule on his complaints first before the bar council made a finding against him."

R19

WHY DO PRESIDENT MBEKI AND DR TSHABALALA-MSIMANG WARN AGAINST THE USE OF ARV DRUGS LIKE AZT?

DO THEY KEEP PEOPLE HEALTHY?

DO THEY MAKE SICK PEOPLE BETTER?

OR ARE THEY DEADLY POISONOUS AND COMPLETELY USELESS?

A presentation by Adv Anthony Brink, Chairman of the **Treatment Information Group**, to the 'Provincial Interactive Strategic Conference on a Holistic Approach to the Treatment and Management of HIV and AIDS' convened by the KwaZulu-Natal Department of Health at Pietermaritzburg on 22-24 November 2006

Appendix: African death rates on ARVs – reports in 2007

TREATMENT INFORMATION GROUP
thinking about AIDS drugs

2043

"Concerned to respond appropriately to [AIDS in South Africa], many in our country have called on the government to make the drug AZT available in our public health system. … There … exists a large volume of scientific literature alleging that, among other things, the toxicity of this drug is such that it is in fact a danger to health. These are matters of great concern to the government as it would be irresponsible for us not to heed the dire warnings which medical researchers have been making. I have therefore asked the Minister of Health, as a matter of urgency, to go into all these matters so that, to the extent that is possible, we ourselves, including our country's medical authorities, are certain of where the truth lies."

– President Thabo Mbeki, Parliament, 28 October 1999

"[Dr Tshabalala-Msimang confirmed that there was indeed] a body of scientific research and information which indicated that AZT was a dangerous drug, and had not been designed for the treatment of HIV/AIDS. Because it was unable to target only the human immunodeficiency virus when it went to work in the body, it further weakened the immune system. There was also a danger that ... mothers taking the drug might produce children with disabilities [*]. Tshabalala-Msimang said her ministry would not like to look back ten or fifteen years down the line and find it had exposed the vast majority of historically disadvantaged people in South Africa to a dangerous drug. … there was no data proving that AZT was of any use to rape victims."

– SAPA report of Dr Manto Tshabalala-Msimang's statement outside Parliament immediately after President Mbeki's warning about AZT, 28 October 1999

"The antiretroviral drugs currently licensed in the United Kingdom are zidovudine (azidothymidine) [*AZT*], zalcitabine (ddC) and didanosine (ddI). … All are very toxic. Suppression of bone marrow elements can occur with any of the three, as can peripheral neuropathy."

– *Adverse Drug Reaction Bulletin*, No.178 (1996)

"AZT is a drug that was developed for use in chemotherapy for cancer patients. It was, however, never used in cancer patients because it was regarded as too toxic to use. Tests have clearly shown that rats that were exposed to … AZT [*in the womb during gestation*], developed vaginal cancer [*]. This is a very serious finding. Other toxicological data exists with respect to AZT, including damage to nerves, muscles and bone marrow. All of this data needs to be assessed very thoroughly. As the Minister of Health I have a responsibility for ensuring that South Africans get appropriate and affordable healthcare. This responsibility extends to ensuring that no healthcare intervention has a long-term negative effect on people."

– **Dr Tshabalala-Msimang, Parliament, 16 November 1999**

"… for AIDS patients, it is urgently necessary to develop a remedy substituting this toxic substance, AZT."

– **Hayakawa et al. *Biochemical and Biophysical Research Communications* 176:87-93 (1991)**

"AZT is a confirmed carcinogen. ... The fact is that some of the mice [*exposed to AZT in the womb*] have contracted cancer [*]. It attacks bone marrow. It is very toxic."

– **Dr Tshabalala-Msimang, *Mail&Guardian*, 1 December 1999**

"It is self-evident that ANAs [*antiretroviral nucleoside analogues, such as AZT*], like all drugs, have side-effects. However, the prevalent and at times serious ANA mitochondrial toxic side-effects are particularly broad ranging with respect to their tissue target and mechanisms of toxicity: Haematological [*blood*]; Myopathy [*muscles*]; Cardiotoxicity [*heart*]; Hepatic toxicity [*liver*]; Peripheral neuropathy [*nerves*]."

– **Lewis and Dalakas, *Nature Medicine* 5:417-22 (1995)**

R19

"[AZT and other nucleoside analogue drugs] are much more toxic than we considered previously. … The layer of fat-storing cells directly beneath the skin, which wastes away … is loaded with mitochondria … other common side effects of [AZT and similar drugs are] nerve and muscle damage, pancreatitis and decreased production of blood cells … all resemble conditions caused by inherited mitochondrial diseases."

– **Brinkman et al. *Lancet* 354(9184):1112-5 (1999)**

"What we are trying to do is to put on the table information so that [if] the citizens of the country … get hold of AZT they do so knowingly, so that tomorrow nobody should say we were not told."

– **Dr Tshabalala-Msimang, 'The Truth on AZT', e.tv documentary, 12 December 1999**

"AZT underwent clinical trials and was introduced as a specific anti-HIV drug many years before there were any data proving that the cells of patients are able to triphosphorylate the parent compound to a level considered sufficient for its putative pharmacological action. Notwithstanding, from the evidence published since 1991 it has become apparent that no such phosphorylation takes place and thus AZT cannot possess an anti-HIV effect. However, the scientific literature does elucidate … a number of biochemical mechanisms which predicate the likelihood of widespread, serious toxicity from use of this drug. … Based on all these data it is difficult if not impossible to explain why AZT was introduced and still remains the most widely recommended and used anti-HIV drug. [The continued administration of AZT] either alone or in combination … to HIV sero-positive or AIDS patients warrants urgent revision."

– **Papadopulos-Eleopulos et al. *Current Medical Research and Opinion* 15, Supplement 1: 'A Critical Analysis of the Pharmacology of AZT and its Use in AIDS' (1999)**

"RETROVIR (ZIDOVUDINE) MAY BE ASSOCIATED WITH HEMATOLOGIC TOXICITY INCLUDING GRANULOCYTOPENIA AND SEVERE ANEMIA [*massive destruction of white (immune) and red blood cells respectively*]. … ANTIRETROVIRAL NUCLEOSIDE ANALOGUES, INCLUDING RETROVIR … ARE POTENTIALLY FATAL."

– GlaxoSmithKline: AZT 'Product Information'

"What it does, it suppresses the immune system. The very system we want to boost. … I wouldn't take AZT, I would not."

– Dr Tshabalala-Msimang, 'The Truth on AZT', 12 December 1999

"[Due to their] potent immunosuppressive properties … profound immunosuppression … often accompanies therapy with nucleoside analog drugs. … they have a number of associated toxicities, some of what may be severe. Of particular concern is immunosuppression which is uniform with standard treatment programs. Each of the nucleoside analogs is associated with a profound lymphocytopenia [depletion of immune cells], with a reversal of the CD4/CD8, and opportunistic infections."

– Cheeson, Keating and Plunkett, *Nucleoside Analogs in Cancer Therapy* (New York: Marcel Dekker Inc., 1997)

"In your letter to me of June 19, you make the extraordinary statement that AZT boosts the immune system. Not even the manufacturer of this drug makes this profoundly unscientific claim. The reality is the precise opposite of what you say, this being that AZT is immuno-suppressive. Contrary to the claims you make in promotion of AZT, all responsible medical authorities repeatedly issue serious warnings about the toxicity of antiretroviral drugs, which include AZT."

– President Mbeki, letter to DA leader Tony Leon, 1 July 2000

"The drug [*AZT*] can inhibit the production of red blood cells and may reduce white blood cell counts to the point where the drug has to be discontinued to avoid infections."

– **US Food and Drug Administration press release, 5 March 1990**

"I think AZT can only hasten the demise of the individual. It's an immune disease and AZT only further harms an already decimated immune system."

– **Professor Jay Levy, Director of the Laboratory for Tumor and AIDS Virus Research, University of California at San Francisco, *Newsday*, 12 June 1990**

"Extended follow-up of patients in one [major AZT] trial, the Concorde study, has shown a significantly increased risk of death among the patients treated early."

– **Phillips et al. *New England Journal of Medicine* 336: 958-959 (1997)**

"I don't want to be pushed or pressurized by a target of three million people on antiretrovirals by 2005. WHO set that target themselves. They didn't consult us. … It is not about chasing numbers. It is about the quality of health care we provide for our people. … I will also continue to advise people on the side effects of ARVs. I cannot stand on a pedestal and say everything is hunky-dory. … It is absolutely critical that our people know about the side effects, particularly because these are new medicines and not much is known about them. When we were being pressured to use ARVs we did warn about the side effects and, when I get reports about the people on ARVs, nobody presents to me how many people have fallen off the programme or died because of the side effects. I don't know what happens to those who started on antiretrovirals. … There was a time when we were told to give everyone ARVs and we resisted. We were right, I think. … When it comes to talking about the side effects I will always do

it. … We must be upright and frank about informing citizens about the use of ARVs. … I'm not happy [with reports of how many people are being treated with them, and will] interrogate [the statistics to establish how many people had died of ARV toxicity]. I will continue to educate the people in this country about the side effects of ARVs … you know me, I tell the truth."

– Dr Tshabalala-Msimang, media briefing at Union Buildings in Pretoria, 5 May 2005

"The results of this collaborative study, which involved … over 20 000 patients with HIV-1 from Europe and North America, show that the virological response after starting HAART [*Highly Active Antiretroviral Therapy*] has improved steadily since 1996. However, there was no corresponding decrease in the rates of AIDS, or death, up to 1 year of follow-up. Conversely, there was some evidence for an increase in the rate of AIDS in the most recent period. [We noted a] discrepancy between the clear improvement we recorded for virological response and the apparently worsening rates of clinical progression."

– The Antiretroviral Therapy (ART) Cohort Collaborative, *Lancet* 368:451-458 (2006)

"The major findings are that, despite improved initial HIV virological control … there were no significant improvements in early immunological response as measured by CD4-lymphocyte count, no reduction in all-cause mortality, and a significant increase in combined AIDS/AIDS-related death risk in more recent years."

– *Lancet* editorial commenting on 'these somewhat paradoxical trends' reported in the above-cited study

"The Western Cape report showed that: – Out of a total of 4251 patients enrolled in 3 months, a total of 207 (4.8%) patients died. Out of the total of 2715 patients enrolled in 6 months, a total of 196 (7.2%) patients died. Out of the 914 patients enrolled in 12 months, a total of 114 patients

(12.2%) patients died.” (Plotted on a graph as X and Y values, these data reveal a perfect linear relationship between the death rate of people taking ARVs and the duration of their treatment; and they predict that within seven years everyone on ARVs will be dead. The high treatment dropout rate reflected by these data are consistent with numerous published reports on the unendurable toxicity of ARVs for most people prescribed them.)

– Information per Department of Health Media Liaison Officer Maupi Monyemangene, 6 October 2005

“United Nations Special Envoy for HIV/AIDS in Africa Stephen Lewis expressed concern on Tuesday over Malawi’s rising number of deaths among people receiving HIV/AIDS treatment in the country. Lewis was speaking at the end of his three-day visit to the impoverished southern African country when he was briefed by Malawian government officials that the country was grappling with an 11 percent death rate of people who were receiving free antiretroviral (ARV) drugs in public hospitals. Malawi has managed to increase the number of people receiving free ARVs from about 4,000 two years ago to 70,000 at present.”

– ‘UN concerned about Malawi’s rising deaths of AIDS patients on ARVs’, China *People’s Daily Online*, 1 November 2006

“South Africa’s Ministry of Health has confirmed that close to 6,000 HIV-positive people had died while receiving antiretroviral (ARV) drugs since the government rollout began in 2004 … just below 3 percent of the number of HIV-positive people accessing treatment at government ARV sites during the same period. Health department spokesman Sibani Mngadi said … ‘The number of people being treated with antiretroviral therapy through our “Comprehensive Plan on HIV and AIDS” has increased [by] 60,000 in the past year to 235,378 by the end of September 2006.’”

– ‘SOUTH AFRICA: Govt AIDS programme on course but people still dying’, Reuters Foundation (Source: IRIN), 14 Nov 2006

"We have not been able to discover why doctors prescribe a toxic drug called AZT (Zidovudine) to people who have no other complaint than the presence of antibodies to HIV in their blood. In fact, we cannot understand why humans would take that drug for any reason."

– Dr Kary Mullis PhD, 1993 Chemistry Nobel Laureate, in his foreword to *Inventing the AIDS Virus* by Professor Peter Duesberg (Washington: Regnery, 1996)

"Look, there's no sociological mystery here … It's just people's income and position being threatened … That's why they're so nasty. In the AIDS field, there is a widespread neurosis among scientists … there's just so much slowly accumulating evidence against them. It's really hard for them to deal with it. They made a really big mistake and they're not ever going to fix it. They're still poisoning people."

– Dr Kary Mullis in 'Out of Control: AIDS and the corruption of medical science' by Celia Farber, *Harper's Magazine*, March 2006

"In my heart I believe it is not right to hand them [*AZT and other ARV drugs*] out to my people."

– Dr Tshabalala-Msimang, launching an anti-TB campaign, c.15 March 2003

"… you are justified in sounding a warning against the long-term therapeutic use of AZT, or its use in pregnant women, because of its demonstrated toxicity and side effects. Unfortunately, the devastating effects of AZT emerged only after the final level of experiments were well underway, that is, the experiments which consisted of giving AZT to large numbers of human patients over a long period of time. Your effort is a worthy one … I hope you succeed in convincing your government not to make AZT available."

– Professor Richard Beltz, inventor of AZT in autumn 1961, to Adv Brink, 11 May 2000

"We have seen colonization, we have seen imperialism, we have seen apartheid ... and all of them used against us as a people. [Africans have] won their liberation and now they are fighting another war and they are being psychologically terrorised once more because people want to sell [ARV drugs] and make profits. And there is no benefit in those products. The only thing that can really happen is that once you touch the antiretrovirals you can go one way."

– **Peter Mokaba MP, the *Star*, 4 April 2002**

APPENDIX:
African death rates on ARVs - reports in 2007

"[A] distressingly high loss-to-follow up rates [was] reported by some large ART-dispensing facilities … at the 3rd South African AIDS Conference. … For instance, 27% of the first tranche of patients enrolled at King Edward VIII Hospital in Durban starting after April 2004 were 'non-persistent' (defined as having failed to return for prescription refills for 90 days or more) within 12 months of starting ART. … Dr Helen Schneider of the Centre for Health Policy at the University of Witwatersrand … concluded about a third of these 'drop-outs' were deaths."

– **AIDSmap.com, 'Patient retention difficulties for South Africa's public sector' in *HIV & AIDS Treatment in Practice #90*, 31 August 2007**

"… Felege Hiwat hospital in Bahir Dar, in the northern Amhara region [Ethiopia] … started over 3600 patients on ART by the end of 2006. However 22% of those patients were lost to follow-up … Home visits and other enquiries were able to locate just 6% of patients, with a further 44% of the LTFUs discovered to be dead, and the remainder still missing. In South Africa, Klerksdorp Hospital in the North-West province … the loss to follow-up rate … reached 21%. The vast majority of those lost to follow-up defaulted during the first six months of treatment, but an audit of 300 patients lost to follow-up could only identify 126 deaths from local death records. The remainder were still out there somewhere,

but, said Dr Ebrahim Variava [*without saying how he knew*], either their address details weren't complete, or they weren't answering their mobile phones.❞

– **AIDSmap.com, *HIV & AIDS Treatment in Practice #92*, 26 September 2007**

❝ … we conducted a systematic search of the English-language published literature, gray literature (project reports available online), and conference abstracts between 2000 and 2007. … We included 32 publications reporting on 33 patient cohorts totaling 74,289 patients in 13 countries in our analysis. … Under the worst-case scenario, 76% of patients would be lost by 2 y [*years*]. The midpoint scenario predicted patient retention of 50% by 2 y. … losing up to half of those who initiate ART within two years is cause for concern. From the data as reported, attrition averaged roughly 22% at 10 mo [*months*] of follow-up. This average comprised mainly deaths (40% of attrition) and losses to follow-up (56%). … we believe that actual attrition is higher than … we report … The midpoint scenario suggests that approximately half of all patients started on ART were no longer on treatment at the end of two years. … A recent attempt to trace lost-to-follow-up patients in Malawi determined that 50% had died, 27% could not be found, and most of the rest had stopped ART ... those reporting on these cohorts do not know what ultimately happened to patients categorized as lost to follow-up … our analysis is necessarily limited to publicly available reports and thus potentially subject to publication bias. Researchers may be less inclined to publish long-term outcomes from cohorts that have experienced very high early attrition. … Better information on those who are lost to follow-up is urgently needed.❞

– **Rosen S et al. 'Patient retention in antiretroviral therapy programs in sub-Saharan Africa: A systematic review'. *PLoS Med* 4(10): e298, October 2007**

***The extensive research literature reporting the foetal toxicity and transplacental carcinogenicity of AZT, to which Dr Tshabalala-Msimang has referred, is canvassed in depth in *Poisoning our Children: AZT in Pregnancy*, and in a brief overview: *Why do Zackie Achmat, Nathan Geffen and Mark Heywood want pregnant African women and their babies to be given AZT? What AZT does to unborn and newly born children* – accessible online in the 'Quick links' column of the Treatment Information Group website, www.tig.org.za. See further: *Introducing AZT*; *Inventing AZT*; *Licensing AZT*; *Debating AZT: Mbeki and the AIDS drug controversy*; and *The trouble with nevirapine*, also posted there.**

R19

25 mg AZT supplied by Sigma-Aldrich Chemie Gmbh to research laboratories (GlaxoSmithKline recommends a daily dose of between 500-1500 mg). The label warns:

TOXIC Toxic by inhalation, in contact with skin and if swallowed. Target organ(s): Blood Bone marrow. In case of accident or if you feel unwell, seek medical advice immediately (show the label where possible). Wear suitable protective clothing.

(The latest version of the label also carries a cancer warning.)

TREATMENT INFORMATION GROUP

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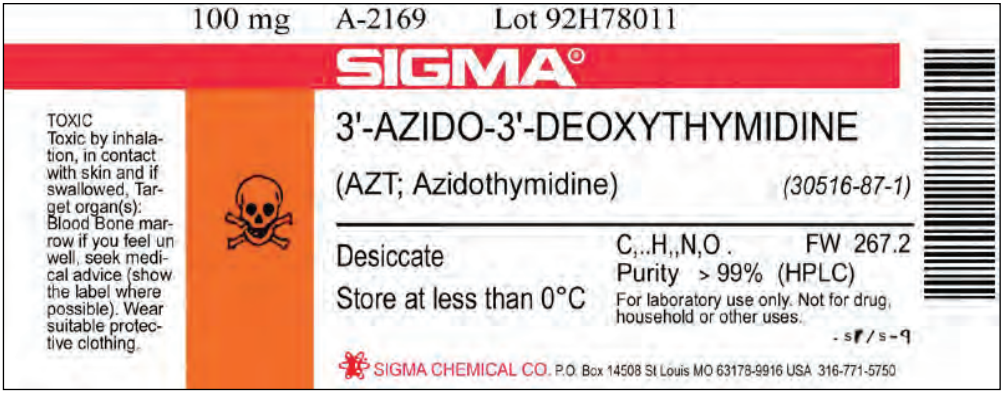
WHY DO ZACKIE ACHMAT, NATHAN GEFFEN AND MARK HEYWOOD WANT PREGNANT AFRICAN WOMEN AND THEIR BABIES TO BE GIVEN AZT?*

R20

WHAT AZT DOES TO UNBORN AND NEWLY BORN CHILDREN



Reports from the medical literature compiled by Adv Anthony Brink, chairman of the **Treatment Information Group**

'AZT FOR PREGNANT WOMEN'

Treatment Action Campaign street demonstration placard

R20

'By increasing the availability of drugs, particularly for preventing mother to child transmission, the government is going to save lives.'

Zackie Achmat, TAC leader, *Mail&Guardian*, 28 October 2006

'Toxic Giftig Toxique Toxico Tossico Vergiftig … TOXIC Toxic to inhalation, in contact with skin and if swallowed. Target organ(s): Blood Bone marrow. In case of accident or if you feel unwell, seek medical advice immediately (show the label where possible). Wear suitable protective clothing.'

Label on 25 mg bottles of AZT supplied by Sigma-Aldrich Chemie Gmbh for research use, bearing an orange stripe imprinted with a skull and crossbones icon to signify potentially fatal toxic chemical hazard – the latest version of which also carries a cancer warning

'Our findings support the hypothesis of a link between mitochondrial dysfunction [*in babies and infants*] and the perinatal administration of prophylactic nucleoside analogues.' (Eight children were born with severely impaired energy metabolism and corresponding muscle and other cell damage, manifesting in heart muscle injury and muscle weakness generally. Five children, of whom two died, presented with delayed neurological symptoms – extensive brain damage in the form of massive cortical necrosis, cortical blindness, epilepsy and spastic quadriplegia, and three were described as 'symptom-free' but had 'severe biological or neurological abnormalities'. Four of the children had been exposed in utero and after birth to AZT and 3TC (a similar drug) combined, and four to AZT alone. None were HIV-positive. Please see the annexed APPENDIX for an excerpt from this report detailing these injuries. Following further 'exhaustive' investigation by Barret et al., the 'hypothesis of a link' between perinatal AZT exposure and grave harm to unborn and newly born babies was 'confirmed'; see the report cited immediately below.)

Blanche et al. *Lancet* 354(9184):1084-9 (1999)

'An exhaustive study in a large prospective cohort [*of AZT- and 3TC-exposed children found*] unexplained symptoms compatible with mitochondrial dysfunction. A total of 2644 of 4392 children were exposed to antiretrovirals … All the children with "established" or "possible" mitochondriopathy diagnosed in this study had been exposed to antiretroviral drugs … in the pre, per- and post-partum periods. … The finding that the use of antiretroviral nucleoside analogues in the perinatal period is associated with persistent mitochondrial disease is confirmed … a risk about 30 times higher than that in the general population. … Despite active screening, no similar cases were found in the antiretroviral unexposed group. … by age 18 months … a coherent syndrome is appearing with three main features: neurological symptoms (principally developmental retardation, seizures and behavioral disturbances), significant abnormalities on cerebral MRI (principally lesions of the white matter and brainstem) and often hyperlactataemia either persistent or transient outside the treatment period. First described

as a myopathy associated with zidovudine [*AZT*], the issue of mitochondrial toxicity of nucleoside analogues is currently a growing problem. Its clinical expression is highly variable, from peripheral neuropathy to severe lactic acidosis.'

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Barret et al. *AIDS* 17(12):1769-1785 (2003)

'Mitochondrial dysfunction has been reported in HIV-negative children perinatally exposed to zidovudine [AZT], a drug often used in HIV-seropositive mothers during pregnancy. The purpose of this study was to determine the incidence of cerebral MR imaging findings in HIV-uninfected children exposed to zidovudine who present with unexplained neurologic symptoms. … Images observed in children with antiretroviral-induced mitochondrial dysfunction are similar to those observed in congenital mitochondrial diseases.'

Tardieu et al. *American Journal of Neuroradiology* 26(4):695-701 (2005)

'AZT exposure causes a persistent depletion of mtDNA [(mitochondrial DNA) in babies exposed to AZT in the womb. Because] chemically induced tumors take 20 to 30 years to develop … the possibility … exists that exposed children might have an elevated cancer risk that will be manifested later in life. … the results presented here underscore the necessity for long-term follow-up of children of HIV-infected mothers receiving prenatal HAART therapy.'

Poirer et al. *Journal of the Acquired Immune Deficiency Syndrome* 33(2):175-183 (2003)

'The probability of developing severe disease at 3 years of life was significantly higher in children born to mothers [administered AZT during their pregnancies] than in those born to [*untreated*] mothers. … The same pattern was observed for severe immune suppression: the probability of developing severe immune suppression was significantly higher in children born to [*AZT-treated*] mothers … than born to [*untreated*] mothers. … Finally, survival probability was lower among children [*born to AZT-treated mothers*] … compared with children born to [*untreated*] mothers.'

De Martino et al. *AIDS* 13(8):927-33 (1999)

'Prenatal and perinatal ZVD [*AZT*] exposure were associated with 1.8-fold increased risk of progression to AIDS or death after adjusting simultaneously for all variables associated with disease progression … Restricting the analysis to children born after April 1994 (date of public release of the results of ACTG 076), ZDV exposure was associated with 2.5-fold increased risk of progression to AIDS or death after adjusting simultaneously for the same variables. … Steady improvements in prognosis of [HIV] infected children unexposed to ZVD were observed in each successive birth cohort, but infected children exposed to ZVD lagged behind these temporal changes. Our results ... are consistent with recent results from the Italian Registry for HIV Infection in Children [*reported by de Martino, cited above*].'

Kuhn et al. *Journal of Infectious Diseases* 182(1):104-11 (2000)

'In this retrospective study, the risk of RPD [*rapid progression of disease*] was five to six times higher among infants born to [*AZT*] treated compared with untreated mothers. … RPD was three times more likely to occur in infants born to [*AZT*] treated compared with findings in untreated mothers.'

De Souza et al. *AIDS* 24(2):154-61 (2000)

'AZT-exposed [*Macaca nemestrina monkey*] infants took three times as many sessions (6) as controls (2) to meet criterion on Black-White Learning, a simple discrimination task [and performed] significantly [worse in locating] the reward. … Postnatal weight increase was significantly lower in AZT-exposed infants … Hemoglobin dropped significantly in the AZT-treated animals after treatment began and remained low until the end of the study … The hematological toxicities reported here are consistent with those seen in 500 mg/day AZT-treated humans.'

Ha et al. *Journal of Acquired Immune Deficiency Syndromes and Human Retrovirology* 7(2):154-7 (1994)

'The AZT animals [*Macaca nemestrina monkeys given AZT during pregnancy*] developed an asymptomatic macrocytic anemia, but hematologic parameters returned to normal when AZT was discontinued. Total leukocyte count decreased during pregnancy and was further affected by AZT administration. AZT caused deficits in growth, rooting and snouting reflexes, and the ability to fixate and follow near stimuli visually.'

Ha et al. *Journal of Acquired Immune Deficiency Syndromes and Human Retrovirology* 18(1):27-38 (1998)

'The study cohort included 92 HIV-1-infected and 439 uninfected children … Antiretroviral therapy (nonprotease inhibitor) was independently associated with FTT [*Failure to Thrive*] in our cohort … ZDV [*AZT*], in particular, alters mitochondrial metabolism and may have direct nutritional effects.'

Miller TL et al. *Pediatrics* 108(6): 1287-96 (2001)

'Antiretroviral drugs (ARV) as prophylaxis to prevent mother-to-child transmission of HIV results in decreased haematological parameters during and shortly after exposure, with recent data suggesting a more prolonged inhibition of haematopoiesis until at least 18 months [*i.e. ARV drugs given to pregnant women cause persistent bone marrow suppression reducing blood cell production*]. In uninfected children … ARV exposure [before birth was] associated with reduced neutrophil count until at least 8 years of age. … CONCLUSION: A considerably longer effect of exposure to ARV was shown in uninfected children than previously thought.'

European Collaborative Study, *AIDS* 18(15):2009-17 (2004)

'[In a major review of data collected between 1986 and April 2004, AIDS drugs such as AZT were found to cause a] substantially increased risk of severely curtailed pregnancy [*i.e. dangerously critical prematurity*] ... coupled with a very high neonatal mortality rate.'

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Thorne et al. *AIDS* 18(17):2337-2339 (2004)

'Premature infants of HIV-positive mothers may be more likely to develop a rare, but potentially fatal, bowel condition, according to French research [*by Desfrere* et al.] published in the September 23rd [*2005*] edition of AIDS [*19:1487-1493*]. In a retrospective study the investigators found that having an HIV-positive mother was an independent risk factor for developing necrotising enterocolitis in babies born before the 37th week of pregnancy. The investigators suggest that mitochondrial toxicity, resulting from the use of AZT to prevent mother-to-child transmission of HIV, is a possible cause. … Necrotising enterocolitis is a gastrointestinal disease which can affect premature infants and can result in destruction of the bowel. … Of the 30,000 infants born at the investigators' unit, 4009 were premature. A total of 79 (2%) of these premature infants developed necrotising enterocolitis. The incidence of necrotising enterocolitis was 2% (72/3931) in the premature infants of HIV-negative mothers, but 9% (7/78) in the premature infants of HIV-positive mothers. None of the seven infants born to HIV-positive mothers were infected with HIV. … All seven infants with necrotising enterocolitis and an HIV-positive mother received doses of AZT to prevent mother-to-child transmission of HIV. Six of the seven mothers were also taking anti-HIV therapy; in two this consisted of AZT monotherapy, the other four women were taking a three-drug combination (AZT or ddI with 3TC and a protease inhibitor).'

Michael Carter, *AIDSmap News*, 7 September 2005

'Children born to HIV-positive women who take antiretroviral therapy (ART) during pregnancy are significantly smaller in terms of height, weight and head circumference compared with children born to HIV-positive women not on ART, or who took monotherapy, according to the results of a European study examining the effects of ART on uninfected children's growth up to the age of 18 months [*European Collaborative Study,* JAIDS *40(3):364-370 (2005)*].'

Edwin Bernard, *AIDSmap News*, 3 November 2005

'Two new animal studies [*Walker et al.; Hong et al.*] have examined the cancer-causing effects of transplacental exposure to AZT in mice and rats and found increased rates of tumors and tumors with gene changes that frequently occur in human cancer. In addition, two human studies [*Escobar et al.; Witt et al.*] are the first to observe the induction of mutations and large scale chromosomal damage in red blood cells of newborns exposed to NRTIs [*nucleoside analogue reverse transcriptase inhibitors*] in utero. These, and other, studies were published in April 2007 in a special issue of Environmental and Molecular Mutagenesis that examines the latest research on DNA damage and potential health risks related to the use of NRTIs.

Besides the effects of NRTIs on nuclear DNA and cancer risk, the issue also contains recent findings on the toxicity of these drugs toward mitochondrial DNA.'

***Science Daily*, 7 April 2007**

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APPENDIX

Blanche et al. describe eight children severely harmed by AZT exposure in the womb and postnatally, two fatally, in 'Persistent mitochondrial dysfunction and perinatal exposure to antiretroviral nucleoside analogues', *Lancet* 1999 Sep 25;354(9184):1084-9.

Note that in all cases the crippling injuries caused by AZT during gestation and after birth were not immediately evident, but only became apparent several months later.

And in common with the others cited above, the researchers do not consider and report the likelihood of widespread subclinical, undiagnosable, permanent neurological and mental/psychological impairment resulting from AZT exposure in utero and after birth.

'At age 4·5 months, the first patient presented with visual impairment. Cerebral nuclear magnetic resonance imaging showed initially (at age 5·0 months) demyelinating lesions of the brainstem that became more severe and secondarily associated (at 11·0 months) with sustentorial lesions. From age 4·5 months to 11·0 months, the growth was abnormal and associated with vomiting. There were no important hepatic, pancreatic, muscle enzyme, or haematological abnormalities, but blood and cerebrospinal fluid lactate concentrations were high (2·5 mmol/L [normal <1·5 mmol/L] and 4·5 mmol/L [<2·0 mmol/L], respectively). The child died aged 13 months because of respiratory and cardiac-rhythm disorders. The symptoms were compatible with Leigh's syndrome and mitochondrial investigations were done at age 12 months.

'The second patient, from age 4 months until death at 11 months, had refractory epilepsy and deterioration of cognitive and psychomotor abilities. Cerebral imaging showed diffuse demyelinating lesions associated with massive cortical necrosis (figure). There were no substantial biological abnormalities for liver, pancreas, muscle, or haematological markers. The blood lactate concentration was high (2·5 mmol/L) but cerebrospinal fluid lactate was normal. Several disorders were excluded because of normal results from the following diagnostic procedures: organic-acid chromatography (urine), aminoacid chromatography (serum, urine, cerebrospinal fluid), serum cholesterol, triglycerides, vitamins A and E, pyruvate dehydrogenase activity in lymphocytes, fatty-acid oxidation and biotinidase activities (lymphocytes), very long-chain fatty acids (serum), lysosomal enzymes (galactosidase, galactosylceramidase, arylsulfatase A, mannosidase, GM1 and GM ganglioside), copper and ceruloplasmin (serum), and oligosaccharide excretion (urine). These symptoms were consistent with ALPERS syndrome, and led to mitochondrial investigations between ages 5 months and 7 months.

'At age 8 months, during a febrile episode, patient three had a seizure and was thought to be hypotonic. At age 15 months, the child showed symptoms of hypokinetic hypertrophic cardiomyopathy. Blood hepatic and pancreatic enzyme concentrations were normal but the child had neutropenia neutrophils 0·931 09/L [normal > 1·531 09/L), high concentrations of muscle creatine phosphokinase in blood (350 IU/L [<250 IU/L]), and persistently high blood lactate concentrations (4mmol/L), although cerebrospinal lactate was normal. Endomyocardiac biopsy showed intracytoplasmic vacuolisation in myocytes, but without inflammation. The cardiomyopathy progressively improved and symptoms of peripheral myopathy were seen at age 2·5 years. At age 4·0 years, the child's cardiac function was normal, but moderate muscular deficit persisted; lactate and muscle creatine phosphokinase concentrations in blood remained high. Electroretinography showed macular and peripheral abnormalities. Cerebral nuclear magnetic resonance imaging was normal.

'In the fourth patient, early development was normal. Between ages 14 months and 27 months, the child had four episodes of febrile seizures. Neurological assessment at age 27 months showed mild spastic diplegia. Haematological and biochemical findings, including lactate concentrations in blood and cerebrospinal fluid, were normal. Cerebral nuclear magnetic resonance imaging showed moderate hypersignal of the white matter in T2-weighted images, with no evidence of necrosis (figure).

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'From age 7 months until 15 months, patient five had repeated seizures. Cognitive development and neurological assessments between episodes were normal until age 15 months. The child developed status epilepticus for 4 h, which led to severe neurological dysfunction with cortical blindness and spastic tetraparesis. Biological tests at 15 months showed only high blood hepatic enzyme concentrations (aspartate and alanine aminotransferases 200 IU/L [<40 IU/L]), which progressively returned to normal. Blood and cerebrospinal fluid lactate concentrations were measured only at the time of mitochondrial assessment and were not retrospectively available. Nuclear magnetic resonance imaging at age 16 months showed large necrotic lesions of the white matter and cortical grey matter. At age 3·5 years the child had severe sequelae and microcephaly.

'Patient six was symptom-free until age 14 months, but persistent biochemical abnormalities were seen on standard follow-up of the epidemiological survey (which included lactate assays). The child had had high concentrations of blood lactate (4 mmol/L), hepatic aspartate aminotransferase (50 IU/L), and pancreatic lipase (200 IU/L [<150 IU/L]) since birth that persisted until age 14 months. Cerebrospinal fluid lactate was normal. These biological abnormalities led to specific mitochondrial investigation, including cerebral nuclear magnetic resonance imaging that showed delayed myelinisation, which is difficult to interpret at that age.

'Patient seven was symptom-free until age 4 months, at which time he became hypotonic with apnoea. The child regained normal breathing and consciousness after resuscitation, with no apparent sequelae. There were no biological abnormalities during routine biological follow-up, but blood lactate concentrations (routinely assayed in this institution) were continuously high (>4 mmol/L) from the first test at 4 weeks to 7 months. Cerebral nuclear magnetic resonance imaging was normal. Near-miss syndromes and lactataemia justified mitochondrial investigations.

'The eighth child was symptom-free. Persistent hepatic and pancreatic abnormalities (alanine aminotransferase 80 IU/L and lipase 180 IU/L) were seen from birth in the routine prospective biological follow-up. Blood lactate concentrations that were systematically added to the normal screening in the institution were normal, as were cerebrospinal fluid concentrations. At age 20 months, biological abnormalities persisted unchanged; a specific mitochondrial investigation was therefore done, including electroretinography, which was abnormal, and cerebral nuclear magnetic resonance imaging that showed abnormalities of the periventricular white matter.

'No child was infected with HIV-1, and all were HIV-1 seronegative at age 15 months, or at death before this age for patients one and two. For all children, repeated tests for HIV-1 by PCR and by culture were negative.'

NOTE

For a comprehensive review of the medical and scientific research literature on the foetal and neonatal toxicity of AZT and similar nucleoside analogue drugs, and for a critical discussion of WHO, UNAIDS, UNICEF and US CDC recommendations regarding the use of these drugs in pregnancy, see *Poisoning our Children: AZT in Pregnancy* by Adv Brink – online in the 'Quick links' column at **www.tig.org.za**.

Even as they report the harm that ARV exposure causes babies in the womb, many researchers continue to support the use of such drugs in pregnancy on the basis that they prevent mother to child transmission of HIV, and thereby save lives. In fact, there is no evidence supporting the notion that children born to HIV-positive mothers given AZT (and/or other ARVs) live, whereas children born to untreated mothers will get seriously sick and die; as the research findings cited above demonstrate, the contrary is the case.

Whether ARVs such as AZT really do prevent mother to child transmission of HIV is examined and debunked in an extensive analysis by Papadopulos-Eleopulos et al., *Mother to*

Child Transmission of HIV and its Prevention with AZT and Nevirapine: A Critical Analysis of the Evidence (monograph, 2001) – also online in 'Quick links' at the **TIG** website.

R20

The TAC's call for AZT and similar drugs to be given to pregnant African women and their newborn babies in South Africa is supported by Nicoli Nattrass, Professor of Economics, University of Cape Town; by Ferial Haffajee, editor of the *Mail&Guardian*, backed by the newspaper's governing board; and by Kerry Cullinan, editor of Health-e, an AIDS drug promoting news service.

The reason for general ignorance in South Africa about the harm that AZT causes unborn and newly born children is because the dissemination of information about it has been banned in the commercial media. On 22 November 2004 the Treatment Information Group (TIG) summarized the above-cited research findings in an article in the *Mail& Guardian*: 'Numerous studies have found that children exposed to AZT in the womb suffer brain damage, neurological disorders, paralysis, spasticity, mental retardation, epilepsy, other serious diseases and early death', preceded by the note that 'Hundreds of studies have found that AZT is profoundly toxic to all cells of the human body, and particularly to the blood cells of our immune system.' Outraged public reaction to the statement of these unacceptable facts led M&G editor Haffajee to apologize for publishing them, and to promise readers never to do so again. On 9 March 2005, following a complaint by the TAC, the Advertising Standards Authority proscribed the offending statements; and consequently they may not be repeated in the media, nor accepted for reproduction by any printing firm in South Africa.

On 28 October 2005 Medicines Control Council chairman Professor Peter Eagles wrote to say that his MCC was unconcerned by research reports concerning the foetal and neonatal toxicity of AZT, which the TIG had drawn to its attention, and said the MCC stood by its recommendation in July the year before that the drug be given to pregnant African women and their newborn babies (see the correspondence in *Poisoning our Children: AZT in Pregnancy*). The MCC's indifference to these reports may possibly be explained by the fact that its members are predominantly white and Indian.

✱ 'With great honesty the TAC has always tried to understand medical science. And this is something with which all South Africans have always struggled. We are scientifically illiterate.'

Zackie Achmat, leader of the Treatment Action Campaign, *Rapport* (translated from Afrikaans), 10 February 2002

TREATMENT INFORMATION GROUP
thinking about AIDS drugs
www.tig.org.za • arbrink@iafrica.com • tel 021 4264513 • fax 086 6720776
Postnet Suite 273 Private Bag X1 Vlaeberg, Cape Town 8018

MINUTES OF THE MEETING OF THE BAR COUNCIL OF THE SOCIETY OF ADVOCATES OF KWAZULU-NATAL HELD ON 26 OCTOBER 2017, IN THE MEETING ROOM, 15TH FLOOR, 6 DURBAN CLUB PLACE, DURBAN.

1. **WELCOME**

The Council meeting commenced at 17h00. The chairman welcomed the members and in particular the new members of the council who were present and expressed the hope that the year would be a productive one.

2. **ATTENDANCE AND APOLOGIES**

Present:

GO van Niekerk SC (Chairman)
J Nxusani SC
KC McIntosh
BZ Mthethwa
V Moodley
S Mahabeer
W Nicholson
GR Thatcher SC (Honorary Secretary)
D Pillay (Assistant Honorary Secretary)
Ms K Peniston (Administrative Secretary)

Apologies:

VM Naidoo SC (Deputy Chairman)
TG Madonsela SC
BJ Buthelezi
M Mazibuko
AR Khan

R21

5.4. **Complaint Report: Legal Aid SA and AR Brink (Annexure 5.4, pages 1 – 4)**

The complaints committee had recommended that an application be brought for the striking off of Brink who is currently acting as a magistrate. In the light of Brink's response to the complaint, the chairman stated that it could be anticipated that this would be a lengthy and expensive process.

It was resolved that:

The complaint would be referred to the GCB for action by it.

5.5. [redacted]

5.6. [redacted]

6. **FINANCE (Annexure 6, pages 1 – 5)**

6.1. [redacted]

MINUTES OF THE MEETING OF THE BAR COUNCIL OF THE SOCIETY OF ADVOCATES OF KWAZULU-NATAL HELD ON THURSDAY THE 23rd NOVEMBER 2017 IN CLUB ROOM 6, 15TH FLOOR, 6 DURBAN CLUB PLACE, DURBAN.

1. **WELCOME**

The Council meeting commenced at 17h00 and the chairman welcomed the members of the Council present.

2. **ATTENDANCE AND APOLOGIES**

Present:

GO van Niekerk SC (Chairman)
VM Naidoo SC
M Mazibuko
BZ Mthethwa
KC McIntosh
W Nicholson
A R Khan
L Law (Honorary Treasurer)
D Pillay (Assistant Honorary Secretary)
Ms K Peniston (Administrative Secretary)

Apologies:
GR Thatcher SC
TG Madonsela SC
S Mahabeer
V Moodley
A R Khan

R22

4.3 [redacted]

[redacted]

It was resolved:

[redacted]

4.4 **Complaint Report : Legal Aid SA and AR Brink**

The chairperson reported that he would be raising this item at the EXCO meeting of the GCB and that the GCB will be requested to attend to litigating against Brink because our membership is unable to finance such protracted and costly litigation.

4.5 [redacted]

[redacted]

It was resolved: [redacted]

MINUTES OF THE MEETING OF THE BAR COUNCIL OF THE SOCIETY OF ADVOCATES OF KWAZULU-NATAL HELD ON THURSDAY THE 25TH JANUARY 2018 IN CLUB ROOM SIX, 15TH FLOOR 6 DURBAN CLUB PLACE, DURBAN.

1. **WELCOME**

The Council meeting commenced at 17h00 and the chairman welcomed the members of the Council present.

2. **ATTENDANCE AND APOLOGIES**

Present:

GO van Niekerk SC (Chairman)
J Nxusani SC
KC McIntosh
S Mahabeer
WAJ Nicholson
BZ Mthethwa
CB Buthelezi
GR Thatcher SC (Honorary Secretary)
D Pillay (Assistant Honorary Secretary)
Ms K Peniston (Administrative Secretary)

Apologies:

VM Naidoo SC (Deputy Chairman)
L Law (Honorary Treasurer)
AR Khan
V Moodley
M Mazibuko

R23

7. [redacted]

It was resolved:

[redacted]

8. [redacted]

It was resolved:

[redacted]

9. **COMPLAINT: LEGAL AID / AR BRINK – RESOLUTION TO STRIKE OFF**

The chairman reported that at the meeting of the GCB Executive in December 2017, he had raised the matter of an application to strike Brink from the roll of advocates. He had advised the GCB that the legal costs that the Society would incur in bringing such an application were unaffordable and he had requested the GCB to bring the proceedings. The GCB declined to do so but resolved to fund the litigation. The chairman then recapitulated the history of the matter which was as follows:

R23

(a) a complaints committee of the Bar Council had delivered a report dated the 17th February 2017 in a complaint made by Legal Aid South Africa ("LASA") in which the committee recommended that the Society launch an application for Brink to be struck from the roll of advocates;

(b) that report was placed before the Bar Council and at a meeting held on the 23rd February 2017 at which it was resolved that the Society launch an application for Brink's striking off;

(c) when Brink was informed of this decision, he contended he had a right to respond to the allegations made about him by LASA and he had not been afforded this right before the council had taken the decision to strike him from the roll;

(d) the request of Brink was acceded to and the decision to strike him off was rescinded on 25 May 2017. He was invited to make submissions in response to the complaint levelled against him by LASA;

(e) Brink made written representations and LASA was invited to reply thereto and it did so although the gist of its reply was that Brink had not raised new matter in his representations;

(f) the complaints committee considered the representations of Brink and concluded that an application should be brought for Brink's striking off;

(g) at a meeting of the Bar Council held on the 26th October 2017, the report of the complaints committee was placed before the council and it was resolved to refer the complaint to the GCB for its action as it was anticipated that any application to strike Brink off would be a lengthy and expensive process which the Society could not afford.

It was resolved that:

Brink's representations and the report of the complaints committee headed by Mossop SC which had previously reported on the matter, be circulated amongst council members for their consideration and that they would notify the chairman

R23

of their decision as to whether the council should resolve to apply for Brink's removal from the roll of advocates.

10. [redacted]

11. [redacted]

12. [redacted]

It was resolved that:

(a) [redacted]

(b) [redacted]

MINUTES OF THE MEETING OF THE BAR COUNCIL OF THE SOCIETY OF ADVOCATES OF KWAZULU-NATAL HELD ON 22 FEBRUARY 2018 IN THE COMMON ROOM, ADVOCATES CHAMBERS, 17 PRINCE EDWARD STREET, PIETERMARITZBURG

1. **WELCOME**

The Council meeting commenced at 17h00 and the chairman welcomed the members of the Council present. The chairman noted that he would have welcomed J Nicholson, but as she was not present he would undertake to do so at the next council meeting.

2. **ATTENDANCE AND APOLOGIES**

Present:

GO van Niekerk SC (Chairman)
VM Naidoo SC (Deputy Chairman)
J Nxusani SC
TG Madonsela SC
KC McIntosh
V Moodley
WAJ Nicholson
AR Khan
M Mazibuko
BZ Mthethwa
D Pillay (Assistant Honorary Secretary)
Ms K Peniston (Administrative Secretary)

Apologies:

L Law (Honorary Treasurer)
J Nicholson
G R Thatcher (Honorary Secretary)

R24

4.11 [redacted]

4.12 [redacted]

4.13 **Complaint : Legal Aid / A R Brink**

The chairman apologised for not providing the complaint against Brink and his response thereto but pointed out that it was not possible to provide Brink's response which ran into 8 volumes of documents.

R24

The essence of the dispute related to allegations made by Brink (whilst acting as a magistrate) against Judge Mlambo which were sufficiently serious enough to warrant a striking off application being brought against him. The chairman raised a query regarding the status of the complaint at the Judicial Services Commission and whether we should await the outcome of that decision before embarking on litigation.

It was resolved:

That a letter be written to the JSC enquiring as to the status of the complaint and that Nxusani SC is to provide a memorandum as to whether it would be proper to bring a striking off application if Brink was at the time acting as a magistrate.

14.14 [redacted]

[redacted]

14.15 [redacted]

[redacted]

MINUTES OF THE MEETING OF THE BAR COUNCIL OF THE SOCIETY OF ADVOCATES OF KWAZULU-NATAL HELD ON MONDAY THE 19TH MARCH 2018 IN CLUB ROOM SIX, 15TH FLOOR 6 DURBAN CLUB PLACE, DURBAN.

1. **WELCOME**

The Council meeting commenced at 17h10 and the chairman welcomed the members of the Council present. He extended a special welcome to J Nicholson who was attending her first council meeting after having been co-opted onto the Council following the resignation of S Mahabeer.

2. **ATTENDANCE AND APOLOGIES**

Present:

GO van Niekerk SC (Chairman)
J Nicholson
W Nicholson
CB Buthelezi

GR Thatcher SC (Honorary Secretary)
D Pillay (Assistant Honorary Secretary)
Ms K Peniston (Administrative Secretary)

Apologies:
VM Naidoo SC (Deputy Chairman)
L Law (Honorary Treasurer)
V Moodley
KC McIntosh

The chairman noted that the meeting was initially not quorate.

R25

[redacted]

4.11. **Complaint: Legal Aid / AR Brink**

At the previous council meeting it was resolved that Nxusani SC would provide a memorandum as to whether it would be proper to bring a striking off application if Brink was at the time of the alleged offence acting as a magistrate. No memorandum had been received. In the meantime the chairman had communicated with the Judicial Services Commission who had reported that Brink had lodged a complaint against Mlambo JP and Waglay JP which a committee of the JSC was investigating. The JSC had however advised the chairman that the Society should proceed with an application to strike Brink off. The chairman reported that it would be appropriate that the outcome of the JSC committee's investigation should be awaited since if that committee determined that Brink's complaint was without merit, the way would then be clear to move an application for the striking off of Brink from the roll. The chairman did note that in those circumstances in all probability this complaint would be dealt with by the Legal Council.

4.12. [redacted]

[redacted]

SOCIETY OF ADVOCATES OF KWAZULU-NATAL

LITIGATION SUB-COMMITTEE REPORT

This report has been prepared by the Litigation Sub-Committee of the Society of Advocates of KwaZulu-Natal, to be presented to the Annual General Meeting of the General Council of the Bar to be held on 14 July 2018.

The following are the pending striking-off applications with which the Society is involved:

(a) [redacted]

(b) [redacted]

(c) [redacted]

(d) Advocate A. Brink.

[redacted]

A report on each of these matters follows hereunder.

R26

[redacted]

[redacted]

[redacted]

The complaint involved many volumes of documents. After considering the same, the Committee decided that Brink's allegations were unfounded and contemptuous of the two Judges. It accordingly recommended that striking-off proceedings be brought against him.

When Brink learnt of this decision, he contacted the Society and requested to be allowed to make representations before any final decision was made in this regard. The Society agreed that he may do so. Brink then delivered written representations which, together with annexures, exceeded 250 pages. The Complaints Committee re-considered the matter in the light of these representations but still determined that an application should be brought for his striking-off.

Simultaneously with lodging the written representations, Brink lodged a complaint with the Secretariat of the Judicial Services Commission ("the JSC") regarding the conduct of Justices Mlambo and Waglay. This complaint has apparently been referred to the Judicial Misconduct Sub-Committee of the JSC.

Whilst the Society is of the view that there is no substance to Brink's complaint, it is of the view that it would be advisable to await the decision of the Judicial Misconduct Sub-Committee on the complaints, before proceeding with the striking-off application.

DATED AT DURBAN THIS DAY OF JULY 2018.

From: Gardner van Niekerk <gardner@law.co.za>
Sent: Wednesday, August 8, 2018 3:30 PM
To: 'lbios@judiciary.org.za'
Cc: Kate Peniston - Society of Advocates of KZN <kznbar@law.co.za> (kznbar@law.co.za)
Subject: Subject: RE: Advocate Anthony Brink

Dear Ms Bios

Thank you for the enquiry of today's date.

The bar council decided that it will for the time being not institute strike-off proceedings against Brink and that it will await the outcome of the complaint to the Judicial Service Commission. We are aware that there is nothing preventing the Society from moving an application but we are reluctant to do so because of the cost implications of such an application. We will know where we stand once the complaint to you has been dealt with and a decision will then be made as to the question of an application.

Kind regards

ADVOCATE G O VAN NIEKERK SC
Chairman, Society of Advocates, KZN
6 Durban Club Place
Durban, 4001
gardner@law.co.za
michellemack@law.co.za
Telephone: (031) 301 8693
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SOCIETY OF ADVOCATES OF KWAZULU-NATAL

LITIGATION SUB-COMMITTEE REPORT

This report is prepared for the purposes of the Annual General Meeting of the Society, to be held on 8 September 2018.

The Litigation Committee is presently dealing with the following matters:

1. A complaint against J N N Ngema (non-member);
2. A complaint against M Mvune (non-member);
3. A complaint against Ms C Ludick (non-member);
4. A complaint A Brink (non-member);
5. The application proceedings against P Hunt (Ms)

1.

Complaint Against J N N Ngema

The Council authorised the appointment of counsel to consider the complaint and the institution of proceedings for Ngema's strike-off or suspension if so advised by counsel. Govindasamy SC was appointed for this purpose and has subsequently advised that the Council should not proceed with the matter. The committee has accepted this advice and will advise the Council accordingly.

R28

[redacted]

5.

A Brink

Brink made serious allegations regarding the conduct of Mr Justice Mlambo and Mr Justice Waglay, who are currently the Judge President of the North Gauteng High Court and the Labour Court respectively. The allegations arose from their refusal to recommend Brink for appointment to the staff of the Legal Aid Board in Pietermaritzburg. Brink alleged that the two Judges acted *male fides* in doing so with the intention of damaging his career.

The complaint involved many volumes of documents. After considering the same, the Committee decided that Brink's allegations were unfounded and contemptuous of the two Judges. It accordingly recommended that striking-off proceedings be brought against him. When Brink learnt of this decision, he contacted the Society and requested to be allowed to make representations before any final decision was made in this regard. The Society agreed that he may do so. Brink then delivered written representations which, together with annexures, exceeded 250 pages. The Complaints Committee re-considered the matter in the light of these representations but still determined that an application should be brought for his striking-off.

Simultaneously with lodging the written representations, Brink lodged a complaint with

the Secretariat of the Judicial Services Commission ("the JSC") regarding the conduct of Justices Miambo and Waglay. This complaint has apparently been referred to the Judicial Misconduct Sub-Committee of the JSC.

Whilst the Society is of the view that there is no substance to Brink's complaint, it is of the view that it would be advisable to await the decision of the Judicial Misconduct Sub-Committee on the complaints, before proceeding with the striking-off application.

C J Pammenter SC

A E Potgieter SC

M Collins SC

H S Gani

Chambers, Durban

16 AUGUST 2018

Kate Peniston

From: Kate Peniston <kznbar@law.co.za>
Sent: Thursday, 19 September 2019 15:40
To: 'Engela Pienaar'
Subject: RE: REPORT ON PENDING LITIGATION MATTERS

Dear Engela

My apologies for not replying.

There is no updated report on these matters as yet. I have handed over the papers to Nadhira on the 30 August.

Kind regards

Kate Peniston
Administrative Secretary

SOCIETY OF ADVOCATES OF KWAZULU-NATAL
3rd Floor
6 Durban Club Place
Durban
4001
Tel : 031 301 3099
Fax : 031 304 4415
Fax2Mail : 086 401 5567

From: Engela Pienaar <engelap@lpc.org.za>
Sent: Monday, 16 September 2019 12:18
To: Kate Peniston <kznbar@law.co.za>
Subject: REPORT ON PENDING LITIGATION MATTERS
Importance: High

Dear Kate

I am referring to you the Report on pending litigation matters which was before the Council at the August meeting. It will be appreciated if you can do the necessary changes to the matters from the Society of Advocates from items 20 to 25 and also add any new items, if any.

Please let me have the updated report by close of business tomorrow.

Kind regards

ENGELA PIENAAR
Secretary to the Director

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Kate Peniston

From: Kate Peniston <kznbar@law.co.za>
Sent: Tuesday, 20 August 2019 14:31
To: 'Engela Pienaar'
Cc: pearlm@lpc.org.za
Subject: RE: PENDING LITIGATION MATTERS
Attachments: Annex - July Report on Pending Litigation Matters.doc

Importance: High

Dear Engela

Please find attached herewith the Pending Litigation Matters spread sheet with the Society's matters included.

I trust you find the above in order.

Kind regards
Kate Peniston

From: Engela Pienaar <engelap@lpc.org.za>
Sent: Friday, 16 August 2019 12:03
To: Kate Peniston - Society of Advocates of KZN <kznbar@law.co.za>
Subject: PENDING LITIGATION MATTERS
Importance: High

Dear Ms Peniston

I enclose herewith our report regarding pending litigation matters. The Council **resolved** at the July meeting that the report of the Society of Advocates be incorporated into the existing template. It will be appreciated if you can add the litigation report of the Society of Advocates at the end of the Schedule and let me have same by not later than Tuesday, 20 August 2019 to enable me to upload the Agenda by not later than Wednesday morning.

Kind regards

ENGELA PIENAAR
Secretary to the Director

KWAZULU-NATAL PROVINCIAL OFFICE
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E-mail: engelap@lpc.org.za

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LEGAL PRACTICE COUNCIL: KWAZULU-NATAL
REPORT ON PENDING LITIGATION MATTERS

ITEM	REF NO.	NATURE OF MATTER / RESPONDENT DETAILS	STATUS OF MATTER / PROGRESS OF MATTER / OUTCOME OF MATTER
1.	NH/C5/13792012	**Suspension Application:** [redacted] The conduct which forms the basis of the Suspension Application against [redacted] is his failure to respond to the complaint lodged by [redacted]	The Provincial Council is to **note** that the Application was heard on 20 June 2019. The Respondent filed his Answering Affidavit and the matter was adjourned *sine die*. The Applicant was ordered to file its Replying Affidavit by 2 August 2019. The Respondent tendered the costs of the adjournment on an Attorney and client scale.
2.	NH/11092018	**Suspension Application:** [redacted] **) : Closing Requirements**	The Provincial Council is to **note** that the Application papers have been finalized and are in the process of being signed.
3.	NH/V0108/12	**Strike-Off Application:** [redacted] The conduct which forms the basis of the Strike-Off Application is that [redacted]: 1) Failed to properly attend to the administration of the deceased estate. 2) Wrongfully appropriated R182 670,20 in respect of fees which were due to the deceased estate. 3) Misrepresented to the Executor that she submitted four Liquidation and Distribution Accounts when in fact only one was submitted. 4) Unlawfully claimed a fee of 6% in respect of the deceased business from the period (October 2008 to May 2010).	The Provincial Council is to **note** that the Application for Strike off was pended as the Respondent had lodged an Appeal. The Panel Attorneys have filed their Heads of Argument and Practice Notes. We are awaiting the Notice of Set Down.

		Vahed J submitted a complaint to the Society to the effect that when [redacted] appeared before Steyn J in an urgent application, she alleged that she had been instructed by a firm of attorneys, but those attorneys denied having instructed her. The Complaints Committee recommended that an application be brought for [redacted]s striking-off.	Senior and junior counsel were appointed by the Society to draft the necessary application papers. This has not occurred as yet. Junior counsel has been replaced and the new Junior has been instructed to expedite the production of a draft set of papers for submission to senior counsel.
20.	Advocate	**Application to Strike-off A Brink** Brink made serious allegations regarding the conduct of Mr Justice Mlambo and Mr Justice Waglay, who are currently the Judge President of the North Gauteng High Court and the Labour Court respectively. The allegations arose from their refusal to recommend Brink for appointment to the staff of the Legal Aid Board in Pietermaritzburg. Brink alleged that the two Judges acted male fides in doing so with the intention of damaging his career. The complaint involved many volumes of documents. After considering the same, the Committee decided that Brink's allegations were unfounded and contemptuous of the two Judges. It accordingly recommended that striking-off proceedings be brought against him. When Brink learnt of this decision, he contacted the Society and requested to be allowed to make representations before any final decision was made in this regard. The Society agreed that he may do so. Brink then delivered written representations which, together with annexures, exceeded 250 pages. The Complaints Committee re-considered the matter in the light of these representations but still determined that an	The Society's Complaints Committee recommended that an application be instituted for Brinks striking-off. Brink lodged a complaint with the Judicial Service Committee and Litigation Committee recommended that the decision of the Judicial Misconduct Sub-Committee should be awaited before proceeding with the proposed strike-off application. If a decision is not received before the next report of the Litigation Committee falls due, the Litigation Committee will advise the Bar Council on resolving to institute a strike-off application against Brink.

		application should be brought for his striking-off. Simultaneously with lodging the written representations, Brink lodged a complaint with Page 4 the Secretariat of the Judicial Services Commission ("the JSC") regarding the conduct of Justices Miambo and Waglay. This complaint has apparently been referred to the Judicial Misconduct Sub-Committee of the JSC. Whilst the Society is of the view that there is no substance to Brink's complaint, it is of the view that it would be advisable to await the decision of the Judicial Misconduct Sub Committee on the complaints, before proceeding with the striking-off application.	
21.	Advocate	**Application to Strike-off** [redacted] Complaint by [redacted]	During late 2018 the Council referred to the Committee a complaint against Advocate [redacted] in respect of which the Complaints Committee had recommended that a strike-off application be instituted. The complaint is to the effect that Phewa took an amount of R50 000.00 from a client with regard to the transfer of a property, but the property was never transferred and the monies never refunded. A further complaint was thereafter received against Phewa which was then referred to the Complaints committee and is pending. The Litigation Committee has appointed counsel to consider the merits of an application to strike-off Phewa based on the first complaint and, if considered to be of merit, to draft the necessary application whereafter the Litigation Committee will make appropriate recommendations to the Bar Council.
22.	Advocate	**Litigation matter: Advocate** [redacted] This is not a “complaint” in the true sense of the	A draft affidavit has been prepared for signature by the Chairman. In terms thereof, inter alia, it is pointed out

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LEGAL PRACTICE COUNCIL

Advocate Anthony Brink

Email: anthonybrink.sa@gamil.com

YOUR REF:

OUR REF : Nadira

Please Quote Our Reference

10 March 2020

Dear Sirs

RE: COMPLAINT BY MR T V MTATI OBO LEGAL AID BOARD

The above matter refers.

Please be advised that the Legal Practice Council at its meeting held on 7 March 2020 considered your complaint and the Reports submitted by the Complaints Committee of the Society of Advocates and resolved to commence with investigations into this matter de nova as the Society of Advocates did not have the necessary authority to deal with the matter as the Legal Practice Council had taken office on 1 November 2018.

Kindly provide us with your reply by 1 April 2020.

Yours faithfully

Nharipersad

MRS N HARRIPERSAD
SENIOR LEGAL OFFICIAL
DISCIPLINARY DEPARTMENT

Executive Committee: Ms. Kathleen Matolo - Dlepu – Chairperson, Adv Anthea Platt SC - Deputy Chairperson, Adv. Greg Harpur SC, Ms. Trudie Nichols, Mr Lutendo Sigogo, Mr Jan Stemmett, Adv. Phillip Zilwa SC, Executive Officer (acting) Ms. Chanty Nzuza

KWAZULU-NATAL OFFICE - DIRECTOR: PEARL ARNOLD MFUSI

36 Pearson Street
Eshowe 3815
1 April 2020

Your ref: Nadira

Mrs N Harripersad
Senior Legal Official
Disciplinary Department
Legal Practice Council
KwaZulu-Natal Provincial Office
1st Floor, 200 Hoosen Haffejee Street
Pietermaritzburg

Dear Mrs Harripersad

COMPLAINT BY MR T V MTATI OBO LEGAL AID BOARD

I refer to your letter of the 10th ultimo in this matter.

I should begin by advising that the LPC has to do here with an extraordinarily serious case of criminal and other corruption at Legal Aid South Africa ('LASA'), in which both the Chief Justice and the Auditor-General have just recently taken a direct personal interest (further described below). The National Director of Public Prosecutions will shortly be doing likewise.

You tell me that the Legal Practice Council ('LPC') 'considered your complaint and the Reports submitted by the Complaints Committee of the Society of Advocates'. I haven't filed any complaints with the LPC yet (they're still to come), so by 'your complaint' I assume you're referring to former LASA Legal Executive Thembile Mtati's complaint against me to the Society of Advocates of KwaZulu-Natal ('the Society'), chiefly about my allegedly disgraceful, unprofessional criticism of then LASA Board chairperson Dunstan Mlambo JP's gross misconduct before and during my labour litigation against LASA several years ago.

If so, the LPC is very mistaken in thinking 'the Society of Advocates did not have the necessary authority to deal with the matter as the Legal Practice Council had taken office on 1 November 2018', because Mtati's complaint was made to the Society in November 2015, three years before that, and long before the LPC 'had taken office'.

The Society then dealt with Mtati's complaint as follows. Without thinking to afford me a hearing or even inform me of the complaint, the Society's Complaints Committee considered and decided to uphold it, and recommended to the Society that I be struck off on account of it; and the Society agreed and resolved to apply against me to the High Court for this. When I later chanced to hear about this amazing development, and requested a belated opportunity to answer the complaint, the Society agreed to reverse its decision and to hear me. I answered Mtati's complaint by furnishing the Complaints Committee with copies of my eight gross misconduct complaints just lodged in mid-2017 with the Judicial Conduct Committee ('JCC') of the Judicial Service Commission ('JSC') against the said judge. Invited by the Complaints Committee to comment on my response to his complaint (i.e. to comment on my eight complaints against Mlambo JP to the JCC), Mtati declined to do so. This full investigation by the Complaints Committee of the Society took place in 2017, a year before the LPC 'had taken office'. As I told the Chief Justice recently (see below), the conclusion I drew from the Society's silence after this was that my extraordinarily serious complaints against Mlambo JP lodged with the JCC resulted in the Society ultimately dismissing Mtati's complaint that I'd made an unwarranted, insupportable attack on the judge's integrity. In other words, I believed Mtati's complaint against me to have been finally disposed of, and that the matter had died its natural and proper death.

In your letter you tell me that on 7 March 2020 the LPC 'considered ... the Reports submitted by the Complaints Committee of the Society of Advocates'. It seems to me then that the LPC wasn't furnished with and doesn't have copies of my complaints to the JCC against Mlambo JP, which I provided to the Society's Complaints Committee in mid-2017 as my complete answer to Mtati's complaint

against me that I'd defamed this judge, and that the LPC didn't consider them before resolving to re-investigate Mtati's old complaint.

In order to reply properly, as the LPC requires of me, per your letter, I require the following information and documents please:

INFORMATION REQUIRED

1. What is the LPC's case file number in this matter?
2. Do you confirm that the LPC has not been furnished with copies of my complaints to the JCC against Mlambo JP, which I supplied to the Complaints Committee as my answer ('my response') to Mtati's complaint that I'd defamed Mlambo JP, which response the Complaint's Committee copied on to Mtati for his comment, and which response LASA therefore has in its possession?
3. Did LASA Chief Legal Executive Patrick Hundermark ask the LPC to reinvestigate the complaint? If not him, who is the current complainant against me on LASA's behalf? Who is now accusing me of professional misconduct?

DOCUMENTS REQUIRED

1. A copy of Mtati's complaint against me to the Society in 2015, and any addendum updating or supplementing it, if such exists.

2. Given that Mtati resigned from LASA a year or two ago, all correspondence between the LPC and Hundermark and/or other LASA officer, past or current, regarding the revival of Mtati's complaint for re-investigation by the LPC.

3. If Hundermark or other LASA officer has resubmitted to the LPC Mtati's old complaint to the Society, a copy of the resolution by LASA's Board authorising and instructing him to resubmit the complaint to the LPC on LASA's behalf. (Since Mtati no longer works for LASA, he obviously has no authority to make any complaint to the LPC against me on LASA's behalf. If Mtati, Hundermark, or other LASA officer is

complaining to the LPC against me at his own initiative, unauthorised by LASA's Board, and not on LASA's behalf, then no such Board resolution will have been passed, and no minute of it will exist to provide me.)

4. All 'Reports submitted by the Complaints Committee of the Society of Advocates' (per your letter) considered by the LPC on 7 March 2020.

5. Any other documents considered by the LPC on said date.

6. The LPC's resolution on 7 March 2020 'to commence with investigations into this matter de novo'.

The LPC will be interested to learn that the JCC found my charges against Mlambo JP substantial, and required him to respond to them. That is, they weren't found to be frivolous and baseless and subject to summary dismissal under section 15 of the Judicial Service Commission Act. Following Mlambo JP's deplorable response to my complaints, I was invited by the JCC to comment on it, which I did in forthright terms.

When the JCC appeared to me to be foot-dragging with its disciplinary process against Mlambo JP, I complained directly to JSC chairperson Mogoeng Mogoeng CJ at the end of last year, and on 18 February 2020, I received a call from his office – after hours at 8.33 pm (I have a log of the call) – urgently requesting copies of my complaints for immediate consideration, and ascribing the long delay in prosecuting them to the illness, incapacity and death of former JSC Secretary Lynette Bios, in which period administration broke down. As requested I duly provided PDF copies of my complaints, Mlambo JP's response, and my invited comments, by Dropbox link emailed later that night to the Chief Justice's man waiting in his office for them. With the Chief Justice now personally onto the case, I expect movement on my capital complaints against Mlambo JP soon.

On 9 March, the Office of the Auditor-General acknowledged my affirmed, documented complaint addressed to him personally of massive financial corruption in LASA's national office and assured me of the Auditor-General's

personal attention to it at a meeting to be held to discuss it. Two days ago, on 30 March, I received a further email from the Auditor-General's in-house corporate legal services advocate dealing with my complaint, informing me that it was now in the hands of the Auditor-General's investigating unit, and that she would shortly be drawing a summary report for personal discussion with the Auditor-General.

Bottom line is the law is at last on the move against LASA's prodigiously corrupt past and current top officers.

I intend reporting this latest development at the LPC to the Chief Justice, to update him on the 'RETALIATION' section of my letter to him, concerning LASA's (Mlambo JP's, Hundermark's) ongoing endeavour to professionally ruin the whistleblower calling attention to the criminal corruption I've uncovered at LASA (going even to the extreme of perverting judicial proceedings in their favour by dint of a note slipped to a judge – unfortunately, for them, inadvertently left in the court file, and copied for me by the registrar – the subject of a separate complaint pending before the JCC against Mlambo JP's long-time deputy and then successor, Labour Appeal Court head Basheer Waglay JP).

Meanwhile, as I informed the Auditor-General's in-house advocate in reply, I intend this month to commence drawing criminal complaints against Hundermark and his colleagues variously for their perjuries, contradictory lies to the Justice Portfolio Committee, and criminal contraventions of the Public Finance Management Act.

I look forward to the information and documents specified above. No rush. I appreciate that the national lockdown is slowing and disrupting everything.

Yours sincerely

ANTHONY BRINK

Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

COMPLAINT BY MR T V MTATI OBO LEGAL AID BOARD

Anthony Brink <anthonybrink.sa@gmail.com> 1 April 2020 at 16:34
To: Shoba Harkhu <shobah@lpc.org.za>

Dear Mrs Harripersad
I attach my reply to your letter of the 10th last month.
Sincerely
Anthony Brink
[Quoted text hidden]

JPC_1.pdf
38K

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

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

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number:

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

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

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

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

Legal Practice Council
Thornhill Office Park
Building 20
94 Bekker Road
Vorna Valley
Midrand 0002

info@lpc.org.za

B. Particulars of person requesting access to the record

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

Full names and surname	:	**Anthony Brink**
Identity number	:	**5902255116081**
Postal address	:	**36 Pearson Street, Eshowe 3815, KwaZulu-Natal**

Fax number	:	**None**
Telephone number	:	**083 779 4174**
E-mail address	:	**anthonybrink.sa@gmail.com**

C. Particulars of person on whose behalf request is made: N/A

D. Particulars of record

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

See annexure.

E. Fees

*(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid.*
(b) You will be notified of the amount required to be paid as the request fee.
*(c) The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.*

F. Form of access to record

Mark the appropriate box with an "X".
(a) Your indication as to the required form of access depends on the form in which the record is available.
(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.
(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in written or printed form -

X	copies of records		inspection of record

2. If record consists of visual images - N/A

3. If record consists of recorded words or information which can be reproduced in sound - N/A

4. If record is held on computer or in an electronic form -

	printed copy of record		printed copy of information derived from the record*	X	copies to be emailed as file attachments.

G. Notice of decision regarding request for access

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

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

Signed at Eshowe on 22 July 2020

SIGNATURE OF REQUESTER

FORM A ANNEXURE

RECORDS REQUIRED

1. A copy of the 'Complaint by Mr T V Mtati obo Legal Aid Board', i.e. Legal Aid South Africa ('LASA'), referred to in the heading of the letter to me on 10 March 2020 by Nadira Harripersad, Legal Practice Council ('LPC') Senior Legal Official: Disciplinary Department, KwaZulu-Natal Provincial Office ('the letter').

2. Any addendum updating or supplementing the said complaint, originally made to the Society of Advocates of KwaZulu-Natal ('the Society') in November 2015.

3. All correspondence between LASA (and/or by any past LASA officer) and the LPC regarding the revival of the complaint for re-investigation by the LPC.

4. All 'Reports submitted by the Complaints Committee of the Society of Advocates', considered by the LPC at its meeting on 7 March 2020, mentioned in the letter.

5. The minutes of all and any resolutions passed by the Society in regard to the disposal of the complaint, considered by the LPC at its 7 March 2020 meeting.

6. All and any other documents considered by the LPC at its 7 March 2020 meeting before resolving 'to commence with investigations into this matter de nova [*sic*]' – the 'matter' being LASA's complaint to the Society against me in November 2015.

7. The minute of the LPC's resolution passed at its 7 March 2020 meeting 'to commence with investigations into this matter de nova'.

8. Any record identifying the original author of the allegation made in the letter, if not Ms Harripersad herself:

> [T]he Society of Advocates did not have the necessary authority to deal with the matter as the Legal Practice Council had taken office on 1 November 2018.

Advocate A Brink
E-mail: anthonybrink.sa@gmail.com

YOUR REF:

OUR REF : NH/mg

Please Quote Our Reference

18 February 2021

Dear Advocate Brink

RE: COMPLAINT BY MR T V MTATI obo LEGAL AID SOUTH AFRICA

We refer to your letter dated 12 January 2021 and respond herewith as follows to your request for further information in so far as it relates to the Legal Practice Council: -

1. Ad paragraph 1 (page 2)

   We enclose herewith a copy of Ms Kola's letter dated 30 November 2020 and advise that the copy received is clear and legible.

2. Ad paragraph 2 (page 3)

   We confirm having received from the Society of Advocates your eight (8) complaints against the erstwhile LASA Board Chairperson, Mlambo J.P.

   We further confirm that we have copies of your following letters in our possession: -

   a) A copy of your letter addressed to Mossop SC dated 3 July 2017; and

   b) A copy of your e-mail addressed to Mossop SC dated 26 July 2017.

   We confirm that we are not in possession of your complaint to the JSC against Waglay J.P.

3. Ad paragraph 2 (page 7)

   1) As requested, please find attached a copy of the complaint by Mr T V Mtati obo the Legal Aid Board.

2) We enclose herewith a copy of Ms Kola's letter referred to above in para 1 in which she has supplemented the original complaint.

3) Attached herewith our correspondence between LASA and the LPC, relating to the revival of the complaint.

4) A copy of the report to the Bar Council by Advocate R G Mossop SC dated 17 February 2017 and 14 September 2017.

5) & 7) We enclose a copy of the LPC's minutes dated 7 March 2020.

6) The following items were considered by the LPC at its meeting held on 7 March 2020: -

i) The complaint by T V Mtati obo LASA dated 24 November 2015.

ii) Your letter dated 3 July 2017.

iii) The Society of Advocate's report – September 2019.

iv) Reports to the Bar Council by Advocate R G Mossop SC dated 17 February 2017 and 14 September 2017.

8) Please find attached a copy of our minutes from the LPC KZN Provincial Council stating that "all matter referred by the Society of Advocates must be investigated afresh as the latter ceased to have *locus standi* from 1 November 2018".

Yours faithfully

MRS N HARRIPERSAD
SENIOR LEGAL OFFICER - DISCIPLINARY DEPARTMENT

Encl.

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

188, 14th Road, Noordwyk, Midrand, 1685
Private Bag X10, Marshalltown, 2107
Tel: +27 10 493 2500 (Switchboard)
E-mail: info@ judiciary.org.za
www.judiciary.org.za

JUDICIAL CONDUCT COMMITTEE

Enq: Lynette Bios

Tel: (010) 493 2500(switchboard)

Advocate Brink

25 Balcomb Avenue

Zini River Estate

Mtunzini

Per email: anthonybrink.sa@gmail.com

Our Ref: JSC/533/17

Dear Advocate Brink

RE: COMPLAINT AGAINST JUDGE PRESIDENT MLAMBO OF THE GAUTENG DIVISION OF THE HIGH COURT

Kindly find the attached response from Mlambo JP.

The Secretariat requests your comments (if any) by the close of business on 20 June 2018.

Yours sincerely,

L BIOS

Secretariat for the Judicial Service Commission

Date: 07/06/2018

R35

OFFICE OF THE JUDGE PRESIDENT

P O Box 442, PRETORIA 0001 - Tel 012- 314-9003 - Fax 012-326-4940
Palace of Justice, Church Square, Room 13, First Floor, Pretoria
E-mail: TMotswasele@judiciary.org.za / NNdungane@judiciary.org.za

Your Ref: JSC/533/17

THE CHAIRPERSON
JUDICIAL SERVICE COMMISSION
186, 14TH ROAD
NOORDWYK
MIDRAND
1685

Dear Chief Justice

RE: COMPLAINT BY ADVOCATE BRINK AGAINST MLAMBO JP

1. I refer to your letter dated 25 May 2018 wherein you sought my response to the complaint that has been lodged by Mr Anthony Brink ("Brink").

INTRODUCTION

2. At the outset, I wish to point out that the complaint by Brink is not the first or isolated complaint. Brink has on innumerable occasions filed or made complaints against myself and senior officials of Legal Aid South Africa and other judicial officials. These complaints were made not only before the JSC but also in various courts, Parliament and before various Chapter 9 institutions.

3. At the heart of Brink's numerous complaints is his non-appointment to Legal Aid South Africa's Senior Litigator post at its Pietermaritzburg office during or about 2010.

4. Of particular concern though, is the language used by Brink in all the complaints that he has filed. Brink has been, to say the least, very derogatory, defamatory, and, at times, racist, against not only myself, but also senior officials of Legal Aid South Africa and other sitting judicial officers.

5. With this introduction I proceed to address Brink's complaint.

SUMMARY OF THE COMPLAINTS

6. In his complaint, Brink had made eight allegations of gross misconduct against me in my capacity as the Chairperson of the Board of Directors of Legal Aid South Africa ('Legal Aid SA") which I can summarise as follows -

6.1. The first complaint is *"subornation of perjury to defeat an application under section 25 of the Supreme Court Act"* for leave to subpoena me, so as to avoid being cross examined at the trial of Brink's labour action against Legal Aid SA (D529/11) on my "*gross misconduct, including crimes in false reporting and lying on multiple scores to the Justice Portfolio Committee";*

6.2. The second complaint is *"collusion in Legal Aid SA CEO and Information Officer Vidhu Vedalankar's illegal and unconstitutional total refusal to comply with Brink's request duly made under the Promotion of Access to Information Act 2 of 2000 ("PAIA") for access to specified records exposing recruitment corruption in which [I] was directly involved"*. The third to the fifth complaints are similar to the second complaint;

6.3. The sixth complaint is *"false reporting and lying to the Minister of Justice and Constitutional Development (as he was then described) to pervert his enquiry into Vedalankar's repeated illegal and unconstitutional refusal to comply with PAIA, and thereby cover this up, with the object of covering up my own gross misconduct exposed by the illegally refused records which were ultimately surrendered many years later at the point of argument in court for an order compelling their delivery";*

6.4. The seventh complaint is *"false reporting and lying to the Justice Committee to pervert its separate independently instituted enquiry into the same illegal and unconstitutional suppression of public records, with the same corrupt object, in criminal contravention of section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act";*

6.5. The Eighth complaint is *"false reporting and lying to the Minister of Justice and Correctional Services, and to the Justice Portfolio Committee to pervert their separate, independently instituted enquiries into-*

(a) the unauthorised, off the record, illegal abortion of the appointments of recommended candidates to three Senior Litigator posts under cover of a mendacious budgetary insufficiency excuse given to cover recruitment corruption favouring an unsuccessful candidate, [my] former long-time colleague as an acting Judge in the Labour Court which [I] headed at the time; and

(b) the unauthorised, off the record, unlawful, permanent freezing of the fully funded critical posts, substantially disrupting critical specialist legal professional service delivery in KwaZulu- Natal and the Eastern Cape; unlawfully deviating from Legal Aid SA's approved Strategic Plan and unlawfully contravening the Public Finance Management Act in multiple other respects- in the case of the false report to the Portfolio Committee, in criminal

contravention of section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act".

BACKGROUND

7. Having read the complaint lodged, I do not intend to deal with each and every allegation made by Brink as doing so will be unjust to both myself and the Judicial Service Committee (Committee) to burden it with unnecessary and irrelevant information. However, my failure to deal with any of the allegations *ad seriatim* should not be construed as an admission but as a denial.

8. For convenience of the Committee, it is important that I lay the background to the complaints:

8.1. On 12 November 2009, Brink was interviewed and shortlisted for the second round of interviews as a candidate for the Senior Litigator post at the Pietermaritzburg offices of Legal Aid SA. I revert to the interview date as it becomes relevant to one of the complaints relating to my alleged involvement in the appointment of Mr. Ngcamu;

8.2. Legal Aid SA subsequently abandoned the filling of the remaining vacant senior litigator posts due to budgetary constraints and Brink was informed of the decision;

8.3. On 26 August 2010, Brink filed his first PAIA request with Legal Aid SA seeking 51 records relating to the recruitment process for the Senior Litigator post;

8.4. On 18 October 2010, the First Request was refused. The Chief Executive Officer (CEO) of Legal Aid SA addressed a letter to Brink explaining why the recruitment process was discontinued;

8.5. Thereafter, Brink addressed a letter to me as the chairperson of the Legal Aid SA Board of Directors. I responded to the letter on 30 November 2010;

8.6. Dissatisfied with both the Legal Aid SA and my response, Brink proceeded with a claim and challenged Legal Aid SA's decision not to appoint him to the Senior Litigator post in the Labour Court, Durban. He based his challenge primarily on the ground that the failure to appoint him was due to political or racial prejudice as a result of his Aids denialism;

8.7. Brink sought to subpoena me to attend Court. Just before the hearing of the matter, Brink voluntarily withdrew his application;

8.8. In the statement of claim before Court, Brink made various defamatory statements against me and the CEO of Legal Aid SA including the complaints forming part of the current enquiry. In his initial statement of claim, Brink alleged:

8.8.1. I was "*motivated by unlawful political (alternatively racial) prejudice [when I] aborted his appointment*".

8.8.2. I "*attempted to camouflage [my] direct discrimination against [him] on prohibited grounds by concocting and advancing a false cover story for it based on fake financial justification*".

8.8.3. I "*lied to the Minister of Justice and Constitutional Development and the Chairperson of the Portfolio Committee of Justice and Constitutional Development.*"

8.9. It was during the hearing and under cross examination that Brink withdrew such statements exempting me from any alleged involvement in collusion with any official of Legal Aid SA, false reporting, connivance and corrupt activities. I hereby attach a

schedule of some of the statements that Brink made in his statement of claim as well as the excerpts of the transcript of the Labour Court record which I mark **JP001 and JP002**;

8.10. He withdrew and exonerated me and the CEO of Legal Aid SA during cross examination and shifted his focus to the National Operations Executive of Legal Aid SA;

8.11. His claim to the Labour Court was dismissed with costs. The decision is reported as *Brink v Legal Aid South Africa* (2015) 36 ILJ 1020 (LC);

8.12. Brink filed an application for leave to appeal to that Court and the application failed. Brink petitioned the Labour Appeal Court for leave to appeal. In his founding affidavit, Brink's vitriolic attitude and cumulative conduct not only towards Legal Aid SA but also towards me and Cele J erupted. That application, too, failed. I attach relevant excerpts of the application illustrating such attitude and conduct, which I mark **JP003**;

8.13. After his appeal failed, he lodged an urgent application at Pietermaritzburg High Court under case number 12977/15 seeking to interdict the taxation of the bill of costs. Brink continued with his vitriolic attitude and cumulative conduct not only towards Legal Aid SA but now also towards Waglay JP and I, accusing us of corruption and maliciously obstructing his right to appeal. See **JP004.** Brink also levied personal attacks against us, stating that:

8.13.1. Waglay JP ordered his registrar "*to issue a counterfiet order he'd ghost-written, pretending that he, Davis and Sutherland JJA had considered and unanimously rejected*" his petition.

8.13.2. "*The lying defamatory Memorandum was certainly not written by Waglay JP, Davis JA or Sutherland JA, all of whose judgments are written in fine, flawless, plain and unpretentious English, in contradistinction to the haughtily magisterial, aggressive tone of the document in second language English with its grammatical imperfections – such as I noticed listening on my car radio to Mlambo JP's disposal of the costs question after President Zuma dropped his*

application to interdict the Public Protector's state of capture report. (I don't mean to be rude; I wish my Zulu were as strong as his English.)"

8.14. Brink is currently indebted to Legal Aid SA for taxed costs in the total amount R1,647,814.65 which he is not able to pay due to his impecuniosity; and

8.15. Brink now seeks to re-litigate his matter on a new basis that he was not appointed due to my involvement in as he couches it "*plain recruitment corruption*". He now seeks to abuse the PAIA Act, Court processes and even the JSC complaint mechanism in his misguided pursuit to this end.

SUBMISSIONS

9. I deny all the allegations made against me. I specifically deny that I have been involved in recruitment corruption and the appointment of staff or otherwise influenced the appointment of Mr Ngcamu or any other official of Legal Aid SA. I am advised by officials of Legal Aid SA, which advice I accept as true, that at the time when the recruitment process commenced for

the filling of the Senior Litigator positions in Pietermaritzburg and Durban, Mr Ngcamu was not in the employ of Legal Aid SA. He was first appointed as a temporary employee on 1 November 2011 to 28 February 2012 as a Civil Professional Assistant. He was then appointed

again from 19 March 2012 to 16 June 2014 as a Civil Professional Assistant. Both these appointments were at Empangeni Local Office of Legal Aid SA. Mr. Ngcamu was thereafter appointed as a Labour Court Practitioner in Durban Local Office of Legal Aid SA from 17 June 2014 to 31 July 2017. In all these recruitment processes I had no role to play and the relevant officials of Legal Aid SA executed these appointments. As indicated in paragraph 8.1 above, the Senior Litigator recruitment process began long before Mr. Ngcamu joined Legal Aid SA and in particular, the process of recruitment was stalled before he joined the organisation. Whilst Mr. Ngcamu was apparently interviewed during the first round of interviews, it should be mentioned that I did not form part of such a panel. Furthermore, Mr. Ngcamu was not even recommended for the second round of Senior Litigator interviews during the Provincial selection process.

10. I deny that I conducted myself for "*subornation of perjury to defeat an application under section 25 of the Supreme Court Act for leave to subpoena me, so as to avoid being cross examined at the trial of Brink's labour action against Legal Aid SA (D529/11) on my gross misconduct, including crimes in false reporting and lying on multiple scores to the Justice Portfolio Committee*". Firstly, as mentioned in paragraph 8.7 above, Brink withdrew the subpoena against me and exonerated me and the CEO from any wrongdoing. Secondly, the report to the Justice Portfolio Committee confirmed that the reason for not proceeding with the second round of interviews was budget related which I still maintain.

11. I deny that I "*falsely reported and lied to the Minister of Justice and Constitutional Development (as he was then described) to pervert his enquiry into the CEO's repeated illegal and unconstitutional refusal to comply with PAIA, and thereby cover this up, with the object of covering up my own gross misconduct exposed by the illegally refused records*". The report to the Minister also explains the reasons why the second round of interviews was not proceeded with which related to budgetary constraints. In addition, I submit that there is nothing illegal and unconstitutional in all the refusals to records in accordance with PAIA. According to information at my disposal, all the records requested by Brink and as far as legally permissible in terms of the Act, were duly provided to him. To the extent that Legal Aid SA has refused to provide some records, I'm advised that such refusals are subject to determination by the Courts in various applications brought by Brink.

CONCLUSION

12. It needs to be noted that Mr Brink is susceptible to make allegations without factual substantiation and does not spare anyone holding a different view to his, as can be demonstrated with his attacks on me, later Cele J and thereafter with Waglay JP as well as various senior officials of Legal Aid SA. I believe I have demonstrated that Mr Brink has been openly disrespectful and downright malicious to me in particular. I hold the firm view that he has used complaint, PAIA and Parliamentary Portfolio processes to harass me and other officials of Legal Aid SA over the years. He has used these processes to insult me in particular as is clear from his comment regarding my handing down of the Public Protector Judgement. He is perpetuating this conduct in his complaint to the Judicial Conduct Committee against me. The allegations he has made against me in his complaint were retracted by him, as is clear in the transcript of his cross examination, in his failed Labour Court matter. Taking all this into account, I urge the Judicial Complaint Committee to dismiss Mr brink's complaint against me and that he be censured in the strongest of terms. I'm a senior Judicial officer with an unblemished record and do not deserve to be treated in this fashion by anyone including Mr Brink.

Yours Sincerely

D MLAMBO
JUDGE PRESIDENT
GAUTENG HIGH COURTS
07th JUNE 2018

SCHEDULE OF SOME OF THE ALLEGATIONS MADE BY BRINK IN HIS STATEMENT OF CLAIM BRINK MADE AGAINST MLAMBO J AND THE CEO, AMONGST OTHERS.

The following are only some of the many statements he made:

Par 4. *The applicant will show..., the respondent's chairperson Dunstan Mlambo and Chief Executive Officer Vidhu Vedalankar, motivated by unlawful political (alternatively racial) prejudice aborted his appointment off the record and without announcing the fact; and that many months later, under pressure to account, Mlambo and Vedalankar attempted to camouflage their direct discrimination against the applicant on prohibited grounds by concocting and advancing a false cover story for it based on a fake financial justification- unsupported and contradicted by the respondent's business record; conflicting with Vedalankar's CEO report for 2009/10; conflicting with deliberately misleading statements Vedalankar made on two occasions to the Portfolio Committee on Justice and Constitutional Development; and contradicting the express wishes of the Minister of Justice and Constitutional Development known to both Mlambo and Vedalankar.*

Par 5. *The Applicant will further show that in furtherance of Mlambo's and Vedalankar's scheme to cover up their unfair discrimination against the Applicant, Mlambo lied to the Minister on several scores in a "Confidential... report" to him "Re: Adv Anthony Brink", which lies Mlambo repeated to the Chairperson of the Portfolio Committee; and by so doing Mlambo deliberately misled the respondent's executive authority and Parliament in order to (a) allay their further enquiries into the applicant's complaints against the Respondent, which he had copied to the Minister and Committee Chairperson, of unfair discrimination against him and unlawful refusal to*

surrender material records duly requested under the Promotion of Access to Information Act, and (b) to put them off discovering the falsity of the bogus financial justification for their abortion of the Applicant's recruitment dishonestly advanced by Vedalankar to the applicant and by Mlambo to the Minister and to the Committee chairperson.

Par 17. *"Having regard to his subsequent recorded conduct in the matter,... that Mlambo supported and was party to 'the decisions we took'... to abort the applicant's recruitment and thereafter to camouflage the true reason for doing so under cover of a lying alibi"*

Pars 26 & 27. *"Although himself African, Mlambo uncritically subscribes to the American and European industrial complex's HIV-Aids-ARV business model, promoted by the pharmaceutical industry that Africans in South Africa "not whites, coloureds or Indians) are 'new[ly]' riddled with deadly venereal disease... Mlambo actually believes these things and is an active political promoter of these immensely lucrative politico-medical construct on the international stage...*

Par 30. *"The respondent's entire Board and executive management structure actively promote and perpetuate the Western HIV/AIDS/ARV – paradigm in South Africa…"*

Par 31. *Because Vedalankar informed Nair that she did not agree with the applicant's recruitment as a political (or racial) undesirable, Nair never 'signed off' the Motivation … , and the recruitment process to appoint the applicant was thus brought to an end.*

Par 33. *The first strategy adopted by Mlambo and Vedalankar to conceal from the applicant their unfair discrimination against him was deliberate inaction and silence.*

Par 34. *The reason Mlambo and Vedalankar opted for this initial simple strategy was because:*

34.1. it entailed the minimum possible risk that the applicant would discover their unfair discrimination against him; and

34.2. they bargained that after being kept waiting in the dark for several months, the applicant would lose hope, conclude that he had been unsuccessful at his interview, give up pursuing the post for which he had applied, and withdraw himself from the recruitment process of his own accord, thus achieving Mlambo's and Vedalankar's objectives in shutting him out and concealing their decision to do so."

Par 55. *Appreciating (a) that the applicant had not been put off by Mlambo's and Vedalankar's inaction and silence strategy, and that half a year after his interview he was still agitating for the finalisation of his appointment, and (b) that Mlambo's and Vedalankar's scheme to covertly discriminate against the applicant therefore needed elaboration, ..."*

Par 71. *Mlambo's and Vedalankar's purpose in sacrificing the successful Mthatha candidate "In July 2010" off the record ..., was to fabricate a factual foundation for their assertion about to be made to the applicant that the respondent had decided, "due to various reasons", impliedly legitimate, not to fill the respondent's three remaining vacant Senior Litigator posts in order to disguise her and Mlambo's unfair discrimination against the applicant..."*

Par 85. *"... it is probable that Mlambo was the author of the false and misleading statement of the law concerning the applicant's right to information..."*

Par 108. *"It follows that Mlambo's 'Confidential' allegation to the Minister ...was a blatant lie improvised by him to patch the first gaping hole (amongst many others) in his ... lying alibi uttered variously to the applicant, to the Minister and to the chairperson of the Portfolio Committee to mislead and deceive them all,..."*

Par 278. "The horror of the applicant's experience of Mlambo's and Vedalankar's dishonestly camouflaged direct unfair discrimination against him has been considerably exacerbated by his apprehension that Mlambo heads the very court in which he is constrained to seek justice-particularly given the history of Mlambo's appalling, brazen dishonesty in his dissimulations to the applicant...; in his false representations to the Minister...; and in his and Vedalankar's mala fide dealing with the applicant and how best to defeat him, in cabals, behind the scenes and off the record."

JP002

EXCERPTS FROM THE TRANSCRIPT OF THE LABOUR COURT MATTER D529/11 WITH SPECIFIC REFERENCE TO BRINK EXONERATING MLAMBO JP UNDER CROSS EXAMINATION

Page 133	***Mr Du Toit*** *"Then just by the way, Judge Mlambo you say is one of the top judges in the country is the person you called a liar about 30 times?"---* ***Mr Brink*** *"This is before I discovered that Nair was abusing his office, abusing his name to convey falsehoods to Parliament and to the Minister."*
Page 137	***Mr Brink*** *"I am saying that Judge Mlambo and I mean it with absolutely no disrespect and I really rule about my misconceptions about Judge Mlambo's role in this matter."*
Page 154	***Mr Du Toit*** *"By the way, Mr Brink, having called Mrs Vedalankar a liar and dishonest in concocting defenses, do you really think that you could possibly be appointed in an organization where she continues to be the chief executive officer?"---* ***Mr Brink*** *"It is my conclusion from reading her two letters to me, that they*

	were written by Brian Nair, consequently it is my relatively late conclusion, after the case began and consequently I believe that the CEO as Judge Mlambo was, the CEO's higher office and Gormy abused by Nair to convey lies to me. Sir I hold CEO Vedalankar clear in this matter."
Page 158	***Mr Du Toit*** *"But you have said that it was the chief executive officer who was involved in this plot"---* ***Mr Brink*** *"But I thought so; I thought so, because of her letters to me. But later I discovered I faulted and I am sure it will be confirmed, but she did not write those letters, so I was misled."*
Page 159	***Mr Brink*** *"In the early days for the better, before one discover that Judge Mlambo was innocent in this thing and I have since formed the conclusion that Vedalankar too. You see, I had her letters to me, full of lies. Judge Mlambo's report to the Minister, full of lies, what could I conclude, it was a nightmare, it was very shocking, so I had to draw what conclusion but that they are the authors, but now I know they are not the authors."---* ***Mr Du Toit*** *"Well let us clarify exactly what you are withdrawing now. You are saying firstly that Ms. Vedalankar not plot or struck your appointment, is that what you are saying?"---* ***Mr Brink*** *"This is my current conclusion in the fullness of the evidence."---* ***Mr Du Toit*** *"And you are saying that Judge Mlambo did not plot to obstruct your appointment"---*

	Mr Brink *"Correct"* ***Mr Du Toit*** *"That is right, okay. So she is out of the picture, she did not discriminate against you that is what you say now?"---* ***Mr Brink*** *"That is the look of it to me now, neither may well surprise us all and say, no, no, I neatly discussed it with Vedalankar and she agreed. He may tell us that, I do not know, but the look of it on the evidence before me, that I have assembled, the look of it now, that Vedalankar was not involved, not involved."*
Pages 172-173	***Mr Du Toit*** *"But you now say this falls away?"---* ***Mr Brink*** *"It does. I hold her clear, unless Mr Nair implicates her, but we will have to see, but I have no knowledge here."---* ***Mr Du Toit*** *"And then in paragraph 17, you again say that the chairperson of the respondent's board, Dunstan Mlambo, supported and was partied to the decisions took, to abort the applicant's recruitment and thereafter to camouflage the true reason for doing so, under the cover of a lying alibi"---* ***Mr Brink*** *"That is right, and that conclusion was founded on my receipt from the chairperson, the portfolio of Judge Mlambo's updated report to parliament, a pack of lies, including the manifestly untruthful alibi."---* ***Mr Du Toit*** *"And this falls away as well?"---*

Mr Brink *"Oh yes"---*

"Then"---

"Just about everything falls away in my first claim."

Mr Du Toit *"Well, let's just get it clear, because I think it is necessary both for your sake and for the sake of Judge Mlambo at least to get this absolutely clear"---*

Mr Brink *"Yes, yes"---*

Mr Du Toit *"And then in paragraph 18, we refer to the grounds, Mlambo and Vedalankar rejected was because you were politically undesirable and well, if there was no plot, then this must fall away as well."---*

Mr Brink *"Right. It falls away to the extent that they were not the actors, but Nair was."---*

Mr Du Toit *"I see, okay. And then in 19 Mlambo's and Vedalankar's decision to reject the applicant's appointment on prohibited ground was taken, communicated to Nair behind the scenes and off the record and accordingly no record exists. Now if there was no decision by them, then it could not have been communicated."--*

Mr Brink *"It is quite obvious."---*

Mr Du Toit *"Okay, so that falls away. I just want to make a note of these allegations that now are…Withdrawn?"---*

Mr Brink *"Withdrawn, yes.*

Mr Du Toit *"Then in paragraph 20 you have here at page 44, Mlambo*

	neither consulted nor informed the rest of the board of his decision jointly, Ms. Vedalankar's discriminate, does that also fall away?" ***Mr Brink*** *"Ja"*
Page 188	***Mr Du Toit*** *"Now why would Ms. Vedalankar who you have exonerated already from any participation and any unfair discrimination against you why would she tell you a lie?"---* ***Mr Brink*** *"Because she did not write the letter; I am pretty sure she did not write the letter. I could be surprised by this, but I do not think she wrote the letter; I think it was Nair who wrote the letter"*
Pages 205-206	***Mr Du Toit*** *"Then you go on in paragraph 32 at page 49, not only had you expand on this, you say, Nair having been instructed as it were by Vedalankar, informed by Vedalankar, he then deliberately does not do something, because he is now carrying out his CEO's instruction. He is astute not to note, because appreciating the decision to abort was unlawful, so in other words he is now part of the plot, construed by Ms. Vedalankar."---* ***Mr Brink*** *"This is my conclusion, because I am many miles away, I am on the other end of the world and I am peacefully developing about bits and*

	pieces that the American Right is taller than these things, bits and pieces. And the accumulation evidence, someone required quite recently as profoundly shifted my understanding of what actually happened in this matter. Now, sir, you can hammer away that my early statement declare but I tell you it was based on numerous fundamental misconceptions to which I had been led by Nair."
Page 213	***Mr Du Toit*** *"But she could not have joined Vedalankar's scheme, because you already accepted that there was no scheme by Vedalankar."---* ***Mr Brink*** *"Correct."--*
Page 214	***Mr Du Toit*** *"Paragraph 48 stands, paragraph 49 stands, 50 stands, 51 stands, save that is no longer Mlambo and Vedalankar's scheme, but Nair's"*
Page 215	*"And then the heading, page 57, the scheme, that is also wrong."---* ***Mr Brink*** *"Ja, it was wrong to the extent that Mlambo and Vedalankar are named the Nair scheme."*
Page 219-220	***Mr Du Toit*** *"Right, and in paragraph 90, or 89 you attribute lies to Ms. Vedalankar."---* ***Mr Brink*** *"Ja."* ***Mr Du Toit*** *"That must fall away?---* ***Mr Brink*** *"No you must reallocate the blame to Nair."*

Page 221	***Mr Du Toit*** *"In paragraph 99 on page 68, you describe to Judge Mlambo a desire to obstruct your efforts under the Promotional Access to Information Act. Do you stand by those contentions?"---* ***Mr Brink*** *"You know I do not."* --- ***Mr Du Toit*** *"You really are challenging, I asked you, are you still attributing falsity against Judge Mlambo?"---* ***Mr Brink*** *"I have said it a hundred times, that I am not doing so, I am not attributing."*
Page 223	***Mr Brink*** *"Really, I have no quarrel with Judge Mlambo, I think he was misled, he was given a bad picture and that is the start of this irritable e-mail on the..."*
Page 224	***Mr Du Toit*** *"Now, in paragraph 108, page 73, you have accused Judge Mlambo of a blatant lie."---* ***Mr Brink*** *"Ja, it is Nair's blatant lie, it is so easy to show and indeed it is going to be retracted."*
Page 227	***Mr Brink*** *"I do not, do you want me to repeat bluntly, I do not think Judge*

	Mlambo is a liar, and that is it, I used to I mean what else was there to conclude from the secret report?"
Page 228	***Mr Du Toit*** *"You slandered a senior judge in a most disgraceful way."---* ***Mr Brink*** *"I agree, I agree, M'Lord, I agree and I tell you it was inadvertent and I regret it."*
Page 231	***Mr Du Toit*** *"You make the allegation that Judge Mlambo made a false allegation concerning the knowledge of the executives; do you attribute falsity against Judge Mlambo?"* ***Mr Brink*** *"I do not. But the rest of the paragraph is absolutely sound, to the actual extent that it is Nair's false allegation via Judge Mlambo."*
Page 241	***Mr Brink*** *"Well, we got over and over, but you know I hold Judge Mlambo clear…"*
Page 242	***Mr Brink*** *"No. The financial cover story and the report were fake, but Judge Mlambo is not the author of that lie."*
Page 264	***Mr Du Toit*** *"Paragraph 265, 122 and I imagine you do not attribute falsity to Judge Mlambo."---* ***Mr Brink*** *"That is right"* --- ***Mr Du Toit*** *"Well, just to save us the agony of going through the rest, can we assume that for the rest you have assume I think, exonerated Judge Mlambo and Mrs Vedalankar from any accusation of dishonesty and*

	discrimination?"--- ***Mr Brink*** *"Yes"*
Page 269	***Mr Du Toit*** *"And you have attributed delinquency to persons involved in this matter."---* ***Mr Brink*** *"Correct. My scope was broaden, it was broader then than it is now. Because I thought Vedalankar was involved and so on."*

EXCERPTS FROM THE PETITION FOR LEAVE TO APPEAL AT LABOUR APPEAL COURT

Par 2	*"This is an extraordinarily serious matter with colossal implications extending way beyond my personal interest in its resolution. It concerns the personal and professional integrity of a sitting judge president, formerly of this court, and that of the most senior management executives of a major public entity. I speak of the perversion of separate Ministerial and Parliamentary enquiries by dint of multiple, objectively demonstrable lies, and different lies told to me, to the LASA Board, to the SAHRC, and to court(different lies told in the pleadings and interlocutory affidavits, and then at trial), and of the gross breakdown of proper corporate governance and the rule of law at LASA, all of which the trial judge looked past in his seemingly clear and definitive, but in fact deplorably inattentive, glib, crude and perfunctory judgement, riddled with the most basic legal and factual misdirection, omissions and non-sequiturs, and characterized by his failures over and over again to consider the radical contradictions and the ludicrously improbable, manifestly untruthful, and objectively contradicted evidence of LASA's single witness at trial, National Operations Executive Brian Nair"*
Par 3	*"I'll advert later in this affidavit to the capital misconduct and massive and pervasive corruption to which I allude here, as well as to the judge's own gravely prejudicial misconduct in the case that thwarted a full and proper ventilation of the issues that I looked to him and trusted him to try."*
Par 4	*"In his refusal the judge didn't treat the clear-cut new evidence surfaced after trial showing unequivocally that Nair had lied to him on oath in two respects. To the judge, Nair's categorically proven repeated mendacity in court made no difference to his assessment of the credibility of his evidence."*
Par 5	*"The judge elliptically conceded his fundamental legal misdirection, identified in my application, that in deciding the case he'd misallocated the final onus of proof, which he'd placed on me*

	instead of on LASA. He then sought to avoid the fatal ramifications of the radical error by two means:"
Par 6	*"The judge's response was to silently look away."*
Par 7	*"And second by asserting that even if I was right about the incidence of onus, irrespective of where it lay his decision wouldn't have been any different-notwithstanding that LASA relied on the mere say-so of its single witness Nair, unsupported by any records, and indeed contradicted by them, a witness the judge acknowledged I'd shown to have been 'not generous with the truth' on numerous scores. Instead of considering the implications of this for Nair's credibility as a witness, he took him at his word, mechanically reciting his evidence as gospel, without any endeavor to assay its veracity. It seems to have been inconceivable to the judge that such a high public officer could be a practiced, confident, spontaneously inventive, unctuous, bare-faced, abject liar."*
Par 8	*"In his refusal, the judge failed utterly to address and deal with the rest of my attack on his judgment in my application, in which I demonstrated all his basic errors, too many to recite here, including the huge prejudice he caused me by refusing to allow me to cross-examine LASA's officers I'd subpoenaed for the purpose, thus depriving me of some major artillery I'd lined up; and he swept the whole thing-all 59 pages and 323 paragraphs-off the table in a single dismissive paragraph."*
Par 22	*"Nonetheless, in view of Nair's unbelievably foolish dissimulation at trial-he was a pathetic liar-*

	contradicted by the documentary record and by LASA's pleaded case, that LASA's entry-level lower criminal court public defender posts were critical, and not its top professional echelon specialist Senior Litigator posts, I showed at trial and called the judge's attention in my heads to all the manifold evidence that Senior Litigator posts are indeed critical, and that the bottom-rung lower criminal court posts can't possibly be and aren't. The judge evidently didn't read that far."
Par 24	*"And what they unequivocally show is that she lied to me in October 2010 about the reason my appointment was aborted. That is, to camouflage the true reason, she'd fed me a false cover-story, as very smooth and convincing as it sounded…The lies then multiplied chaotically in all directions in the classic dynamic of a disintegrating cover-up."*
Par 25	*"At trial I mentioned my conclusions from the evidence I'd found of this that Nair had ghost-written Vedalankar's letters, and Board chairperson Mlambo JP's subsequent false reports to the Minister and to Parliament to pervert their enquiries into my complaints, and for this reason I held them both clear. But in his evidence, Nair denied any hand in Vedalankar's letters to me; and although in evidence he ultimately admitted writing Mlambo JP's reports, he could 'only assume the Judge personally wrote that' (having first insinuated it might have been Vedalankar and then again) i.e. that Mlambo JP had amplified the report for the Minister before sending it to Parliament, with its further lies added about LASA's compliance with my three PAIA requests, and the nature and scale of my claim I'd just referred to the CCMA for conciliation. (It's quite clear Nair lied to the judge about this, and that he, not Mlambo JP, amplified the report with these additional lies.) That is to say, after I'd told the Judge that I held them clear (more about this below), Nair went on to directly implicate Vedalankar and Mlambo JP in lying to me, to the Minister and to Parliament."*
Par 26	*"True to the Minister's assurance, the OSD money was indeed included in the mid-term budget in October 2010, as Vedalankar informed the Portfolio Committee on the 12th-but not me, from who*

	she concealed this hotly material fact in her letter to me six days later, the better to maintain her pretense that LASA was still too skint to hire me."
Par 28	*"In her second letter to me in January 2011, illegally refusing my second PAIA request testing her financial alibi for the abortion of my appointment, not only did Vedalankar conceal this payment from me, she positively lied to me, again and again, that LASA was still in a financial jam (And Vedalankar, Nair and other national management executives took home magnificent, unprecedented bonuses.)*
Par 29	*"In March 2011, responding to my third PAIA application, Vedalankar, Nair and Clark all confirmed the lying budgetary excuse on affidavit. That is, LASA's CEO, NOE, and HRE all swore the lie was true."*
Par 30	*"Even though it was already obviously false, the financial alibi was inadequate to cover and explain Nair's inaction in finalizing my appointment in the initial three-and-a-half month period between the dates he received my recommendation on 26 November 2009 and when the OSD uncertainty arose on 10 March 2010. So to patch the gap he concocted another story-later twice retracted by him on affidavit as an obvious error, and consequently nowhere pleaded or alleged in any interlocutory affidavit, then contradicted with a different story he told the judge. Who didn't think to note any of this dismal shambles in his judgment"*
Par 31	*"In his reports written for Mlambo JP to sign and submit to pervert the ministerial and*

	parliamentary enquiries I'd initiated, Nair now claimed that what initially held up the alleged next step in my recruitment-a so-called second round interview-was difficulty encountered in coordinating a date suitable for all members of this panel to meet. Another smooth and ostensibly convincing story. After I exposed and refuted it as an outright lie in my original statement of claim, Nair retracted it on oath as 'an error…palpably an error' that Mlambo JP had made. Except that Nair himself was the author of this brazen lie to the Minister and to Parliament; it was not Mlambo JP's 'error'.
Par 32	*"But Mlambo JP knew full well that this new story was false, because as a member of this so-called second round interview panel he'd never been contacted for a date. At trial Nair claimed, quite absurdly, that he never opened the recommendation and CV email attachments that he'd specially telephoned for, not until more than a year later, when he did so out of simple curiosity. (The judge found this perfectly credible, even though Nair had told a different story on affidavit before trial, which destructive contradiction I pressed in my heads. The judge didn't note this, and accepted and believed Nair's childishly obvious, self-contradicted new lie told in court, which had featured nowhere in any correspondence, report, pleading or affidavit before trial, all justifying LASA's failure to proceed with my appointment. This was one of the fundamental failures of the judgment.)*
Par 33	*"So, contrary to his lie told to the Minister and Parliament in Mlambo JP's name about this, there was no difficulty fixing a date for it because no attempt was ever made to do so…So Mlambo JP knew full well that the report, which Nair had written for him to sign and to give the Minister and the chairperson of the Portfolio Committee to put down my complaints and pervert their independent enquiries contained in a flagrant lie about why no steps were taken to finalise my recruitment in the first few months before the OSD uncertainty arose several months after my selection."*

Par 34	*"Mlambo JP also knew full well that the budgetary justification Vedalankar had fed me to cover the true reason my appointment had been aborted, which Nair repeated in the reports he drew for him, was another lie, because he'd chaired the meeting of the Board in July 2010 at which it approved executive management's proposal to trim costs by temporarily freezing recruitment to some lower criminal court posts only...Deceptively silent about it, Vedalankar repeatedly falsely reported LASA's Strategic Plan 2009/12 to have been implemented and completed as regards the employment of Senior Litigators in her CEO report for 2011/12 to the Minister and the National Assembly."*
Par 35	*"My discoveries about Nair's authorship led me to inform the judge on the first day that I held them clear, and that I held Nair solely responsible for the lies these documents contained."*
Par 36	*"In his chambers on the second day, when I told the judge I still had a lot more evidence to lead, having already blown the fake budgetary pretext to pieces on the facts set out in my Timeline, he warned me: 'I don't want to tell you how to run your case, but don't make the mistake of throwing your net so far out that you catch more than you can bring in.' These were his exact words, spoken off the record, but contemporaneously recorded that evening in emailed reports of the court day to my family and friends. I understood the judge was giving me an indication, as we lawyers say, and a severe indication at that, namely to limit the spray of my case, and keep it fixed on Nair alone, as I'd indicated I intended doing at commencement, and not present any further evidence implicating the big fish; for if I dared make the dangerous mistake of doing so,*

	this would be too much, and it would doom my prospects of succeeding in his court with my claim. It seemed clear to me that the judge wanted the evidence contained. He did not want me to lead more evidence beyond the smaller fry."
Par 38	*"After I'd discredited the budgetary pretext fed me for not appointing me, and then the initial delay pretext fed to the Minister and Parliament for not immediately proceeding with my appointment, Nair cooked up and fed the Board two brand-new, totally different stories to justify his failure to finalise my appointment at Pietermaritzburg, an internal candidate's promotion at Durban, and another internal candidate's transfer to Mthatha, namely 'recruitment challenges' encountered in filling the posts, and alleged uncertainty that the six incumbent Senior Litigators were up to professional scratch. Both lies. Waffling feebly, Nair was unable to support his first new story and radically changed his second, before which it was repeatedly exposed as a lie by LASA's records."*
Par 40	*"It was a risible new lie, sharply contradicting LASA's pleaded and sworn version before trial, unsupported by any record, not alleged in any affidavit or pleading, and contradicted by LASA's recruitment/vacancy statistics for June 2010. But Nair's new lie in evidence made no impression on the judge, as said, he didn't mention it."*
Par 41	*"The LAC is also certain to treat an important aspect of the case, entirely disregarded by the judge (notwithstanding his fine grasp of the specifics of public service appointment procedure displayed in his Baxter judgment), namely Nair's incompetent and illegal so-called second round interview scheme for Senior Litigator candidates-unauthorised by the Board's Recruitment code and inconsistent with its Approval Framework. Unlike the judge, the LAC is certain to remark on the disgraceful breakdown of lawful recruitment procedure at LASA, in blatant disregard of the Board's said regulatory instruments which precisely govern this, and on Mlambo JP's participation*

	in a grossly irregular, prejudicial, and unlawful recruitment practice."
Par 42	*"His lies proliferating in court as he was trying to shore up his collapsing story about why he never signed his approval (or disapproval) of my recommendation by the selection panel as the Approval Framework required of him, and as provided at the foot of the document (with its legal nonsense, at his instance, about a further interview), Nair claimed in court that he didn't have to-a lie repeatedly and squarely contradicted by LASA's pleadings and interlocutory affidavits. The judge didn't note this; again the LAC is sure to."*
Par 43	*"Unlike the judge who accepted and believed it, the LAC is also sure to find stupidly ridiculous and manifestly false Nair's evidence, building on his just-mentioned lie, but again explicitly contradicted by LASA's pleadings and interlocutory affidavits..."*
Par 44	*"The LAC is certain to find Nair's evidence to have been obviously untruthful just about whenever he opened his mouth...It failed to do so, because its various explanations given were obviously untrue. So what?"*
Par 47	*"I did not expect the judge to be nodding off during the afternoon sessions, and finally claiming perversely, but revealing to his negative animus, that I ought rather to have taken LASA's abortion of my appointment on 'review'. As if I shouldn't have come bothering him to deliver the justice I craved, and had laboured bitterly year after year before trial to achieve, in the face of every obstacle corruptly placed in my way, viciously defamed all the while, contemptuously*

	redoubled when I complained of it. In a matter of such enormous importance, and with so much on the line extending far beyond my personal interest in the case, and with so much fact to traverse and complex argument to present, including relevant, applicable international labour law jurisprudence mentioned in my opening address, I did not expect the judge to prescribe that our heads shouldn't exceed a manifestly insufficient 'fifteen to twenty pages' suggesting that he'd already made up his mind to toss my case. I did not expect that five months after I filed my replying argument the judge hadn't troubled himself to read our heads, and was hearing our oral argument without having prepared for it ten months after the evidence, and relying only on his fading and defective memory of it presented in the course of a nine-day trial concluded the best part of a year earlier. In giving judgment, I did not expect the judge to misstate my case, omitting critical facts and including irrelevant matter, and portray as maladroit and whimsical my precisely considered tactical and strategic decisions taken, wrongly forced by him on the record and improperly pressed by him off it. I did not expect the judge to sugar Nair's lies for his judgment, by stretching and exaggerating them to help them go down. And that besides getting the final onus wrong, he should also have placed on me an impossible, pivotal, evidential onus I very obviously didn't bear and couldn't possibly have discharged."
Par 48	*"Professional and personal networks and loyalties being what they are in the real world, I appreciated from the outset that I was up against very long odds, and that notwithstanding his oath of office it would be no easy thing for a judge to impeach the conduct of his own (then) court president, and now president of the biggest, most important high court in the country, and thereby trigger a gargantuan scandal. But the truth must be out, and justice needs doing fearlessly."*
Par 49	*"An unattended splinter, so easily removed, has led to a widespread gangrene at the top of a major public entity, generally perceived to be the jewel in the crown of the Justice cluster, and a model of good governance."*

Par 50	*"Having regard to the profusion of contradictory lies that have spewed out of LASA, including to the highest authorities, in the cover-up following the illegal abortion of my appointment, to get away with and escape accountability for it-successfully so far, like Nixon nearly did after Watergate-your lordships can expect absolutely any lie from LASA in its answering papers, any subterfuge to persuade you to shut down further enquiry into this matter by refusing this petition. Since in-house attorney Mtati acting on instruction can offer you no more than hearsay about the case, and hasn't stinted at committing the most grotesque, poisonous perjury on affidavit on Nair's instructions to prejudice me in the court's eyes before trial, and since the judge found Nair to have been untruthful under oath on any number of scores, I respectfully entreat your lordships to require CEO Vedalankar, and not the former discreditable and unreliable persons, to depose to any answering affidavit under LAC rule 4(6) in regard to why I should be denied leave to argue my case before three senior, experienced, and attentive judges of appeal...The prospect of being jailed may chill any inclination she might have to repeat under oath to your lordships the lies she told me."*

EXCERPTS FROM THE URGENT APLICATION AT PIETERMARITZBURG HIGH COURT CASE 12977/15

"In sum, Waglay JP acted alone in rejecting my petition, prematurely before all the papers were in and the matter was ready for decision, and without designating three appeal judges to consider and decide my petition ..."

He then covered up his malicious obstruction of my right to appeal (if, under LAC rule 4(8), at least two designated two designated appeal judges thought I was in with a chance), firstly by ordering his registrar in Johannesburg to issue a counterfeit order he'd ghost-written, pretending that he, Davis and Sutherland JJA had considered and unanimously rejected my petition in Durban on 18 February 2015, and secondly by ghost-writing a letter for the said registrar to send me, repeating this lie and basically telling me to push off and stop asking dangerous questions threatening to blow the lid on his impeachable misconduct."

It isn't any mystery why Waglay JP intentionally violated my fundamental right to due process ... I landed the written evidence of stunningly dishonest improper influence that caused him to do so. And I have a photocopy of it worth a bar of gold".

BRINK'S COMMENTS ON MLAMBO JP'S RESPONSE TO HIS EIGHT GROSS MISCONDUCT COMPLAINTS

I, Anthony Brink, affirm:

1. I am the complainant in eight complaints of gross misconduct filed against Mlambo JP under section 14 of the Judicial Service Commission Act 9 of 1994 ('JSC Act'), which I submitted to the Judicial Service Commission ('JSC') in June and July 2017, and at the request of the Judicial Conduct Committee ('the Committee') again in November 2017 in a combined indexed and paginated bundle ('the bundle'). Invited by the Committee, the following are my comments on Mlambo JP's response to my complaints.

2. Mlambo JP's response is prodigiously dishonest as I'll show, and profoundly aggravates my complaints.

3. Adopting a basic offence-as-defence strategy, much of his response is aimed at gunning me down as the complainant, instead of meeting and answering my extraordinarily serious case. It does this by portraying me as an inherently unreliable witness against him, a perennially dissatisfied racist nutcase given to misfiring baseless, abusive complaints in all directions to every imaginable authority.

4. He entirely evades addressing the substance of my finely specified, particularised and documented charges; falsely characterises them as wanton defamation for which I should be sanctioned; and airily waves them away with bald and general denials.

5. To obfuscate the recorded facts and to distract from my specific charges, he makes prolific use of red herrings and other dishonest rhetorical devices.

6. To the Chief Justice, to whom his response is addressed as Committee chairperson, he brazenly repeats lies he told the Justice Minister and Portfolio Committee, with which I've charged him; and he tells a slew of new ones.

7. He mounts a show of feigned offence taken at my charges, to cast me, the gravely injured complainant, as the actual miscreant in the matter, and not him.

8. And riding on his high office, he does all this confident that the Committee will take him at his word and that his high-toned, indignant say-so as a senior judge will suffice to put down my complaints, avert the Committee's examination of them, and shut down its investigation of him.

Ad paragraph 1 of the response.

9. In point of fact, I filed eight individual, separate complaints against Mlambo JP with the Judicial Service Commission ('JSC'), each one charging an impeachable offence, not one 'complaint'.

Ad paragraph 2.

10. Contriving to discredit my complaints against him generally by discrediting me personally, Mlambo JP kicks off with the dog-whistle language of a prosecutor raising in court the recidivist history of an habitual criminal.

11. He falsely insinuates that my several complaints since 2010 made to progressively higher levels of authority about the pervasive systemic corruption; illegal gross financial irregularity involving many millions of rands; deliberate obstruction of critical service delivery for corrupt ends; illegal and unconstitutional suppression of duly requested public records and the concealment of this with false reporting to frustrate and defeat parliamentary oversight and thereby evade accountability; and the culture of mendacity, lawlessness, criminality and contempt for the Constitution that I've run into at Legal Aid South Africa ('LASA') have been both groundless and reprehensible.

12. That I've indeed complained 'in various courts' about all this is immaterial to the merits of my specific complaints against him to the JSC, and to the Committee's determination of them on their own terms and merits.

13. Likewise immaterial to my JSC complaints is the fact that I finally[1] went to 'Parliament'[2] about CEO and information officer Vidhu Vedalankar's persistent and repeated, illegal and unconstitutional refusals to allow me access to LASA records I'd duly requested under the Promotion of Access to Information Act 2 of 2000 ('PAIA'), and about the unauthorised, unrecorded, silent, illegal abortion of my appointment to LASA's top legal professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg,[3] after I was unanimously recommended for it by a duly constituted selection panel of LASA's top lawyers in the region, and then, when I began pressing for the finalisation of my appointment eight strangely silent months later, the illegal, unauthorised, unrecorded so-called freezing of LASA's three remaining vacant Senior Litigator posts under cover of a transparently bogus financial insufficiency excuse, in response to my first PAIA request in which I was thoroughly probing the unspecified 'various reasons' the abortion of my appointment was 'due to'. (My request was illegally ignored then repeatedly expressly refused.)

14. Likewise irrelevant is that I've repeatedly complained to and sought the assistance and intervention of such 'Chapter 9 institutions' as the South African Human Rights Commission ('SAHRC') and the Public Protector, on account of (a) the repeated and persistent, illegal and unconstitutional refusals of my PAIA

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[1] This is after Mlambo JP had rejected my first petition to him and the Board, then rudely rebuked my second.

[2] To be precise, I copied to the Minister and to the Justice Portfolio Committee my third petition to Mlambo JP and the Board on 25 February 2011, in which I appealed again for their intervention in Vedalankar's repeated illegal and unconstitutional refusals of my first two PAIA requests and illegal abortion of my appointment to the Pietermaritzburg Senior Litigator post under cover of the demonstrably false excuse eventually given me that LASA didn't have the budget to hire me. Unlike Mlambo JP, who ignored my third petition about the extraordinarily grave wrongdoing I was reporting to him, yet again, the Minister and the Portfolio Committee duly instituted separate and independent enquiries into the matter. I didn't know at the time that Mlambo JP was at the centre of the lawless corruption of which I was complaining, and only learned of it in April 2016, hence my naïve repeated appeals to him in November and December 2010 and February 2011 for his intervention to remedy it, canvassed in my Second to Fifth Complaints.

[3] There's a twin post serving the Durban High Court.

requests by such 'senior officials' as LASA's information officer Vedalankar and deputy information officers Brian Nair and Thembile Mtati; and (b) LASA's repeated and persistent false annual reporting under section 32 of PAIA to conceal this from the National Assembly so as to successfully frustrate and defeat its constitutional oversight responsibility over LASA, year after year.[4]

15. Likewise irrelevant is that I've complained to the Public Service Commission about Mlambo JP's unauthorised, ultra vires, illegal active interference as a ***non-executive*** member of LASA's Board of Directors in the conduct of LASA's recruitment operations – which, under LASA's internal regulations, are the exclusive preserve of executive management – and about his wholesale corruption of Senior Litigator recruitment procedure with his so-called second round interview scheme, in flagrant contravention of the said legal instruments precisely governing it to achieve fairness and transparency and to eliminate recruitment corruption.[5]

16. Likewise irrelevant is that I've complained about 'other judicial officials', namely:

(a) Cele J, judge of the Labour Court, in my petition to the Judge President of the Labour Appeal Court for leave to appeal his dismissal of my action claiming my appointment (wrongly founded on unfair discrimination, I much later discovered), inter alia about his disgraceful judicial indolence in not preparing

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[4] This unbelievable saga is closely detailed in my 'Special Report on Legal Aid SA: An aggravated case of repeated wilful non-compliance with the Promotion of Access to Information Act 2 of 2000 to illegally obstruct access to duly requested records, and repeated false annual and "confidential" reporting to conceal this from the National Assembly'. It describes the SAHRC's several unsuccessful interventions at my instance to get LASA to start complying with PAIA. LASA's persistent failure to do so, to date, is now before the Pietermaritzburg High Court, where I've three pending applications under section 78 of the Act to compel its compliance with PAIA requests illegally and unconstitutionally refused as a waste of time under section 45. It's accessible online at https://goo.gl/PveC96

[5] Declining jurisdiction, the PSC referred my complaint to the Public Protector, where it's been parked unresolved. On Chief Legal Executive Patrick Hundermark's advice, LASA continues suppressing duly requested records – including records it agreed to surrender under a settlement agreement it made at court – which I need for the completion of further complaints to the JSC about Mlambo JP's further breaches of his oath of office to protect and defend the Constitution, inter alia his brazen violation of the fundamental constitutional principle of legality in his illegal intrusion into recruitment operations at LASA, and involvement in *ethical* recruitment corruption. My claims to these determinedly suppressed public records are the subject of pending litigation under PAIA in the Magistrate's- and High Courts.

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himself for oral argument of the case – set down for three days, after a two-week trial many months earlier – by troubling himself to read and acquaint himself with my extensive written argument (so he admitted in chambers), which I'd filed long before, meticulously footnoted to LASA's contradictory pleadings and contradictory interlocutory affidavits, and the massive indexed and paginated documentary record I'd compiled and bundled for the case;

(b) Waglay JP, head of the Labour Appeal Court, in my still pending complaint to the JSC regarding his breach of Article 4 of the Code of Judicial Conduct;[6]

(c) Senior Magistrate Gerhard van Rooyen, stationed at Emlazi, Durban – specially appointed, as a formally qualified PAIA expert, to try my five applications to the Eshowe Magistrate's Court, launched in 2014–15 for orders compelling LASA's compliance with illegally and unconstitutionally refused PAIA requests made in 2013–14, and in 2016 to compel LASA's full and proper compliance with its settlement agreement after capitulating at court to my five applications – to the Magistrates Commission regarding, inter alia, his disgraceful judicial indolence in failing to prepare himself before coming to court to try my applications by (a) familiarizing himself with the provisions of the Act he was to apply (he volunteered to me on the first day that he hadn't done so, and this was repeatedly apparent at the hearings), and (b) by troubling himself to read the extensive application papers and then the further documents filed during the case, and thereby acquainting himself with the evidence on affidavit to be argued and the amended orders to be sought (that he hadn't bothered to do so, and was ignorantly winging it on the bench, was repeatedly apparent at the hearings).[7]

17. All these previously made complaints of mine to these various other high authorities are perfectly irrelevant to the merits of my instant complaints to the

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[6] The JSC Secretariat acknowledged receipt of it on 29 August 2017, but on 14 June 2018 conveyed that it had been mislaid and requested a copy. I emailed it on the same day and it was acknowledged again. The complaint is accessible online at goo.gl/39eYx1.

[7] The complaint can be accessed, along with notice of its dismissal on patently spurious grounds, misdirected by several obviously mistaken factual premises stated, online at goo.gl/ETHCpV.

JSC against Mlambo JP, and his dissimulation to the contrary, to distract from them and make them look bad, and maybe demented, is dishonestly misleading.

Ad 3.

18. Again, the clear purpose of this false and misleading declamation is to distract from my specific complaints against Mlambo JP to the JSC, none of which directly concern the silent, unrecorded, unauthorised, illegal decision to abort my appointment:

19. Having nothing to do with my 'non-appointment' at all, my First Complaint charges Mlambo JP with suborning perjury in regard to his totally fabricated claim – made via his instructed attorney on affidavit, to discredit me and thereby defeat my application for leave to subpoena him under section 25 of the Supreme Court Act – that after suing for my appointment, I rocked up at his chambers to hassle him about it, and that he was singularly unimpressed with my unprofessional misconduct in doing so (in truth, I've never met or even seen him and don't even know where the Johannesburg High Court is). My Second to Seventh Complaints charge him with complicity in, and with covering up, LASA information officer Vedalankar's repeated and persistent violation of my constitutional right to information, as the record reflects. My Eighth Complaint shows with reference to supporting documents that the cover-stories he told the Minister and the Portfolio Committee about why my appointment wasn't proceeded with were lies to successfully pervert their enquiries into it. Indeed, as described in that complaint, after I refuted and exposed his lies, one was retracted on affidavit, and another was dropped and substituted with completely different lies – and so forth, the whole pathetic, zigzagging, lying shambles detailed in my complaint.

20. If by my 'numerous complaints' Mlambo JP is referring to my several complaints to the other authorities mentioned in his second paragraph, they're all irrelevant to my complaints against him to the JSC. Should the Committee take a different view, I'll furnish it with copies of all the complaints I've made to these different authorities, one after another since 2010, to vouch that all of

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them have been well-founded – with one error I made: my stated surmise and conviction founded on a careful conspectus of the then available evidence, which I held between early 2010 and mid-April 2016,[8] that my appointment had been blocked on account of unfair political discrimination.[9] Years after the trial and dismissal of my claim against LASA for my appointment, which I'd based on that completely wrong ground, I discovered that the actual reason was simply jobs for pals.

21. Certainly the fons et origo of my nearly decade-long conflict with LASA's corrupt governing and managing public officials is the illegal abortion of my recruitment to the top professional post in question.[10] But this abortion is not the subject of my complaints currently before the JSC, and Mlambo JP's claim that it's 'at the heart' of them is consequently irrelevant and misleading, by falsely implying that I'm asking the Committee to revisit a stale dispute settled years ago by court judgment, and that it's none of its business.

Ad 4.

22. Adopting precisely the offence-as-defence strategy adopted by Motata J in his criminal defence, condemned as impeachably dishonest by Jappie JP in his 'Report of the Judicial Conduct Tribunal: In Re: Judge NJ Motata' of 17 April 2018,[11] Mlambo JP begins his response by turning the tables and rounding on me

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[8] This is when I eventually forced out of LASA, by suing for it, the selection panel's full uncensored recommendation report, and first learned of Mlambo JP's long-time judicial collegial relationship with my rival applicant for the post.

[9] In his judgment (correctly) dismissing my unfair discrimination claim in the Durban Labour Court, Cele J had no difficulty finding that I'm acutely politically unpopular as I'd alleged, and he restated my case in this regard extensively. In paragraph 8.6 of his response, to cast me beyond the pale, and to prejudice the Committee against me, Mlambo JP himself smugly charges me with 'AIDS denialism', a deeply pejorative moral and political smear to delegitimize dissident from any aspect of the Western, media-driven propaganda-consensus in the subject. Such as that it's an excellent idea for African women to swallow exceptionally poisonous, teratogenic chemicals every day throughout their pregnancies. My original, internationally acclaimed research work in this regard is posted on my website www.tig.org.za.

[10] The matter is out of my hands now, but as far as I'm concerned, as I've said before, the satisfactory resolution of my claim to the post after eight years of bitter struggle, and the death of my partner on the way, will end my personal interest in the whole matter completely. I'm literally sick of it.

[11] Paragraph 18 of the Report notes: 'Mr Baird [the complainant] was the main focus of the Judge's defence. In the heads of argument presented to the trial court on the Judge's behalf, it was submitted that Mr Baird was biased, unreliable, dishonest and above all that he was a racist.'

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to portray me as the offender in the case, to decoy from and discredit my precisely specified, particularised and documented complaints against him; and he persists with this aggressive personal counter-attack on me throughout it.

23. My First, Seventh and Eighth complaints charge Mlambo JP with criminal misconduct; my Second to Sixth with other capital misconduct – all committed in his capacity as chairperson of LASA's Board, but incompatible with his position as a judge sworn to uphold and defend the Constitution. It's idle therefore to fuss that my 'language' used 'in all the complaints' is 'very derogatory' and 'defamatory'[12] – except to improperly and disgracefully prejudice the Committee against me and to distract from the hard point of my charges. It's like Goliath moaning that David's stones are too hard.

24. The 'language' I've used in my complaints, both to the JSC and to the other authorities Mlambo JP mentions, in relation to 'senior officials of Legal Aid South Africa and other sitting judicial officers', and whether it has been justifiably sharp or not, obviously has zero relevance to the merits of my eight complaints against him.

25. Confronted by the Committee with his capital misconduct minutely detailed and vouched in my complaints against him, Mlambo JP feigns resentment at the fact that I should say such things, to falsely imply that my complaints are empty abuse.

26. Calculated to wreck my credibility and finish me off before the Committee completely, Mlambo JP resorts to the ultimate accusation in our multi-racial

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[12] The Committee will undoubtedly find highly cogent, as to its likely author, the fact that the anonymous, unsigned, undated, unstamped 'memorandum' (at page 22 of the bundle) that perverted my petition for leave to appeal the dismissal of my labour action, employed exactly the same low cunning trick to discredit me and my case on petition by attacking my allegedly objectionable language. It *begins* by charging that I've used 'vulgar and insulting language … throughout [my] affidavits. Such conduct is unacceptable for a practicing advocate.' To discredit me personally and thereby discredit my complaints to the JSC against him, Mlambo JP likewise *begins* his response to them by charging that 'the language used by Brink in all the complaints … has been … very derogatory, defamatory, and at times racist'. LASA's complaints against me to the Bar and Magistrates Commission likewise again *begins* by charging that 'the conduct of Advocate Brink is not befitting an officer of the Court more to act as a Magistrate. The language used is unprofessional, the manner he relates to colleagues and Judges require sanction.' (sic: imperfect English)

democracy after apartheid: he smears me as a 'racist' who 'at times' has repeatedly revealed himself to be one.

27. He implies that my complaints as a white man against him as a black man are animated by a basic racist animus that I harbour towards him and towards Africans generally.

28. He plays the exactly same get out of jail free card that Motata J did to try getting out of his legal jam.[13]

29. Not only is Mlambo JP's malicious, revolting lie about me to the Chief Justice entirely baseless, it's utterly false, as I'll presently show with reference to the incontestable facts on the ground.

30. The best and only evidence Mlambo JP provides for his charge that I'm a racist is (a) my textual analysis[14] to conclude that the author of the anonymous, unsigned, undated, unstamped, criminal 'memorandum' turned up in the Durban Labour Appeal Court file (case DA21/14) that perverted my petition for leave to appeal[15] was not a mother-tongue English speaker, and that he'd hastily dashed it off in some agitation to cut me off at the pass; and (b) my observation that Mlambo JP's costs order in former President Zuma's application to interdict the Public Protector's state capture report, to which I listened on national radio, contained similar minor grammatical imperfections. Mlambo JP quotes me in this regard in his paragraph 8.13.2;[16] and no honest reader can conclude from what I wrote there that I'm a racist.

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[13] See footnote 10 above.

[14] I'm the author of several very well reviewed, serious specialist non-fiction books (see all books and reviews at openbooks.tig.org.za), and I'm well experienced in editing, polishing and perfecting translations of technical, philosophical and political writing from Spanish, Italian, German and Russian into natural, mother-tongue-sounding English. As a former musician, now writer, I have a keen feeling for the music, tone and rhythm of written English, and the distinctive 'voices' of different writers. Reading Mlambo JP's response, for instance, I recognise instantly, from his other writing, the hand of the attorney who drafted it for him.

[15] See my still pending complaint against Waglay JP. The criminal 'memorandum' is annexure 'C' to it.

[16] See my similar textual analyses in my First Complaint against Mlambo JP, and in my complaint against Waglay JP at paragraph 36. And before this: Noting his recurrent, habitual fingerprint idiosyncratic syntactical errors in his writing, I employed the same exercise in the Labour Court to identify LASA National Operations Executive as the likely ghost-writer of CEO

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31. Certainly my late[17] partner Fezisa,[18] an African woman born in Pondoland, with whom I shared a loving home for two-and-a-half years, didn't think I'm a racist. Nor do any of my family and friends, including my Zulu musician friends with whom I illegally shared my house during apartheid; nor my Indian attorney friend with whom I defiantly co-founded a multi-racial jazz club during the 'emergency' era; nor three past and sitting African and Indian judge presidents (at two of whose homes – the Africans' – I've been a guest) and any number of other judges, including in the Supreme Court of Appeal; nor my legal colleagues, including attorney comrades with whom I conducted lengthy political trials and appeals in the early nineties, including in the Supreme Court of Appeal, as an advocate acting pro bono or for picayune fees; nor my more recently made Xhosa and Zulu legal and other friends and colleagues in and around the courts in Butterworth, Eshowe and Ulundi. An Indian attorney said of me in my presence a few years ago (his exact words): 'Anthony was the most loved advocate at the Pietermaritzburg bar for his non-racist and progressive attitudes.' My entire life has been defined by my loathing of racist ideology, and it brought me into repeated conflict with the local and national apartheid security apparatus throughout my young adult life.

32. Mlambo JP's absolutely false, groundless, malicious accusation made to the Chief Justice that I'm a racist, to devastate my credibility and thereby discredit my complaints against him, massively aggravates them.

33. As said, Motata J employed exactly the same low-kicking, shamefully dishonest tactic – as Jappie JP and his Judicial Conduct Tribunal noted in their report finding such misconduct impeachable. And which identical foul charge

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Vedalankar's illegal and unconstitutional blanket refusal in October 2010 of my entire first PAIA request in August two months earlier, and the lies her letter told to justify it.

[17] Understandably convinced that the corruption I'm up against at LASA is too powerful to overcome, since it radiates from Mlambo JP, more especially since this corruption has metastasized into the judiciary – see my complaint against Waglay JP – and that our prospects together were consequently hopeless (LASA had got me fired as a magistrate without a hearing, by complaining to the Magistrates Commission that I'd outrageously criticized Mlambo JP before and after my labour action), she fell ill in despair and died two years ago this month.

[18] Pictures at goo.gl/eC2JPr and goo.gl/htCiL7.

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levelled by Motata J at the complainant in his case, they found to be an abject lie. Like Mlambo JP's abject lie about me.

34. But Mlambo JP's lie that I'm a racist is highly material in the Committee's determination of the veracity of other disputed claims he makes in his response, identified in these comments, and of his general denials, because it provides the clearest evidence that, when in a corner, the Judge President of the Gauteng Division of the High Court of South Africa will lie freely, about anything, to anyone, even to the Chief Justice. Further multiple objectively demonstrable lies that he tells in his response will be refuted and exposed below.[19]

Ad 6.

35. Pretending to provide a 'SUMMARY OF THE COMPLAINTS', Mlambo JP quotes some of my complaints, but not the *evidence* I provide supporting them; naturally he doesn't 'summarise' the chapter and verse of all that. In truth, he provides no 'summary' at all. His object in reciting some of my extraordinarily serious charges without mentioning the supporting evidence I provide seems to be to make them appear outlandish, outrageous, and fit for summary dismissal.

Ad 7.

36. Mlambo JP evades responding to the evidence I present against him i by dissembling inanely that to answer it in any detail would be 'unjust to both myself and the Judicial Service (sic: Conduct) Committee', 'as doing so' would 'burden it with unnecessary and irrelevant information.'

37. Afforded an opportunity under the audi alteram partem rule to answer and refute my capital complaints,[20] all closely particularised and vouched by supporting documents, he declines to do so under a ludicrous pretext, varnished

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[19] In his response, Mlambo JP talks himself deeper and deeper into the mire, in an illustration of the adage after Watergate, 'The cover-up is always worse than the crime.'

[20] Neither the Magistrates Commission and Department of Justice, nor the KwaZulu-Natal Society of Advocates thought to afford me the same benefit of this elementary principle of natural justice before sacking me as a magistrate and deciding to strike me off as an advocate for criticizing Mlambo JP in my labour claim. (After chancing to hear about the Bar's decision, I got it reversed.)

with lofty-sounding talk of justice in the matter. The true reason he evades meeting my case against him is that it's unanswerable on all counts.

38. Giving away the disingenuity of his ridiculous excuse for not answering my charges, Mlambo JP then proceeds to 'burden' the Committee precisely 'with unnecessary and irrelevant information' in the form of a lengthy counter-offensive against me, as if I'm the accused, in the course of which he tells many lies, all easily demonstrated.

39. It obviously doesn't do in an enquiry like this to avoid dealing with detailed, documented misconduct allegations and to deny them generally, like counsel pleading minimally to an action. My comprehensively made case against him consequently stands unrefuted, and is fit for investigation and reporting on by a Tribunal appointed under section 16 of the JSC Act.

Ad 8.

40. Mlambo JP's real purpose in presenting 'the background to the complaints' is manifestly not 'for the convenience of the Committee' as he smoothly but falsely pretends, but to distract from my specific complaints, by providing a tendentious, deceptively incomplete, and, in all, a demonstrably untruthful history of my underlying dispute with LASA over the abortion of my appointment to the top professional post for which I was picked instead of his judicial friend. Ultimately his clear object is to represent me as an unreliable witness against him whose allegations against him have already been tried and dismissed. In fact they're different.

Ad 8.1.

41. Mlambo JP's allegations in this subparagraph epitomise the brazen dishonesty of his response generally, and his personal distance from the truth, which is to say the documented, objectively established, incontrovertible facts.

42. It's trivial error, and nothing turns on it, but an early pointer to his carelessness with the basic facts of the case, even as he's writing to the Chief

Justice, is his claim that I was interviewed at 'the Pietermaritzburg offices of Legal Aid SA'. Actually it was at LASA's regional HQ in Pinetown.

43. Much more to the point, Mlambo JP tells the Chief Justice the blatant lie that following my interview I was 'shortlisted for the second round of interviews as a candidate for the Senior Litigator post at the Pietermaritzburg offices of Legal Aid SA.'

44. There was no shortlist. The contrary truth of it, shown by the selection panel's recommendation report, is that I was picked by the selection panel as the best man for the job, in fulfilment of its mandate under LASA's Policies and Procedures on Recruitment ('Recruitment code') to interview the shortlisted candidates and 'identif[y] ... the most suitable candidate for appointment in a post.'

45. I wasn't 'shortlisted' with other candidates for another interview. Quite the contrary, the recommendation report records that the other applicants for the post, including and especially Mlambo JP's judicial friend Ngcamu, were disqualified and eliminated.[21]

46. Mlambo JP can't be referring to Bongani Mngadi, head of the High Court Unit at the Durban Justice Centre, who was also selected and recommended, because this was in relation to a different post: the simultaneously advertised Senior Litigator post at LASA's Durban office. And it became common cause at the second pre-trial conference before the trial of my labour claim that although the recommendation report didn't specify this, I was selected and recommended for the Pietermaritzburg post for which I'd applied and Mngadi for the Durban one for which he had.

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[21] The selection panel's full, unredacted, uncensored recommendation report was determinedly concealed from me for years. First requested under PAIA in August 2010, I was only able to see it in April 2016, years after the trial of my labour claim in mid-2013, after suing for it under section 78 of PAIA. Opposing me all the way to argument, LASA finally agreed at court to surrender it, and under the settlement agreement turned it over two months later. How LASA persistently suppressed the report to prevent me seeing it, and my repeated attempts to access it, ultimately successful, but too late, is closely detailed in my Special Report to the SAHRC.

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47. Mlambo JP's lie that I was 'shortlisted' for another interview[22] is not just another factual slip: he talks about 'the second round of interviews' – 'interviews' *plural* – in relation to the Pietermaritzburg post, to imply that it wasn't only me who was to be re-interviewed for the post; one or more of the unsuccessful applicants for it were to be re-interviewed too.

48. Indeed, so utterly corrupt is Senior Litigator recruitment at LASA, thanks to Mlambo JP's corruption of it, that National Operations Executive Nair (LASA's 2IC) told the labour judge in his evidence in mid-2013 that Mlambo JP and his so-called second round interview panel are free to interview and appoint anyone they feel like, including a candidate rejected and eliminated by the selection panel.[23]

49. The reason Mlambo JP tells this lie – that I was shortlisted, implicitly with others, for a second interview for the Pietermaritzburg post, after I was *solely* selected by the selection panel from among the shortlisted applicants for it – is to fudge the unwelcome fact to him that in my application for the post I was the lucky boy recommended for it, and very irksomely to him not his judicial chum Ngcamu.

50. In other words, Mlambo JP persists with repeating the foolish lie told me by CEO Vedalankar in October 2010 – even as she illegally and unconstitutionally refused my PAIA request for the selection panel's recommendation report[24] flatly

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[22] To be conducted by him and some management executives – illegally on multiple scores in contravention of LASA's Recruitment code and Approval Framework.

[23] Thereby clumsily giving the game away: they'd intended appointing Ngcamu, after I'd concluded from the long silence after my interview that I'd not been selected, and walked away (indeed I was clumsily asked in cross-examination why I hadn't done so), which is precisely why *Ngcamu wasn't also sent a letter telling him the recruitment had been cancelled, like the other candidates were, both successful and unsuccessful.* Only, I boggled the plan by persistently pursuing my appointment, after HRE Clark backhandedly confirmed in April 2010 that I'd been recommended.

[24] Under SAHRC pressure, it was released to me in January 2011, but heavily redacted with a black Koki marker pen to conceal two critically material facts, namely Mlambo JP's long-time judicial relationship with my rival applicant for the post, and the fact that he'd been disqualified and eliminated by the selection panel. The report showed I'd been selected and recommended for the post and no one else. (Bongani Mngadi, an internal candidate, was selected and recommended for the simultaneously advertised twin post at Durban.) After the failure of my ill-founded labour action I requested the full, unredacted recommendation report under PAIA. It was illegally refused, and as said, my application for an order to compel its surrender was resisted all the way to the point of argument, when at court LASA capitulated, and agreed to

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refuting and exposing it[25] – that (per Vedalankar) I was 'recommended together with other candidates'.

51. To sum up: I wasn't 'shortlisted' by the selection panel for 'the second round of interviews' for the Pietermaritzburg post, as Mlambo JP dishonestly alleges to the Chief Justice; I was the only candidate recommended for the post. (Internal candidate Bongani Mngadi was recommended for the simultaneously advertised *Durban* post.) No other candidates were included on any shortlist. Quite the contrary, of the four of us, the two other shortlisted candidates interviewed for the Pietermaritzburg and Durban posts were both disqualified and eliminated.[26]

52. Beyond the scope of these comments is Mlambo JP's illegal procedural corruption of Senior Litigator recruitment at LASA, and his illegal intrusion into and interference with such operations as a ***non-executive*** director of LASA's Board, in breach of LASA's internal regulations – its Recruitment code and its Approval Framework,[27] which give him no power whatsoever to interview, vet and approve or overrule a selection panel's recommendation as to the best candidate it has interviewed and identified for a vacant Senior Litigator post. These binding legal instruments make no provision for so-called second round interviews by him or by anyone else. To put it bluntly, Mlambo JP has no say in Senior Litigator recruitment at all. (Under his leadership of the continent's biggest law firm, legal anarchy reigns.) Mlambo JP's violation of the rule of law in this regard, as a judge sworn to uphold it, will be the subject of a separate, independent complaint, once I've forced out of LASA by court order the duly requested, formally promised records I need to complete it,[28] which it continues

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hand it over – nearly five years after I'd originally asked for it. Furnished in April 2016 (page 75 of the bundle), it revealed Mlambo JP's long judicial collegial relationship with Ngcamu AJ (as he used to be). Mlambo JP's extraordinary, hitherto inexplicable misconduct detailed in my eight complaints suddenly made sense.

[25] Under SAHRC pressure, the recommendation report was released to me heavily redacted three months later in January 2011, and it showed that the recommended candidates for the Pietermaritzburg and Durban posts, for which we'd respectively applied, were me and Bongani Mngadi and no one else. The redacted report is at page 101 of the bundle.

[26] This is recorded in the full, unredacted recommendation report finally crow-barred out of LASA through legal action in April 2016: see page 75 of the bundle.

[27] See bundle, page 7, paragraphs 27–30, and page 20, paragraph 39.

[28] The illegally and unconstitutionally suppressed records are the subject of two pending PAIA applications, namely:

withholding in breach of its settlement agreement it made with me at the Eshowe Magistrate's Court on 11 February 2016 to hand them over, and generally in contempt of its constitutional information transparency obligations in our open democracy under section 32(1)(a) of the Constitution and section 11 of PAIA.

53. Contrary to Mlambo JP's false allegation here, not 'one of the complaints' I made to the JSC charge him with 'alleged involvement in the appointment of Mr Ngcamu'. First off, Ngcamu wasn't appointed as a Senior Litigator. Second, my eight complaints charge Mlambo JP with gross misconduct in relation to *the cover-up that* ***followed*** *the abortion of my appointment*, not with his 'alleged involvement in' it, after learning to his irritation that his judicial friend had been rejected by the selection panel, having assumed that as a former long-time acting judge he'd be a shoo-in, even though he lacked right of appearance in the High Court and had never litigated a case on his feet there, much less in Bloemfontein or Braamfontein.

Ad 8.2.

54. To the Chief Justice, Mlambo JP tells the lies that LASA 'subsequently abandoned the filling of the remaining vacant senior litigator posts due to budgetary constraints and Brink was informed of the decision.' Mlambo JP's identical lies told the Minister and the Portfolio Committee in his 'confidential' (secret, behind my back) reports 'Re: Advocate Anthony Brink' in March and June 2011 to pervert their enquiries – i.e. '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

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(a) my pending application in the Magistrate's Court to compel full and proper compliance with the settlement agreement – the latter long delayed by LASA's application to block it by applying to have me declared a vexatious litigant, and then by the Magistrates Commission's tardiness in responding to a PAIA request for records vouching the appointed magistrate's qualification under section 91A of PAIA to try the case, thrown into doubt by the SAHRC's section 84 report for 2015–17. (See request and response online at goo.gl/ak8MmL.) The case will be set down in the coming weeks. And,
(b) my application to the Pietermaritzburg High Court under case number 11187/16 – to be set down together with two subsequently brought PAIA applications in that court (14224/17 and 5239/18) for other records, once all the affidavits have been filed in the most recent case, launched in May 2018.

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decision' – are precisely the subject of my Eighth Complaint, in which I expose and refute them in light of LASA's own records.[29]

55. What further aggravates these lies that Mlambo JP told the Minister, the Portfolio Committee, and now the Chief Justice, is the deep cunning and criminally ingenious fraud involved in them, because there are grains of truth buried in each of them. Only, as the Jewish proverb goes: 'A half-truth is whole lie.'

56. There are three deceitful half-truths in Mlambo JP's whole lie that 'Legal Aid SA subsequently abandoned the filling of the remaining vacant senior litigator posts due to budgetary constraints and Brink was informed of the decision.' As discussed in fine detail in my Eighth Complaint:

57. '[T]he filling of the remaining vacant senior litigator posts' was indeed 'abandoned' but not by *'Legal Aid SA'* as Mlambo JP untruthfully alleges. Had *Legal Aid SA* taken such a decision, there'd be a record of it, but NOE Nair repeatedly confirmed on affidavit and again in the Labour Court there's none, which means no decision to this effect was taken by any competent authority at LASA. So it wasn't *Legal Aid SA* that 'abandoned' its substantially complete recruitments for the Pietermaritzburg, Durban and Mthatha Senior Litigator posts after three suitable candidates had been selected and recommended for each of the three posts, after all the advertising and interviewing, all the time and money spent on the recruitments; and it wasn't *Legal Aid SA* that decided to permanently freeze 'the filling of the remaining vacant senior litigator posts', all budgeted by LASA and funded via the Department by the Treasury. The substantially complete recruitments were aborted off the record, irregularly and unlawfully *by unauthorised person(s)*, and in an unapproved unlawful deviation from LASA's Strategic Plan 2009–12, presented both to the Minister and the Portfolio Committee. And in illegal contravention of the Public Finance Management Act, as I complained, and as the Constitutional Court confirmed earlier this year in Zungu v Premier of the Province of KwaZulu-Natal and

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[29] Bundle, pages 198–228, paragraphs 42–150.

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Others [2018] ZACC 1 (22 January 2018), observing in paragraphs 8 and 9 of its judgment that to allow a budgeted, funded post to be 'left vacant' constitutes a 'breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position ... vacant.' Exactly as I've been saying.

58. As for the 'budgetary constraints' alleged by Mlambo JP, LASA did indeed experience some *transient financial uncertainty* in regard to when it would receive from the Department its *extra budget* for staff salary increases under the OSD scheme for legal professionals in the public service, which was promised and paid to LASA during the year, like the year before. But LASA's own records show this uncertainty had zero bearing on Senior Litigator recruitment, and it didn't even warrant a passing mention in LASA's annual report. As discussed in my Eighth Complaint, NOE Nair later told the Board totally different stories (also lies, exposed by PAIA requests testing and refuting them) regarding why LASA's remaining three Senior Litigator posts hadn't been filled.[30]

59. Mlambo JP's allegation that 'Brink was informed of the decision' (taken off the record, by unauthorised persons, irregularly and unlawfully) is true on its face but false in substance, which is to say it's another lie Mlambo JP has told the Chief Justice. In truth and in fact, as emerged from a blundering question put to me at the trial of my labour claim, discussed at page 197, paragraph 41.7 of the bundle, I was deliberately kept *uninformed*, hoping I'd conclude from the deliberate silence that I'd been unsuccessful at the interviews and walk away. It was only in August 2010, *more than eight silent months after my successful interview* in November 2009, and only when I pressed CEO Vedalankar in July 2010 to see to the finalisation of my appointment, that I was now told that 'we' had decided not to finalise the Senior Litigator recruitments, no reasons given me. After I filed a searching PAIA request in August 2010[31] to investigate this

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[30] The November 2011 Board meeting, chaired by Mlambo JP according to the minute, merely 'noted' Nair's radically different lies from the lies he, Mlambo JP, had told the Minister and the Portfolio Committee in the lying report to them that Nair had drafted for him a few months earlier (see further below). According to the minute, Mlambo JP didn't ask Nair, Why have you changed our story? Why are you coming along with all these different stories now? Is it because Brink has blown our financial one? (Nair's November 2011 Report to Board containing his new lies was leaked to me by a sympathetic insider.)

[31] Mlambo JP mentions it in his paragraph 8.3.

story, and called in the SAHRC's PAIA Unit for support when it was ignored, I was then fed the financial excuse by Vedalankar as she now refused my entire request expressly.[32]

Ad 8.3.

60. This is correct. As said, my first PAIA request was initially ignored before being expressly refused in October 2010 and again, for completely different reasons, in January 2011.[33]

Ad 8.4.

61. Both of Mlambo JP's sentences in this paragraph are dishonestly misleading:

62. He omits to mention that my request was initially illegally ignored, a deemed refusal under section 27 and that I had to call in the SAHRC to assist me under its section 83(3)(c) powers. And that it was then expressly refused in toto, right after Chief Legal Executive Patrick Hundermark had given the director of the SAHRC's PAIA Unit his assurance that my request would be duly responded to.

63. In my first petition to Mlambo JP and the Board in November 2010, I showed incontrovertibly that the refusal of my request was illegal and unconstitutional, being based on grounds advanced that were not contemplated and permitted by PAIA (later abandoned, see below), and, a whole lot worse, were justified by a faked dictum claimed to be quoted from a reported judgment, inverting what the judge actually said – which squarely supported my claim to sight of the records I was requesting.

64. Being insupportable, the reasons advanced in October 2000 for refusing my first PAIA request were later dropped and replaced with others when I called for the SAHRC's intervention a second time – the second, substituted reasons also eventually abandoned, after protracted dilatory resistance, as I pursued the illegally suppressed documents determinedly through round after round of document discovery procedure in the Labour Court.

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[32] Mlambo JP mentions it in his paragraph 8.4.
[33] What few records were given me in January 2011 were not to comply with my request but 'To demonstrate' Vedalankar's several contentions, mostly false.

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65. At all times, Mlambo JP has fully appreciated from the information I placed before him in my repeated petitions for his intervention that Vedalankar's total refusal of my first PAIA request was illegal, unconstitutional and indefensible. Yet he dishonestly implies to the Chief Justice that the refusal was just fine.

Ad 8.5.

66. The dishonesty of Mlambo JP's ostensibly neutral matter-of-fact statement here is manifold.

67. *First*, as described in my Second Complaint, Mlambo JP's letter dismissing my complaints about Vedalankar's total, illegal and unconstitutional refusal of my first PAIA request and the manifestly irregular abortion of my appointment under a transparently false financial excuse – my complaints on both scores made out in fine detail, and presenting the clear evidence supporting them – was, it's common cause, prepared on Vedalankar's own office computer. This proves that Mlambo JP conspired with the very subject of my complaint to forge a response to it, and to email it to him, for him to email to me a fortnight later.[34]

68. *Second*, Mlambo JP doesn't mention that he corruptly dismissed my 59-page petition in two sentences, claiming untruthfully that he'd considered my complaints to him and found them meritless, while in truth well appreciating that both my extensively stated complaints were sound, for all the reasons reiterated in my Second and Eighth Complaints.

69. *Third*, Mlambo JP falsely implies that his response to my complaints, closely detailed and supported in my petition, was in order, and that he rightly rejected them. But neither the Minister not the chairperson of the Portfolio Committee thought so, because when I repeated them in my *third* petition to Mlambo JP and the Board in February 2011, and copied it to those highest authorities, they were so concerned that they separately and independently called on Mlambo JP to please explain. (His perversion of their enquiries with lies is the subject of my Sixth, Seventh and Eighth Complaints.) That my first three PAIA requests in 2010 and 2011 were illegally and unconstitutionally refused is not a matter of

[34] This is the subject of my Second Complaint.

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any intelligent dispute. Indeed, at a special remedial training workshop on PAIA held for them at my instance by the SAHRC in November 2011, LASA's head office lawyers repeatedly admitted that as far as applying PAIA went, they'd no idea what they were doing. It's because the suppression of the records I'd requested under PAIA was indefensible that they were later surrendered under unremitting legal pressure.

70. *Fourth*, Mlambo JP knew full well that my appointment to the Pietermaritzburg Senior Litigator post hadn't been aborted for any financial reason, and that the Board had never approved such an alleged major decision – which is why, it's common cause, there's no record of any such decision and approval of such major deviation from LASA's Strategic- and Business Plans, as would have been required by the Approval Framework. LASA's Senior Litigator posts, both filled and vacant have at all material times been budgeted and funded, and Mlambo JP is full well aware of this.

Ad 8.6.

71. This is right, only I was barking up the wrong tree completely. The abortion of my appointment turned out much later to have had nothing to do with any specific antipathy towards me, as I'd wrongly apprehended and pleaded, just with preference in Johannesburg for my rival.

Ad 8.7.

72. Indeed I brought an application for leave to subpoena Mlambo JP, but contrary to his false claim here, I never withdrew it '[j]ust before the hearing of the matter' or at any other time. I didn't pursue it for the reason stated in my First Complaint, and quietly dropped it.

Ad 8.8.

73. In truth and in fact, contrary to Mlambo JP's false claim about this, my 'statement of claim before court', on which I went to trial, was my amended statement of claim, and (a) it didn't mention Mlambo JP at all, or (b) raise as

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issues for decision by the labour judge any of my 'complaints forming part of the current enquiry.'

74. Considered in light of their extraordinarily serious misconduct, none of my original statement of claim comprised 'defamatory statements against [Mlambo JP] and the CEO of Legal Aid SA.' They certainly lied about the reason my recruitment was aborted, as I pleaded – but not to cover unfair discrimination; rather to cover everyday recruitment corruption in the form of cronyism. The plan went awry when I began knocking, and then pounding on the door.

Ad 8.8.1.

75. That's indeed what I very wrongly surmised and pleaded, deliberately kept ignorant of *the KEY material fact* of Mlambo JP's long judicial relationship with my rival applicant for the post, Ngcamu, his repeated appointee as an acting judge of the Labour Court. As I've described, this hotly relevant information was illegally concealed from me with a Koki pen until years after the trial, when I finally forced it to the surface by suing for the full, uncensored recommendation report submitted by the selection panel that interviewed us.

Ad 8.8.2.

76. The justification eventually fed me, eight months after my successful interview, in response to my PAIA request for all material documents, even as they were all illegally and unconstitutionally refused, was that LASA's 'baseline budget' had been unexpectedly cut 'due to the recession', and that LASA had accordingly aborted its recruitments of Senior Litigators for its Pietermaritzburg, Durban and Mthatha posts for this reason: a nice tight cover-story. Mlambo JP repeated this lie to the Minister and to the Portfolio Committee,[35] and he does so again to the Chief Justice in his response. In truth and in fact, LASA's nine Senior Litigator posts, six filled and three vacant, have always been and remain budgeted and funded posts. There was no reduction of LASA's baseline budget in 2010/11; to the contrary, it increased substantially

[35] See Eighth Complaint.

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over the previous year. LASA even enjoyed a substantial budget surplus that year, and the next. I deal with all this in my Eighth Complaint.

77. The 'financial justification' for the abortion of my appointment was indeed 'fake', as even a child can see from LASA's own records.

Ad 8.8.3.

78. He sure did, and I prove it in my Sixth to Eighth Complaints.

Ad 8.9.

79. In truth and in fact, *it was right at the outset of the hearing* before evidence, even before my opening address. During the hearing of LASA's frantic, failed application to quash my subpoenas of its CEO, NOE and HRE – whom I dragged very unwillingly into court for cross-examination, under oath on penalty of being jailed for perjury, on all the lies they'd told me, along with a Board member who, informed about them, had just sat on his hands – I told the judge I held Mlambo JP and Vedalankar clear in the case; and I indeed, as Mlambo JP states, I repeated this under cross-examination by LASA's counsel.

80. Part 2 of the Endnote to my Sixth Complaint (pages 128–9 of the bundle) explains fully and precisely what led me to make this mistake, and describes two stunning discoveries I made on the eve of trial that caused me to turn my legal guns away from them. It further explains what led me to change my mind again within a week or so (seeing Nair performing so feebly in the witness stand) and revert to indicting Mlambo JP's misconduct in the matter in my petition for leave to appeal.

81. By failing to mention my change of mind again, Mlambo JP creates the false impression that I long ago dropped my empty charges against him and then vexatiously revived them many years later by spuriously complaining about him to the JSC. And that my charges are unworthy of serious consideration accordingly.

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82. This is mix of true and false. At the hearing I indeed 'withdrew' my *originally pleaded* allegations against Mlambo JP – but *for the purpose of the action*. The trial record shows that right from the start the case, and throughout it, the expression I consistently used in relation to Mlambo JP was 'hold clear'; 'I hold him clear'. That is, I was no longer pressing for a finding against him.

83. Even before my amazing discoveries on the eve of trial that misled me to think Nair and not Mlambo JP was my real opponent in blocking my appointment, my amended particulars of claim, drawn by a silk friend of mine, pleaded the barest facta probabanda, without mentioning Mlambo JP at all. So my change of course, my change of strategy, caused by my unsettling discoveries, didn't require further amendment of my stated claim for trial.

84. It's like this: Trial lawyers understand that a litigant's objective is to win his case. To achieve this, the honest litigant need not prove all the true facts on all the available evidence – only enough to tip the balance of probabilities.

85. Indeed, to go beyond what's necessary may be counter-productive. In his chambers, the trial judge revealed he was sharp to this elementary principle of trial strategy when he warned me ominously – after I'd presented the essential history of the case comprising the core facts enumerated in my Timeline, and mentioned that I had a whole lot more evidence still to give – 'Don't make the mistake of throwing your net so far out that you catch more than you can bring in' (his exact words), by which I understood him to mean what he'd unequivocally implied: Lead enough evidence to win and stop there; don't go after fish too big to land, or you'll capsize your boat and lose.

86. The principle is well illustrated by a war crimes trial held by the victor, charging an officer from the defeated enemy with participation in a sensational atrocity alleged to have been committed during a total war. The officer's interest is keeping his neck intact, not to establish all the true facts for the history books, such as that the atrocity charged is sheer war propaganda and nothing more. To outrageously dispute the fact of the atrocity, treated by the tribunal as an

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indisputable given, and the very basis of the trial, is to inflame the tribunal and guarantee a conviction. So the officer doesn't plead all the true facts within his knowledge. He just pleads enough to get off, that he wasn't there, that he was occupied with something else, or similar. Albert Speer's success at Nuremberg is the best known of this kind of *pragmatic limited defence.* Conversely, at trial, upon a last-minute reassessment of the lie of the land, I engaged in a *pragmatic limited offensive.*

87. My discovery a fortnight before trial (from its PDF 'Author' properties) that NOE Nair had ghost-written Mlambo JP's 'Confidential Report Re Adv Anthony Brink' to the Minister and to the chairperson of the Portfolio Committee hit me like a wrecking-ball, and caused me to lower my sights from Mlambo JP to Nair. I detail this in my Third and Fourth Complaints.

88. At that stage, the fact of Mlambo JP's long judicial relationship with my rival for the post was unknown to me, because LASA had assiduously concealed it. In my JSC complaints, and above, I've detail how LASA hid this pivotal information from me between 2010 and 2016.[36]

89. My next discovery just before trial – from his parvenu broken syntax in habitually commencing his written (and at trial spoken) sentences with, 'Noting that, [etc]' (which characteristic clumsy tic he admitted and owned at trial) – was that Nair had ghost-written Vedalankar's first letter to me, advancing the unbelievably stupid lying budgetary insufficiency excuse for cancelling my recruitment to the top post, among other obvious lies.

90. These new discoveries, that Nair was doing the lying writing – of Vedalankar's letter, of Mlambo JP's secret report – led me to conclude that he was my principal enemy at LASA responsible for knifing me behind the scenes, so I decided to turn my guns on him, and told the judge so at the very start.

91. This didn't change the documented facts of Mlambo JP's impeachable misconduct – charged, with supporting documents, in my several complaints to the JSC. But I estimated, on the evidence suddenly to hand of Nair's lying

[36] See footnote 24.

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ghost-writing of the major documents that it was no longer necessary to pitch my case for trial at Mlambo JP and ask the court to find against him. I reckoned this shift of focus made it easier on the trial judge, and therefore easier for me to carry my case. It didn't in the result, because I still lost – and correctly so, I now accept, in that the reason my appointment was blocked had nothing to do with unfair discrimination against me, as pleaded and contended at trial and on petition, and everything to do with Mlambo JP wanting his former judicial brother in the post instead of me.[37]

Ad 8.11.

92. Correct, and although the judge made a multitude of basic reversible errors,[38] he was quite right in the practical result to dismiss my unfair discrimination claim, because, as I discovered years after the case through further litigation against LASA under section 78 of PAIA, the reason my appointment was aborted had nothing to do with unfair discrimination. In plain terms, it's not that in Johannesburg they disliked me in particular; they just wanted the other guy in.

Ad 8.12.

93. I stand by every word of my petition – except to the extent that I still believed, when I delivered it, that I'd been the victim of unfair discrimination. Having succeeded long after the trial and judgment in forcing out of LASA the selection panel's full uncensored recommendation report revealing Mlambo JP's connection with my rival for the post, I'm satisfied that the abortion of my appointment had nothing to do with unfair discrimination, and that, calamitously misled by the unconstitutional, indeed criminal,[39] suppression of

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[37] In my answering affidavit in Pietermaritzburg High Court case 12124/16, namely LASA's failed application to kick me out of court as an alleged vexatious litigant, I describe Mlambo JP's history of irregular job fixing, above and beyond his total disregard for LASA's governing instruments regulating recruitment at LASA: its Recruitment code and Approval Framework.
[38] These mistakes are identified in my lengthy application for leave to appeal comprising 323 paragraphs, the most important of which mistakes are reiterated in my 50-paragraph petition for leave to appeal, which the Labour Court rules specifically required be much shorter.
[39] Section 90(1)(a) of PAIA proscribes the alteration of a record to deny a right to information, and renders it a criminal offence.

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the just-mentioned information, my cause of action at trial and on appeal was completely wrong.

94. Labour Appeal Court Judge President Waglay found nothing objectionable about my petition, or he'd have stung me with costs. He made no such order.

95. As regards my 'vitriolic attitude and cumulative conduct', I'm locked in mortal combat with a profoundly corrupt public entity, so I make no apologies for having an 'attitude' towards its officers and taking them to task in uncompromising terms: In my experience, plain and direct speech works best when exposing humbug and dishonesty; fancy, elliptical lawyer-talk is usually calculated to obscure it.

96. As described in my First Complaint against Mlambo JP and in my complaint against Waglay JP, my petition for leave to appeal failed because it was perverted through improper influence, the real evidence of which I put up with both complaints. So it's useless for Mlambo JP to trumpet that my petition failed. We both know it did, and we both know why it did.

Ad 8.13.

97. It was a semi-urgent application, derailed by unanticipated difficulty achieving service of the papers. The principal complaint I made in it, namely that Waglay JP had summarily and prematurely dismissed my petition on account of improper influence exercised on him, is charged in my separate complaint to the JSC against him.[40]

Ad 8.14.

98. Sure I don't have a spare million and half[41] to pay LASA costs (in both cases mistakenly awarded),[42] but this hardly bears on the merits of my gross

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[40] Depending on the outcome, more complaints against Waglay JP may follow.
[41] LASA hasn't taxed its bill for my interdict case, so the 'total amount' that Mlambo JP claims I'm 'indebted to' LASA for is wrong. It's not all 'taxed costs' that he states.
[42] So the Constitutional Court pointed out as a matter of general principal in regard to my labour claim in paragraphs 23 and 24 of its judgment in *Zungu* cited above: 'The correct approach in labour matters in terms of the LRA is that the losing party is not as a norm ordered to pay the successful party's costs. ... The rule of practice that costs follow the result does not apply in

misconduct complaints against Mlambo JP. In stating this irrelevant fact in his response to my complaints, his purpose seems to be to discredit them by discrediting me as a bum not worth an audience.

Ad 8.15

99. Indeed I intend reagitating my claim to my appointment to the still vacant, still budgeted, still funded post, and the Pietermaritzburg High Court sees no legal impediment to my doing so:

100. At the hearing on 27 October 2017 of LASA's failed application to knock me down as a vexatious litigant, Vahed J reiterated to LASA's counsel with implicit approval my intention stated in paragraph 92 of my answering affidavit to apply to the Labour Court for (a) rescission of its judgment dismissing my unfair discrimination claim, on the ground that it was fraudulently misdirected by the 'pack of lies' Nair told it (Vahed J's own description of Nair's patently obvious perjuries, demonstrated with supporting records in my said answering affidavit), and (b) the substitution of its dismissal order with one of absolution from the instance, so that I might press my claim to my appointment to the post for which I was recommended, on fresh pleadings, having regard inter alia to pivotal documentary evidence as to the true reason my recruitment was quietly cancelled off the record – sedulously suppressed and concealed from me before trial, and surfaced under legal pressure nearly three years later: the full uncensored recommendation report disclosing Mlambo JP's long judicial relationship with my rival applicant for the post.

101. Mlambo JP's allegations that I 'now seek.. to abuse the PAIA Act [sic], Court processes and even the JSC complaint mechanism in my misguided pursuit to this end' (my pursuit of my appointment) have already been considered by the Pietermaritzburg High Court and found to be a load of

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Labour Court matters.' And so Vahed J pointed out to LASA's counsel at the hearing of its failed application to have me declared me a vexatious litigant. Seeing as the merits of my application to interdict the taxation of LASA's bill of cost in my labour case weren't treated, and my application wasn't entertained only for want of urgency in the judge's opinion, it should have been struck from the roll, Vahed J observed, not dismissed, and without an order for costs being sought and made against me.

rubbish. Unlike Mlambo JP, Vahed J doesn't think my announced intention to return to the Labour Court is 'misguided' at all. Knowing civil procedure, he well understands our ancient settled law that fraud on a court and newly uncovered documents can found an application for rescission of a judgment made after the trial of an action.

102. In view of LASA's gloating in its replying affidavit in its just-mentioned vexatious application that the Bar had resolved to apply for my strike-off as an advocate (the first I heard of it), I put up a supplementary affidavit, annexing (a) the record of the Bar's reversal of its decision, and (b) copies of my eight complaints against Mlambo JP to the JSC as my complete answer to LASA's charge that I'd unprofessionally impugned his integrity as a judge. LASA formally applied to have my supplementary affidavit struck out, and it failed.

103. After spending a full week, Vahed J said, reading all the papers (mine were exceptionally long and finely detailed), he didn't come to the conclusion that my apprising him of all the unpleasant material facts was an 'abuse ... of Court processes'. He didn't suggest I'd abused 'the JSC complaint mechanism' in filing eight gross misconduct complaints against Mlambo JP with the JSC, and in placing them before him to illustrate the scale and the level of the corruption at LASA that I'm up against.

104. My repeated use of PAIA to access public records (section 18) and to apply to court to compel their surrender when illegally and unconstitutionally refused (section 78), and my announced intention to return to the Labour Court for my appointment to the post in question, were central to LASA's case to bar my way as a vexatious litigant.

105. During his debate of the case with LASA's counsel, however, and before dismissing LASA's case, Vahed J pertinently considered (a) the legal propriety of my repeated use of PAIA to access records and my repeated resort to court to compel access to them, and (b) my intention to return to the Labour Court in pursuit of my appointment.

106. Vahed J didn't think my repeated use of PAIA to access LASA's records, and my repeated necessary applications to court to compel them, was an 'abuse' of 'PAIA' and 'Court processes', nor that my intention to return to the Labour Court to claim my appointment was an 'abuse' of 'Court processes', as LASA had claimed in as many words in its vexatious application, and as Mlambo JP persists in claiming in his response, in those exact words, contradicting Vahed J's considered judgment in the matter.

107. Vahed J well understands that (a) my reliance on PAIA as my basic tool to expose the full extent of the corruption at LASA that I'm onto, and (b) my intention to apply for rescission of judgment in my labour case and leave to prosecute my claim to the post I was picked for on fresh pleadings and with new evidence, is legally sound.

Ad 9.

108. Mlambo JP protests too much. His opening denial of involvement in recruitment corruption is a red herring, but revealing. None of my eight complaints specifically charge him with recruitment corruption, as is clear from a glance at his own 'SUMMARY' OF THE COMPLAINTS' in his paragraph 6. Mentioned in paragraph 12 of my Eighth Complaint (page 184 of the bundle), however, his direct involvement in procedural and ethical recruitment corruption will be specifically charged in future, separate complaints – which, as I also mention, are being held up by LASA's persistent ongoing illegal and unconstitutional suppression of records needed for the complaints, duly requested under PAIA, and formally promised me in a settlement of five court applications I brought to disgorge them, but still being determinedly withheld from me. Litigation to compel LASA to hand them over is pending.

109. Mlambo JP's second red herring, served with a plethora of irrelevant detail contrived to obfuscate and distract, is his claim to have been 'advised by officials of Legal Aid SA [that] when the recruitment process commenced for the filling of the Senior Litigator positions in Pietermaritzburg and Durban, Mr Ngcamu was not in the employ of Legal Aid.' So what? We both know this perfectly well, and

I've never suggested otherwise. The selection panel's recommendation report records that, like me, Ngcamu was an external candidate. This is noise contrived to confound and misdirect the Committee.

110. A third red herring is Mlambo JP's statement that 'the Senior Litigator [recruitment] process began long before Mr Ngcamu joined Legal Aid SA'. So what? We both know this perfectly well. This is more noise to the same rotten end.

111. His fourth red herring is his statement that 'the process of recruitment [to fill LASA's long vacant, thrice advertised Senior Litigator posts at Pietermaritzburg and Durban] was stalled before he joined the organisation' – by being appointed to a succession of other posts.[43] So what? We both know this, and it has zero bearing on my complaints, all of which concern his gross misconduct ***after*** 'the process of recruitment was stalled' illegally, off the record, without any decision duly taken by any authorized person(s), and in contravention of the PFMA, as the Constitutional Court pointed out in *Zungu*.

112. It's disingenuous of Mlambo JP to state that 'Mr Ngcamu' – his former brother in the Labour Court, repeatedly favoured with acting appointments by him over about six years – 'was apparently interviewed' for the KwaZulu-Natal Senior Litigator posts, pretending not to know this for a hard fact, and trying to scuttle away from it, only to give his game away and betray his full knowledge of it in his concluding sentence: 'Furthermore, Mr Ngcamu was not even recommended for the second round of interviews during the Provincial selection process' (treated below). Mlambo JP knows full well that his former brother on the labour bench applied, was interviewed, and was bounced by the selection panel.

113. Mlambo JP's fifth red herring is his irrelevant, anxious disclaimer: 'I did not form part of [the selection] panel.' Again, so what? We both know this, and I've never suggested otherwise. This is yet more distracting and misleading noise.

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[43] Per Mlambo JP's paragraph 9.

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114. He concludes with a sixth red herring, as if he's again refuting a false claim, implication or assumption: 'Furthermore, Mr Ngcamu was not even recommended for the second round of interviews during the Provincial selection process.' Yet again, so what? We both know this perfectly well, and I've never suggested otherwise. (Under the Recruitment code there's no such thing as a Provincial selection panel; this is Mlambo JP's invention.) Here though, Mlambo JP contradicts the blatant lie that CEO Vedalankar told me on 18 October 2010: 'You were recommended together with other candidates.' (Except he implied the same in lying that I was shortlisted for the second round interviews for the Pietermaritzburg post.) The truth of it is I wasn't, as the selection panel's recommendation report clearly records; I was recommended for the post alone, and nobody else. (Mngadi was recommended for a different post.) So I saw from the heavily censored report given me on 28 January 2011, after calling in the PAIA Unit of the SAHRC for the second time following Vedalankar's strangely furtive mute then express refusals in September and October 2010 to let me see it.

115. Mlambo JP's very correct statement that Ngcamu wasn't recommended is true on its face, but deceptive and misleading in light of the unstated corrupt factual context. To Mlambo JP and the national management executives on his so-called second round interview panel, the fact that Ngcamu was rejected didn't matter a bit. Without joking, without blinking, and apparently without feeling moronic saying this, NOE Nair told the labour judge that Mlambo JP and his so-called second round interview panel were free to re-interview any of the originally shortlisted applicants they liked, and weren't limited to interviewing and vetting the recommended candidate; they were free to interview and consider a rejected candidate for appointment.[44]

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[44] Indeed, according to information given me by the chairperson of the selection panel that interviewed applicants for the Senior Litigator post at Mahikeng, a rejected candidate wound up being appointed, and not the candidate that he and his selection panel recommended. Duly requested under PAIA, LASA is determinedly illegally suppressing the selection panel's recommendation for the post, claiming under section 45 of PAIA that my request for it is a waste of its time. I've sued for it out of the Pietermaritzburg High Court, and the opposed but unanswered application is pending, and will be set down imminently together with two subsequently launched PAIA applications, once all the papers are in. In contempt for the

AB 2169 mm

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116. Such is the extent of the lawless corruption of Senior Litigator recruitment at LASA, illegally controlled by Mlambo JP, ultra vires, and without any authority vested in him by LASA's relevant regulatory instruments: its Recruitment code and Approval Framework.

117. To sum up: Mlambo JP begins by pleading not guilty to a count not yet charged: the original sin, the illegal, unauthorised, unrecorded, silent backroom abortion of my appointment to the top job for which I was duly selected and recommended; and in pleading his defence to it he over-eggs his pudding. All my complaints concern *the cover-up* after *the abortion of my appointment*, not the abortion itself, which cover-up by him entailed his collusion in and conniving at Vedalankar's refusals to comply with my PAIA requests probing it, telling me patent lie after lie in her letters justifying this; and his lies to the Minister, to the Portfolio Committee, and to the Labour Court about me and my complaints.

Ad 10.

118. Speaking to my First Complaint of subornation of perjury, supported by material excerpts of the affidavit containing it, Mlambo JP doesn't deal with the particulars of my complaint. He doesn't dispute that the affidavit I put up was made and filed on his behalf and on his instructions as alleged in it. He doesn't suggest that unbeknown to him his attorney just went off and made up the colourful story the affidavit tells: that I travelled across the country to remonstrate with him at his chambers about my case and that he was unimpressed by this. He just leaves it all in the air.

119. As said, it's untrue that I 'withdrew the subpoena against' him, because none had been issued so there wasn't any to withdraw. After he ignored my request for leave to subpoena him, and I then brought my application for leave to do so, I didn't pursue it for the reason stated in my First Complaint.

Constitution and the law on public information transparency in our open democracy, these rogues, advised by CLE Hundermark, are determinedly concealing the documentary evidence of this endemic recruitment corruption at LASA.

120. Why I decided to hold Mlambo JP clear at the trial of my labour case is explained above. As said, the phrase I used repeatedly was 'hold clear', which any lawyer knows has a different meaning from 'exonerate', which was LASA's counsel's and now Mlambo JP's word, not mine.

121. In his letter to the Chief Justice, denying my charges, Mlambo JP brazenly persists with his major lie – radically contradicted by NOE Nair's very different lies told to the Board – that 'the reason for not proceeding with the second round of interviews was budget related'. After I refuted it in 2011, Nair changed the story, abandoned this financial lie, and replaced it with new, different lies to account for the abortion of my appointment, namely 'recruitment challenges' and doubtful professional performance by LASA's six incumbent Senior Litigators, on account of which they were to be urgently audited by a special panel led by 'possibly a retired judge' (all pure invention). How the original financial lie, revived and pleaded for trial, was told to the labour judge along with the new, different lies – as if the more contradictory lies told in court the merrier – is thoroughly treated in my Eighth Complaint.

122. Mlambo JP doesn't repeat to the Chief Justice the first part of his lying excuse for not proceeding with the recruitment process, which he told the Minister and the Portfolio Committee, namely difficulty encountered in coordinating a date on which he and various management executives would all be available to interview me again. And the reason he doesn't repeat to the Chief Justice this blatant lie told to mislead the Minister, this criminal lie he told to mislead the Portfolio Committee, is that the lie was twice retracted on affidavit as 'an error', 'palpably an error', after I exposed and refuted it before trial. (I deal with this in my Eighth Complaint.)

123. By stating to the Chief Justice, 'the report to the Justice Portfolio Committee confirmed that the reason for not proceeding with the second round of interviews was budget related which I still maintain', Mlambo JP compounds his criminal lie[45] to the Portfolio Committee infinitely.

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[45] It's comprehensively treated and refuted in my Eighth Complaint.

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124. Indeed, 'The report to the Minister also explains the reasons why the second round of interviews was not proceeded with which related to budgetary constraints.' I've already dealt with Mlambo JP's lie to the Minister, also to the Portfolio Committee, and repeated to the Chief Justice, that my appointment was aborted for on account of 'budgetary constraints.'

125. Mlambo JP repeats to the Chief Justice his lie to the Minister[46] that 'there is nothing illegal and unconstitutional in all the refusals to records in accordance with PAIA.' In light of the facts set out and vouched in my Second to Fifth Complaints, the statement is absurd, and cannot have been made in good faith by anyone with a smidgeon of legal knowledge, let alone by a senior judge. It follows that this assertion by Mlambo JP is a lie.

126. To the extent that Mlambo JP is also referring to my PAIA requests made after 2013 (my Second to Sixth Complaints concern my PAIA requests made in 2010–11 only), LASA consistently refused them on the grounds that they were a waste of its time (section 45) because related to my labour claim (section 7). When I sued in the Magistrate's Court[47] to compel compliance with the requests, LASA opposed me all the way to court. Just as I was about to move my applications, however, LASA dropped these stories and agreed to comply with my requests at last, after years of delay, implicitly conceding that my requests weren't 'frivolous and vexatious' and unreasonably time-consuming to respond to, as previously falsely alleged – or this would have been argued. As for section 7, it doesn't even afford a ground for refusing a request, not being among the 'Grounds for Refusal of Access to Records' allowed by sections 34 and 45. Yet both these section 7 and 45 justifications have been revived to block my access to further records I've requested in my corruption investigation, requiring that I

[46] It was criminally repeated, with amplification, to the Portfolio Committee.
[47] As provided by the definition of 'court' in section 1 of PAIA.

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bring three High Court applications to compel compliance with my requests for them.[48]

127. Seeing as when push came to shove in the Magistrate's Court LASA timorously abandoned[49] its waste-of-time and relating-to-litigation excuses for denying me access to its duly requested records, rather than arguing it, its same excuses for blocking my access to subsequently requested records (sought for the serious purposes stated in every case) can hardly be 'in accordance with PAIA', and the Judge President of the Gauteng High Court's claim to the Chief Justice, 'I submit that there is nothing illegal and unconstitutional in all the refusals to records' (sic), is dumbfounding and reflects his gross dishonesty or gross judicial incompetence or both.

128. Mlambo JP's statement to the Chief Justice, 'According to the information at my disposal, all the records requested by Brink and as far as legally permissible by the Act, were duly provided to him', is an outright lie. In truth and in fact, from 'the information at [his] disposal' contained in my three petitions addressed to him and the Board, in which I implored his and the Board's intervention, but which he dismissed and finally ignored in the scandalous manner described in my Second to Fifth Complaints, he well appreciated that Vedalankar[50] had repeatedly blatantly illegally and unconstitutionally refused my requests, even forging and uttering a fake dictum from a reported judgment claimed to support her refusal – with the first set of spurious justifications for suppressing the records I'd requested abandoned and replaced by other obviously spurious ones, themselves later abandoned under unrelenting discovery pressure in the run-up to trial of my labour claim.

129. I wasn't writing about this to a shunter on the railways, I was writing to a senior judge with at least a slightly better than lay understanding of constitutional information law in our open democracy after the secretive,

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[48] Immediately after filing these comments, I'll be replying to LASA's just-delivered answering affidavit in my most recent application, and then applying forthwith for date on the opposed roll to argue the three cases together.

[49] On CLE Hundermark's telephoned instructions.

[50] On CLE Hundermark's advice.

fundamentally corrupt apartheid administration, and therefore, one must assume, readily able to comprehend what I was telling him and appreciate the enormity of the constitutional violations I was reporting to him in my repeated petitions.

130. The simple truth of it is that Mlambo JP didn't want me nosing about with PAIA, investigating the illegal abortion of my appointment and the true reason for it, and this is why – as detailed and vouched in my Second to Fifth Complaints – he went along with Vedalankar's illegal and unconstitutional obstruction of my access to the records I'd duly requested, to which records he appreciated full well as a senior judge I was constitutionally entitled. And this is why he tersely then rudely rebuked my first two petitions to him and ignored my third.

131. It's correct that I currently have 'various applications ... subject to determination by the Courts', but these have nothing whatsoever to do with my eight complaints to the JSC, most of which concern Mlambo JP's collusion in and connivance at Vedalankar's and then Nair's manifestly illegal and unconstitutional refusals of my first three PAIA requests in August and December 2010 and March 2011, and his lying reports to the Minister and the Portfolio Committee to pervert the enquiries they instituted into this.

132. None of my complaints against Mlambo JP to the JSC concern the consistent blanket refusals of my several PAIA requests made years later, after the trial of my labour claim in mid-2013 – nearly all refused on the basis alleged under section 45 that they were an obvious waste of LASA's time – and none of my complaints concern my indeed pending several applications to compel compliance with them.

133. Due to his documented collusion in, connivance at, and false reporting about the illegal and unconstitutional refusals of my first three PAIA requests in 2010–11, I didn't waste my time appealing for LASA Board chairperson Mlambo JP's intervention in the continuing illegal and unconstitutional refusals of my PAIA requests made after the trial of my labour claim in 2013 and

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thereafter. (He would have told me to get lost again.) So I've no evidence that he supported the latter refusals and I'm not complaining to the JSC that he did. Even though it's plain from his paragraph 11 that he supports these more recent illegal and unconstitutional refusals of my requests on the basis that they're just a waste of time, despite my serious purposes in making my requests stated every time.

Ad 12.

134. Mlambo JP's opening counter-charge in his 'CONCLUSION', to discredit me and thereby my complaints, that I'm 'susceptible to make allegations without factual substantiation' is contradicted and exposed as a flagrant lie by the minutely detailed 'factual substantiation' and supporting documents I provide for my 'allegations' contained in my eight complaints against him.

135. His charge that I do 'not spare anyone holding a different view to [mine], as can be demonstrated with my attacks on [him], later Cele J and thereafter with Waglay JP as well as various senior officials of Legal Aid SA' is irrelevant noise. The merits of my separate complaints about all their particular misconduct – not their 'views'[51] – is irrelevant to a determination of the particular gross misconduct charges that I've levelled at Mlambo JP before the JSC.

136. Besides being baseless, Mlambo JP's accusation that I've been 'openly disrespectful and downright malicious to [him] in particular' is transparently calculated to distract from the hard specifics of my complaints against him.[52]

137. His claim that I've 'used [the] complaint[s], PAIA and Parliamentary Portfolio processes to harass [him] and other officials over the years', which he bumps up by claiming to 'hold' this as his 'firm view', is a risible and obvious lie. My Second to Seventh Complaints concern my first three PAIA requests only,

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[51] Such as Cele J's mistaken 'view', to my immense prejudice, that the applicant bears the overall final onus in an unfair discrimination claim, not the accused respondent; and that a party may not cross-examine witnesses he's subpoenaed with the very object of taxing them under oath on the lies they've told him in correspondence, to show the court, in light of contradicting records, what liars they are.

[52] Too long at LASA, and running it like their personal fiefdom, Mlambo JP 'and other officials' aren't used to be held to account in our open democracy under the rule of law, and clearly don't like it. Further complaints about jobs for pals will follow, once I have the records I've sued for.

and it's not seriously contestable by anyone with any nous that they were illegally, unconstitutionally and dishonestly refused.

138. In referring to Mlambo JP's 'handing down of the Public Protector Judgement' (sic), I specifically disavowed any intention 'to be rude', and no reason exists to doubt my sincerity, so his allegation that I meant to 'insult' him is a lie.

139. His claim that I'm 'perpetuating' this 'conduct' in allegedly 'insult[ing]' him by making my 'complaint[s] to the Judicial Conduct Committee against [him]' is a similar obvious lie.

140. His claim that I 'retracted' my 'allegations against [him]' is only partially true, and then again only for the limited purpose of narrowing the lis at the trial of my 'failed Labour Court matter' in the particular circumstances discussed at length above and in my complaints to which I refer. My amended statement of claim filed months before the trial didn't mention Mlambo JP and his misconduct at all; and on my amended – even original – pleadings, his misconduct in relation to the repeated and persistent illegal and unconstitutional refusals of my early PAIA requests in violation of my fundamental right to information (Second to Fifth Complaints), and the cover-up of this that followed (Sixth and Seventh Complaints), weren't issues for decision by the Labour Court, which had no interest in adjudicating LASA executive management's repeated PAIA violations and Mlambo JP's support for them in this, all being beyond its jurisdiction.

141. My complaint about Mlambo JP's subornation of perjury (my First Complaint) was certainly not withdrawn at any stage; to the contrary, during my cross-examination of Nair (LASA's single witness at trial) I bitterly protested the depraved lie Mlambo JP told about me going up to harass him at his chambers, but he said he said he knew nothing about it. Which I accept.

142. Mlambo JP conspicuously fails to mention that I promptly revived my 'withdrawn' complaints against him in my petition for leave to appeal to the Labour Appeal Court. His lack of candour in presenting all the material facts creates the false impression, as intended, that my complaints against him were

long ago withdrawn in the Labour Court in mid-2013 and remained so for the next four years until I capriciously revived and filed the same baseless complaints against him at the JSC in mid-2017.

143. The reason Mlambo JP has 'an unblemished record' is that he's not yet been impeached on the capital charges I make in my first eight complaints against him. Unfortunately I can't toot the same horn: discussed below, my own 'unblemished record' as an advocate admitted thirty-five years ago has been thoroughly trashed.

144. As to Mlambo JP's imprecation that I be 'censured in the strongest terms' for making my complaints against him, I record that I've already been severely punished for having had the temerity to complain of his gross misconduct in my original statement of claim in the Labour Court and in my petition for leave to appeal to the Labour Appeal Court. Claiming to the KwaZulu-Natal Society of Advocates and to the Magistrates Commission in November 2016 that 'the conduct of Advocate Brink is not befitting an officer of the Court more to act as a Magistrate. The language used is unprofessional, the manner he relates to colleagues and Judges require sanction', LASA – undoubtedly with Mlambo JP's knowledge and approval – got me summarily thrown off the bench as a magistrate and professionally disgraced as an advocate in the manner described in the Introduction to the bundle.

145. Blacklisted by the Justice Department, as I discovered in mid-2017, I'm currently unable to get acting appointments, despite the need for my services on relief in the Zululand region, so the Pietermaritzburg Chief Magistrate told me.

146. And I'm convinced that LASA's complaint to the Magistrates Commission and to the Bar cost me a permanent appointment to a civil magistrate post for which I was shortlisted and interviewed in Pretoria in July 2017. The very first question I was asked was whether there were any professional misconduct complaints against me, and I was bound to confess them. After which, it didn't help much that 'You have a very impressive CV', as the chairperson of the selection panel warmly remarked to me.

147. Were I to put my CV about to attorneys in Zululand where I'm now based, one call to the KwaZulu-Natal Society of Advocates or to any of my advocate colleagues to find out more about me, and I'd be finished. Despite my having copied to the Society my eight complaints against Mlambo JP in June and July 2017, a full year later it's still to finally determine LASA's complaint against me that I outrageously and unprofessionally impeached his integrity as a judge. So I'm out of practice and sans an income until this mess is cleaned up.

148. In every dimension of my life, the extreme personal cost to me and to those closest to me – my late partner, my two sons – of taking Mlambo JP on has been incalculable. (Had I foreseen the road ahead in 2010, I'd have just left it, and let LASA fester in its corruption like any number of other corrupt public entities gone bad in the Zuma era.) In short, I've been more than 'censured in the strongest terms'; I've been professionally paralysed and economically strangled. Exactly as vindictively intended.

149. By posturing that he does 'not deserve to be treated in this fashion by anyone including Mr Brink', and by demanding that I be strung up for reporting his impeachable misconduct, Mlambo JP perversely inverts the reality of the matter. In the language of the Supreme Court of Appeal in paragraph 58 of its judgment in Gauteng Gambling Board and Another v MEC for Economic Development, Gauteng (620/2012) [2013] ZASCA 67; 2013 (5) SA 24 (SCA); [2013] 3 All SA 370 (SCA) (27 May 2013), he's 'attempted to turn turpitude into rectitude', has 'appeared indignant and played the victim', and has demonstrated a 'flagrant disregard of constitutional norms'.

150. Wherefore I persist with my complaints.

Signed at Eshowe on 28 June 2018.

ANTHONY BRINK

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Signed before me at Eshowe on 28 June 2018 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirmed its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name: MTHOKOZISI ROBERT MNUSI

Address: SAPS ESHOWE 73-79 MAIN STREET

Capacity: WARRANT OFFICER

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
2018 -06- 28
ESHOWE
KWAZULU-NATAL

FIRST COMPLAINT AGAINST WAGLAY 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, admitted to practice on 12 April 1983. I reside 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 brought under section 14 of the Judicial Service Commission Act 9 of 1994 against Basheer Waglay JP, head of the Labour and Labour Appeal Court ('LAC'), hereinafter 'the respondent'.

3. The respondent was appointed Judge President of the LAC in February 2013. Before this, he'd been Deputy Judge President of the court under Dunstan Mlambo JP – the latter appointed to the LAC in November 1997, and since 2002 chairperson of Legal Aid South Africa ('LASA').

4. I charge the respondent with failure to maintain 'Judicial Independence', as required of him by Article 4 of the Code of Judicial Conduct ('the Code'), and with contravening his judicial oath to 'administer justice to all persons alike without ... favour or prejudice, in accordance with the Constitution and the law', thereby committing an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act.

5. Article 4 of the Code prescribes (my ellipses for relevance):

> A judge must –
>
> a) uphold the independence and integrity of the judiciary ... ;

(b) maintain an independence of mind in the performance of judicial duties;

(c) take all reasonable steps to ensure that no person or organ of state interferes with the functioning of the courts; ...

6. My complaint arises from the perversion of my petition to the respondent for leave to appeal against a Labour Court judgment in LASA's favour, by dint of an anonymous, undated, unsigned, unstamped 'Memorandum' ('the memorandum') drawn and passed to him by an apparently well-connected, top-level LASA officer, especially motivated to torpedo my petition, in which he aggressively denigrated me and lied about the issues before the trial court, the evidence at trial and my case on petition, with the object of defeating the ends of justice by prejudicing the respondent against me and against my case for leave to appeal to ensure it failed.

7. With which prejudice, having been improperly influenced by the memorandum, and in contravention of Article 4 of the Code, the respondent summarily dismissed my petition in the grossly irregular circumstances described and vouched below.

8. Annexed hereto are:

8.1. a copy of the memorandum, marked 'A';

8.2. an inventory of the petition file (DA21/14) in the Labour Appeal Court registry at Durban, dated 2 April 2015 and stamped on the same day by a registry clerk, recording the presence of the memorandum in the file, marked 'B'; and,

8.3. a copy of my petition, marked 'C.;

9. On 10 December 2014, in strict compliance with rule 4(1)–(5) of the Labour Appeal Court Rules ('LAC rules'), I filed my petition for leave to appeal against the dismissal of my action brought against LASA in the Durban Labour Court, in which I'd claimed an order instating me to its top professional position in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg, for which I'd been unanimously recommended by a duly constituted selection panel in November 2009.

10. I'd based my claim on unfair political discrimination, which on a careful conspectus of the information then known to me seemed the most probable reason my recruitment had been aborted, considering the shambles of internally contradictory, objectively contradicted, risibly false, radically different excuses that LASA's officers had advanced for not proceeding with my appointment (canvassed in my petition). (In December 2015, several months after my petition was dismissed, I obtained LASA's budget applications to the Department of Justice and Correctional Services for Senior Litigator salaries for the five years 2010/11 to 2014/15, which further categorically exposed and refuted LASA's main lying budgetary insufficiency excuse for not finalizing my appointment – which lie, repeated in the memorandum, both the trial judge and the respondent accepted. I accessed these financial records via a request made to the said Department under the Promotion of Access to Information Act 2 of 2000 ('PAIA'), after LASA had illegally refused a similar request in May 2015, contemptuously violating my fundamental right to information in its ongoing cover-up of the real reason for the off-the-record abortion of my recruitment.)

11. The Labour Court had dismissed my claim on 18 September 2014 – correctly, it turned out, albeit for very wrong reasons. A year-and-a-half later I discovered that the reason my appointment had been blocked had nothing to

do with my acute political unpopularity (accepted by the trial judge and canvassed at length in his judgment) and everything to do with jobs for pals. The selection panel's complete, uncensored recommendation report, which I finally succeeded in clawing out of LASA at legal gunpoint in April 2016, after a long and bitter struggle for it over many years, revealed that my rival for the post, also shortlisted and interviewed for it, had been LASA Board chairperson Mlambo JP's judicial colleague for '±6 years' in the Labour Court, Mzochitwayo Ngcamu AJ (as he used to be).

12. It bears mentioning here, for reasons later to become apparent, that the potently relevant fact of Mlambo JP's long professional relationship with my competitor for the post had been determinedly and illegally concealed from me without any justification contemplated and allowed by Chapter 4, 'Grounds for Refusal of Access to Records', in Part 2 of PAIA, under which Act I'd requested the minute of the selection panel's recommendation in August 2010. My request for it was ignored and thereby mutely illegally refused in September 2010. It was expressly illegally refused in October 2010. In January 2011, under further pressure from the PAIA Unit of the South African Human Rights Commission I was given a copy of the selection panel's recommendation report, but heavily redacted, with this hotly relevant information carefully blacked out with a Koki pen to conceal it, unjustifiably under PAIA and therefore unlawfully. (I had no idea at that stage what was being hidden from me.) In February 2015, my renewed PAIA request in November 2014, after the dismissal of my labour claim, for the complete, uncensored recommendation report was obstructed with an incompetent and illegal charge for fees for background reading. In May 2015, the document was illegally refused again on the factually and legally idle basis that my request for it 'relates to' and was 'ancillary' to my past labour litigation and

was 'malicious and seeks to divert the resources of Legal Aid South Africa'. In December 2015, my application to court in November 2015 to compel the surrender of the record, among others, was opposed without good grounds, followed by a lengthy, meritless, filibustering answering affidavit full of spurious defences. Finally on 11 February 2016, LASA capitulated in court just before the commencement of argument, abandoned all its manifestly vacant defences, and at last agreed to surrender the complete unmutilated recommendation report document, five-and-a-half years after I'd first tried exercising my fundamental right to it, and had experienced this basic civil right to information persistently spat upon (with Mlambo JP's connivance; separate complaints to follow) as LASA determinedly hid from me the key information recorded in the document that my rival Ngcamu had been LASA Board chairperson Mlambo JP's judicial colleague for '±6 years' before he applied for the post.

13. LAC rule 4(6) permitted LASA to 'deliver an answering affidavit within 10 days of delivery of a copy of the petition.' In breach of this rule, it delivered its answering affidavit out of time on 22 January 2015. An excerpt of the first and last pages of this affidavit vouching this is annexed marked 'D'.

14. Generally indulgent about time limits in my litigation against LASA, I took exception on this occasion, for several reasons immaterial to detail here, to LASA's insouciant breach of the LAC rules and failure to file in time, and by notice delivered on 27 January 2015 objected to its late delivery of its answering affidavit. A copy is annexed marked 'E'.

15. LASA responded by bringing an application for condonation as contemplated by LAC rule 12(1): 'The Court may, for sufficient cause shown, excuse the parties from compliance with any of these rules.' LASA's notice of application, without its supporting affidavit, is annexed marked 'F'.

16. On being served with LASA's condonation application on 13 February 2015, I immediately set to the task of answering it, and in particular showing with reference to the cold print of contradicting records refuting them that LASA's two excuses advanced to the respondent for the late filing of its answering affidavit were no 'sufficient cause' for it, because they were both perjured.

17. Five days later on 18 February 2015, while still drafting my answering affidavit and before I'd completed and delivered it, I received an order of court by telefax notifying the dismissal of my petition. A copy is annexed marked 'G'.

18. According to the face of the order, the three judges of appeal who'd 'read the petition and considered the matter', and unanimously resolved to dismiss it, were Waglay JP and Davis and Sutherland JJA.

19. Since:

    19.1. my petition had been irregularly determined prematurely:

        19.1.1. before I'd been able to answer LASA's application for condonation and prove its excuses were lies (in keeping with the culture of casual mendacity in its governing ranks);

        19.1.2. before LASA's case for condonation had been tried; and therefore,

        19.1.3. before LASA's opposing affidavit was properly before court for consideration;

    19.2. I'd ascertained from a search of the law reports that, unlike in my special case, the respondent ordinarily took condonation applications seriously, and closely analysed and determined them with exemplary

care, as illustrated by his finely detailed judgment in Eberspächer v NUM (JA21/2007) [2008] ZALAC 11; [2009] 1 BLLR 44 (LAC); (2009) 30 ILJ 880 (LAC) (19 September 2008) (online at https://goo.gl/hgr7xc); and,

19.3. my petition identified a multitude of reversible, fundamental, critical procedural and evidential errors made by the trial judge at trial and in his judgment given more than a year later – all of which were eminently fit for argument on appeal on any objective, thoughtful and fair assessment,

I suspected foul play in the disposal of my petition; doubted that it had been properly read by the respondent, and read at all by the other appeal judges named in the order; and resolved to investigate.

20. I was an acting magistrate in Eshowe at the time, so I requested my retired accountant friend Christopher Rawlins in Durban to go over to court to examine the petition file and report its contents to me. Which on 1 April 2015 he did.

21. That same evening, Rawlins telephoned me to report that he'd:

21.1. found no record in the court file to show that Davis and Sutherland JJA had considered and decided my petition; in fact he found no signature on any document by any of the judges named in the order;

21.2. discovered the memorandum in the petition file, and had requested a registry clerk make him a photocopy; and had,

21.3. made an inventory of the contents of the petition file.

22. As I requested of him, Rawlins then scanned and emailed me the memorandum and his handwritten inventory.

23. Stunned by his discoveries, and particularly by the criminal depravity of the memorandum, I asked Rawlins to type his inventory and return to court to have the registrar check the contents of the petition file against it, item by item, and certify that it was true and complete. Rawlins did this the next day, and then scanned and emailed me his typed inventory, which a registry clerk had certified, after verifying it, by applying the court stamp.

24. I don't anticipate any dispute about the existence of the memorandum in the court file, because at my request Rawlins went back to court in August 2016 to examine the file again, and found the memorandum still there – only, now it had been moved to the top of the documents in the file.

25. Which shows that between Rawlins' inspections of the file in April 2015, and after I'd mentioned the existence of this criminal evidence in other litigation against LASA, somebody had drawn the file from the registry, gone through it in search of the memorandum, picked it out, looked it over, and then replaced it, but at the top of the pile, out of its original order in the file in which Rawlins had found it in April 2015.

26. Rawlins' affidavit confirming all this will be put up with this complaint.

27. To read the memorandum, magisterially condemning me and my petition, is to understand why the respondent concluded I was a personal and professional reprobate whose petition was fit only for the rubbish bin, and why he summarily dismissed it accordingly:

    27.1. It begins with a horrifying barrage of lying defamatory smears, to the effect that I'm a contemptible, base, stupid, irrationally stubborn and

deranged person who's unfit to be an advocate, so as to wreck my credibility and distract from the merits of my petition before the respondent read it.

27.2. It lies about 'What [was] common cause' at trial, namely that 'the position for which his [sic: he] applied for [sic] was frozen due to budgetary constraints', when in truth and in fact, this was LASA's defence version which at all times had been centrally in dispute. After which misrepresentation, the memorandum ambiguously concedes, in as many words, that what had just been falsely asserted as 'common cause' was centrally in issue: 'there is a dispute about the veracity of the decision to stop the process of appointment'. Indeed so, especially as LASA had repeatedly admitted before and at trial that no record whatsoever exists to show any such decision was ever duly taken – with its major adverse repercussions for specialist legal professional service delivery by LASA (a special repeatedly stated concern of the National Assembly), and its financial implications counted in millions of rands.

27.3. And it repeatedly lies that my petition:

27.3.1. 'does not say in what respect the labour Court erred' and 'does not say in what respect the court *a quo* erred in dismissing his claim', in other words disclosed no grounds for an appeal, whereas in truth and in fact, as is clear to any objective and judicious reader giving it an honest reading, it enumerated a host of clear, strong grounds; and,

27.3.2. contained no more than unfounded 'judgemental comments about the credibility of [LASA's] employees', whereas in truth

> and in fact, as is clear to any objective and judicious reader giving it an honest reading, my petition precisely showed – with reference to LASA's pleadings, interlocutory affidavits and records; to the trial record; and to categorical documentary proof of brazen perjury on two collateral points, elicited from LASA via PAIA after trial – that the evidence of LASA's single witness, National Operations Executive Brian Nair, on whose oral evidence the judge relied, to the exclusion of the documentary record contradicting it, was perjured on all material scores.

28. Since the memorandum is not only anonymous, undated and unsigned, but also unstamped, it evidently didn't cross the registrar's front desk before being placed in the file like any other court process.

29. Unless the registrar or one of his clerks was complicit in the corruption, perhaps knowing the author of the memorandum, and agreed to do him the favour by irregularly slipping the memorandum into the court file without stamping it, the fact that the memorandum is unstamped means that someone at LASA with the motive, the power, the influence and the connections bypassed the registrar and his clerks and delivered the memorandum directly to the respondent. Who then, fortunately for me, forgot to remove it.

30. I request that the Judicial Service Commission investigate who authored the memorandum and gave it to the respondent with the criminal intention of interfering in his decision of my petition, by poisoning him against me and my case and thereby defeating the ends of justice. The respondent will undoubtedly be able to identify him.

Note: Page 11 of the signed and attested complaint was inadvertently missed during the scanning. So to complete the scanned copy, page 11 from the final PDF before it was signed has been inserted here.

31. In its enquiry the Commission may find relevant the fact that of all the multifarious LASA records to which I sought access under PAIA in my persistent and thorough investigation of the true reason my recruitment had been aborted (revealed only after the trial), the only record mentioned obliquely in the memorandum is the minute of LASA's Board meeting of 31 August 2010, chaired by Mlambo JP: 'There is a dispute about the veracity of the decision to stop the process of the appointment for which the petitioner had requested [the] recording of the board meeting.'

32. LASA's own records, annexed and marked up for clarity, expose and refute the outright lie told the respondent in the memorandum that 'the position [I'd] applied for was frozen due to budgetary constraints' and the lying insinuation that the Board had taken a 'decision to stop the process of [my] appointment' to the critical, top-deck Senior Litigator post for this reason.

33. The minute of the Board meeting in question shows very differently, namely that the Board approved (annexure 'H') LASA executive management's proposal to temporarily freeze recruitment only to some entry-level, lower criminal court public defender posts until the Department had paid over LASA's outstanding OSD Phase 1 allocation for legal staff salary increases (annexure 'J') – a stunt, LASA's witness Nair credibly explained at trial, contrived to spur the Department into paying, which it did, in short order: the additional funds were provided for in the National Medium Term Budget in October 2010 (annexure 'K') and paid in December 2010 (annexure 'L').

34. The fact that the respondent confidently acted and relied on the memorandum to summarily dismiss my petition before all the papers were in shows that he knew and trusted its author.

35. It's inconceivable that the respondent delegated a junior law clerk to read and decide my petition for him, and that the memorandum merely records the junior law clerk's advice to him to dismiss it, because apart from being extraordinarily dishonest and hostile to me, which a junior law clerk would have had no motive to be, it's an impeachable contravention of Article 9(c)(ii) of the Code to 'shift the responsibility to ... decide a matter to another judge', let alone to a junior law clerk. And LAC rule 4(7) entitled me to the evaluation and decision of my petition by three senior, experienced judges of appeal: 'A petition must be considered by three judges of the court designated by the Judge President.' And not by a junior law clerk.

36. A second fact the Commission may find relevant in its enquiry as to the author of the criminal memorandum that perverted my petition is the high-toned attack it makes, yet again, in Mlambo JP's familiar routine, on my personal and professional integrity: 'The petitioner's vulgar and insulting language is prevalent throughout his affidavits. Such conduct is unacceptable for a practising advocate. His vulgarity has clouded his mind [etc]'.

37. The language of my petition doesn't support this low charge, and indeed there are two clear indications that the respondent didn't agree with it:

    37.1.1. Section 162(2) of the Labour Relations Act 66 of 1995 provides (my ellipses for relevance):

> When deciding whether or not to order the payment of costs, the Labour Court may take into account –
> (a) ...
> (h) the conduct of the parties –
> (i) in proceeding with ... the matter before the Court; and

(ii) during the proceedings before the Court.

But in dismissing my petition, and evidently finding no fault with my conduct in the way I worded it, the respondent made no order as to costs against me.

37.1.2. Article 16 of the Code imposes a peremptory obligation on a judge 'with clear and reliable evidence of serious professional conduct ... on the part of a legal practitioner [to] inform the relevant professional body ... of such misconduct' (my ellipses). Note 10 to the Code's Preamble provides that the failure of a judge to report such misconduct itself constitutes 'misconduct which will lead to disciplinary action'. But the respondent evidently found no misconduct by me in the manner in which I framed my petition, because he didn't report me to my 'relevant professional body' for any.

38. The trial judge found no fault with my interlocutory affidavits either. I pertinently asked him during the argument of my labour case whether he was minded to criticise my conduct and prosecution of my claim in any way, seeing as LASA had consistently claimed it damnable and sought punitive costs against me, in order that I might defend myself. He waved me away, and made no such finding in his judgment. Which shows he saw nothing remiss about the language of my affidavits, or pleadings, much less that it amounted to misconduct warranting a report to my 'relevant professional body'. And which means that, like the respondent, he also found my affidavits entirely proper – contrary to the lie told by the author of the memorandum that my 'vulgar and insulting language is prevalent throughout his affidavits. Such conduct is unacceptable for a practising advocate.'

39. In my First Complaint against Mlambo JP, I document several previous instances of his similar, baseless, low-kicking, ad hominem attacks on my personal and professional integrity.

40. Judges call such a consistent pattern of distinct, characteristic conduct 'similar fact evidence' to establish the identity of criminal perpetrators.

Signed at Mtunzini on 15 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 15 June 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

Name: Photomile Nene

Address: 01 Clarke avenue, Mtunzini

Capacity: Constable

SOUTH AFRICAN POLICE
COMMUNITY SERVICE CENTRE
2017 -06- 15
MTUNZINI
KWAZULU-NATAL

DA21/14

ANTHONY ROBIN BRINK **Petitioner**

and

LEGAL AID SOUTH AFRICA **Respondent**

MEMORANDUM

The petitioner's vulgar and insulting language is prevalent throughout his affidavits. Such conduct is unacceptable for a practising advocate. His vulgarity has clouded his mind so that his application does not say in what respect the Labour Court erred in rejecting his claim.

What is common cause is that the petitioner applied and was shortlisted for the position of senior litigator Pietermaritzburg. He was recommended for a second round interview but the position for which his applied for was frozen due to budgetary constraints. He was only made aware of that decision after numerous telephone calls and correspondence. There is a dispute about the veracity of the decision to stop the process of the appointment for which the petitioner had requested recording of the board meeting in terms of the Promotion of Access to Information Act 2 of 2000.

Notwithstanding the above dispute, the petitioner does not say in what respect the court *a quo* erred in dismissing his claim. All is said in his affidavit is his judgmental comments about the credibility of employees of the respondent.

R37

CONTENTS OF CASE FILE DA21/14

1) Blank Petitions Control Sheet with notification of case number on 10 Dec 14 attached

2) Brown cover page 3/3/2 headed Held in Durban–in the Labour Court of SA, petition set down for 18 Feb 2015, judges Waglay, Davis and Sutherland, order petition refused. Attached fax sheet of 2 page decision sent 15-13 on 18 Feb 2015

3) Letter of 27 Feb 2015 from C.Phophi to A.Brink

4) Petition refusal order stamped 18 Feb 2015 , Juta Street, Phophi, LAC

5) Respondent's notice of objection to late hearsay affidavit signed by T.Mtati 11 Feb 2015

6) Service affidavit:objection to opposing affidavit dated 12 Feb 2015 signed A.Brink 2 Feb 2015

7) Affidavit in support of proof of service Rule 4(2)(b) by Akhona Lucas Nobetsu filed Juta Street 17 Feb 2015 confirming that on 13 Feb 2015 he served a condonation application and notice of objection on the petitioner

8) Undated, unsigned memorandum regarding petitioner's vulgar and insulting language, brief summary of the dispute with conclusion that the petitioner does not say in what respect the court a quo erred in dismissing his claim as his affidavit is only his judgemental comments about the credibility of employees of the respondent.

9) Respondent's notice of objection to the petitioner's affidavit filed in support of a notice of objection dated 2 Feb 2015, filed Juta Street 11 Feb 2015 signed by T.Mtati 11 Feb 2015

10) Objection to opposing affidavit filed Juta Street 4 Feb 2015 signed A.Brink at Eshowe 27 Jan 2015 sworn Eshowe 1 Feb 2015

11) Bound red cover Petition for leave to appeal original filed Juta Street 9 Dec 2015 signed A.Brink at Eshowe 7 Dec 2014 with attached refusal of application for leave to appeal by Cele J in chambers 27 Nov 2014 with Appearances- for the applicant:in person, for the respondent Mokeoena and Machaba, the Judgement by Cele J, application for leave to appeal signed Eshowe 3 Oct 2014 and Heads signed at Pietermaritzburg 16 Sep 2013.

12) Affidavit of service of answering affidavit to the supporting affidavit in the petition for leave to appeal filed Juta Street 23 Jan 2015 sworn by Sekgota, attaching email of 22 Jan 2015 to Ngcamu, copying Mehta, Vilakazi and Brink.

13) Notice of objection to respondent's opposing affidavit signed Brink at Eshowe 27 Jan 2015

14) Notice of intention to oppose petition for leave to appeal filed Liberty House 21 Jan 2015 dated at Durban January 2015 with attached affidavit filed Durban 21 Jan 2015 signed by Sekgota confirming he sent email to Brink on 20 Jan 2015 at 3-42pm followed by a telephone call, sworn and signed at Braamfontein on 21 Oct 2014.

15) Notice of filing of respondent's opposing affidavit at Juta Street on 23 Jan 2015 with 33 page affidavit signed and sworn by Mtati on 22 Jan 2015.

16) Respondent's notice of motion : application for condonation filed Juta Street 5 Feb 2015 signed Pp Mtati Johannesburg 5 Feb 2015 attaching 8 page founding affidavit sworn by Mtati 4 Feb 2015, attaching email from Mtati to Machaba copying Sekgota on 15 Jan 2015 saying he had not received a copy of the petition and a confirmatory affidavit, application for condonation sworn by Sekgota at Johannesburg on 4 Feb 2015.

17) Affidavit of service of notice of intention to oppose the petition for leave to appeal, two copies, filed Durban 28 Jan 2015 sworn by Sekgota 21 October 2014 attaching email to Brink 20 Jan 2015

18) Notice of filing of respondent's opposing affidavit at Durban on 28 Jan 2015 sworn by Mtati 22 Jan 2015

19) Letter from A.Brink to James Kamanga, Durban Labour Court, re petition case number.

20) Service affidavit sworn by Brink at Eshowe on 10 Dec 2014

21) Notice of intention to oppose petition for leave to appeal filed Durban 21 Jan 2015 with affidavit of service by Sekgota sworn at Braamfontein on 21 October 2014.

Contents listed by C.F.M. Rawlins 2 April 2015 C.F.M Rawlins.

ARBEIDSHOF
PRIVAATSAK X54570
DURBAN 4000
2015 -04- 02
1ST FLOOR LIBERTY HOUSE

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

In re: Case D529/11

In the matter between

ANTHONY ROBIN BRINK — Petitioner

and

LEGAL AID SOUTH AFRICA — Respondent

PETITION FOR LEAVE TO APPEAL AND TO LEAD NEW EVIDENCE ON APPEAL

To: Judge President Basheer Waglay, Labour and Labour Appeal Courts of South Africa, and to the judges designated to consider this petition.

And to: Legal Aid South Africa
c/o Durban Justice Centre
332 Anton Lembede Street
Durban
(Mr Ngcamu)

The petitioner, Anthony Robin Brink, applies for an order granting him leave (i) to appeal to the Labour Appeal Court against the dismissal of his unfair discrimination claim with costs by Cele J in the Durban Labour Court on 18 September 2014, his application for leave to appeal and to present further new evidence on appeal having been refused on 27 November 2014, and (ii) to present further new evidence on appeal.

The petitioner's supporting affidavit under rule 4(1) of the Labour Appeal Court Rules is annexed hereto.

Signed at Eshowe on 7 December 2013

ANTHONY ROBIN BRINK
APPLICANT
1 Boast Street, Eshowe, KwaZulu-Natal
Telefax: 086 672 0776

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

In re: Case D529/11

In the matter between

ANTHONY ROBIN BRINK — Petitioner

and

LEGAL AID SOUTH AFRICA — Respondent

SUPPORTING AFFIDAVIT

I, Anthony Robin Brink, affirm:

1. I am an adult male, 55, an advocate of the High Court of South Africa of three decades standing, currently resident at 1 Boast Street, Eshowe, KwaZulu-Natal, where I'm based as an acting magistrate on short-term renewable contracts pending the correct decision of this most important case; and I am your petitioner. This affidavit sets out my case for your leave to appeal, and present further new evidence on appeal, in the form prescribed by LAC rule 4(1). To comply with the stricture imposed by rule 4(3), I've limited it to just 50 paragraphs, so it can't be and isn't exhaustive. For concision, I'll refer to the respondent as 'LASA'; to my main heads of argument as 'my heads'; to the judgment in the case as 'the judgment'; to my application for leave to appeal as 'my application'; and to the judgment refusing it as 'the refusal'. These documents will be bundled with this petition. My considered specific approach in preparing this affidavit has been dictated by the wider public dimensions of the case to be mentioned.

2. As I'll show, this is an extraordinarily serious matter with colossal implications extending way beyond my personal interest in its just resolution. It concerns the personal and professional integrity of a sitting judge president, formerly of this court, and that of the most senior management executives of a major public entity. I speak of the perversion of separate Ministerial and Parliamentary enquiries by dint of multiple, objectively demonstrable lies, and different lies told variously to me, to the LASA Board, to the SAHRC, and to court (different lies told in the pleadings and interlocutory affidavits, and

then at trial), and of the gross breakdown of proper corporate governance and the rule of law at LASA, all of which the trial judge looked past in his seemingly clear and definitive, but in fact deplorably inattentive, glib, crude, and perfunctory judgment, riddled with the most basic legal and factual misdirections, omissions and non-sequiturs, and characterised by his failures over and over again to consider the radical contradictions and the ludicrously improbable, manifestly untruthful, and objectively contradicted evidence of LASA's single witness at trial, National Operations Executive Brian Nair.

3. I'll advert later in this affidavit to the capital misconduct and massive and pervasive corruption to which I allude here, as well as to the judge's own gravely prejudicial misconduct in the case that thwarted a full and proper ventilation of the issues that I looked to him and trusted him to try.

4. In his refusal the judge didn't treat the clear-cut new evidence surfaced after trial showing unequivocally that Nair had lied to him on oath in two respects.[1] To the judge, Nair's categorically proven repeated mendacity in court made no difference to his assessment of the credibility of his evidence. Your lordships can hardly agree.

5. The judge elliptically conceded[2] his fundamental legal misdirection, identified in my application,[3] that in deciding the case he'd misallocated the final onus of proof, which he'd placed on me[4] instead of on LASA. He then sought to avoid the fatal ramifications of this radical error by two means:

6. First by stating that the Employment Equity Amendment Act, which reversed the onus of proof in unfair discrimination claims by legislation, was only proclaimed in August 2014, after the trial and argument of the case, and didn't have retrospective effect – failing to note that the amendment merely codified the international jurisprudence on the point, supported by the International Labour Organisation and therefore prescriptive and binding on him.[5] That is, the onus was reversed and lay on LASA, even before the amendment of the Employment Equity Act. I treated this crucial, foundational aspect

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[1] Application for leave to lead further evidence (Part One of the application). I'm confident that several pending PAIA requests that I filed after the case, testing novel, surprising claims Nair made at trial – unanticipated by the correspondence, reports, pleadings and interlocutory affidavits, and at odds with them – will yield further cold print evidence of Nair's prolific perjuries at trial, and of his successful fraud on the judge I'll seek leave to lead this new evidence on appeal, once it's to hand.

[2] Refusal, paragraph 5.

[3] Application, paragraphs 191–211.

[4] Judgment, paragraphs 65 and 67.

[5] EEA, section 3, law and case bundle, pages 16–17.

extensively in my application, quoting the authorities chapter and verse.[6] The judge's response was to silently look away.

7. And second by asserting that even if I was right about the incidence of onus, irrespective of where it lay his decision wouldn't have been any different – notwithstanding that LASA relied entirely on the mere say-so of its single witness Nair, unsupported by any records, and indeed contradicted by them, a witness the judge acknowledged I'd shown to have been 'not generous with the truth'[7] on numerous scores.[8] Instead of considering the implications of this for Nair's credibility as a witness, he took him at his word,[9] mechanically reciting his evidence as gospel, without any endeavour to assay its veracity. It seems to have been inconceivable to the judge that such a high public officer could be a practised, confident, spontaneously inventive, unctuous, bare-faced, abject liar.

8. In his refusal, the judge failed utterly to address and deal with the rest of my attack on his judgment in my application, in which I demonstrated all his basic errors, too many to recite here, including the huge prejudice he caused me by refusing to allow me to cross-examine LASA's officers I'd subpoenaed for the purpose,[10] thus depriving me of some major artillery I'd lined up; and he swept the whole thing – all 59 pages and 323 paragraphs – off the table in a single dismissive paragraph.[11]

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[6] Application, paragraphs 204–11.

[7] Judgment, paragraph 67. I'm currently preparing perjury charges for the criminal prosecution of Nair and other officers for their numerous lies told under oath in this matter to date, and collecting further evidence for this purpose using PAIA. Predictably, nearly all my first three PAIA requests filed after trial were illegally refused on legally spurious grounds, and three applications I've brought to compel are currently pending. I'm awaiting responses to four subsequently filed further requests. I've just discovered from the SAHRC that LASA has once again failed to report its refusals in its 2013/14 report as required by section 32 of the Act, and has concealed its reliance on entirely irrelevant and incompetent sections of it. Despite having been previously censured by the SAHRC and taken to task by the Portfolio Committee for this (record, page 472, lines 4–25 to page 477, lines 1–7), it's now the third time that LASA has falsely and deceptively reported to the SAHRC for the misinformation of the National Assembly in turn, to conceal its illegal refusal of my PAIA requests to suppress documentary evidence of corruption in executive management.

[8] Ibid.

[9] Judgment, paragraph 69, last sentence for instance. (By the way, contrary to the judge's misdirected and irrelevant finding here, it was not my case that Nair knew of my background other than from my CV, and later my letter to Vedalankar in July 2010 detailing it further – the first he pretended not to have read until more than a year after receiving it (record, page 416, lines 19–25 to page 417 lines 1–2), and the second he pretended to have stopped reading at precisely the point it began dilating on my political background (record, page 460, lines 3–25 to page 461, lines 1–5); but this latter lie is exposed by his different story to the Minister and to Parliament in the reports to them that he wrote for Mlamboo JP to sign and submit to them, which he later repeated even more precisely on affidavit: heads, paragraphs 153–7.)

[10] Application, paragraphs 317–322.

[11] Refusal, paragraph 5.

Pietermaritzburg one.[65] In court Nair told a completely different story, namely that despite his repeated attempts to persuade her, Vedalankar refused to approve the creation of the post at Mthatha,[66] where it was reportedly sorely needed,[67] after the entire LSTC had unanimously resolved to create it and to transfer the budget from Kimberly, where there was reportedly no need for it,[68] and after the new Mthatha post had been advertised, interviewed for, and a candidate selected for it. It was a risible new lie, sharply contradicting LASA's pleaded and sworn version before trial, unsupported by any record,[69] not alleged in any affidavit or pleading,[70] and contradicted by LASA's recruitment/vacancy statistics for June 2010.[71] But Nair's new lie in evidence made no impression on the judge; as said, he didn't mention it.

41. The LAC is also certain to treat an important aspect of the case, entirely disregarded by the judge[72] (notwithstanding his fine grasp of the specifics of public service appointment procedure displayed in his Baxter judgment),[73] namely Nair's incompetent and illegal so-called second round interview scheme for Senior Litigator candidates – unauthorised by the Board's Recruitment code and inconsistent with its Approval Framework.[74] Unlike the judge, the LAC is certain to remark on the disgraceful breakdown of lawful recruitment procedure at LASA, in blatant disregard of the Board's said regulatory instruments which precisely govern this, and on Mlambo JP's participation in a grossly irregular, prejudicial, and unlawful recruitment practice.[75]

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[65] Heads, paragraphs 188–193.

[66] Record, page 365, lines 10–25 to page 366, lines 1–9.

[67] Record, page 401, lines 7–12.

[68] Record, page 363, lines 8–25 to page 364, lines 1–9 and page 402, lines 3–9.

[69] Record, page 436, lines 8–19 and page 490, lines 6–24.

[70] Record, page 490, line 25 to page 491, lines 1–8.

[71] Record, page 399, lines 9–21.

[72] Judgment, paragraphs 73–4.

[73] Law and case bundle, pages 94–7.

[74] Heads, paragraphs 90–8.

[75] The LAC is also likely to remark on the shocking irregularity of Mlambo JP allowing Vedalankar, the very subject of my complaint to him and the Board about her illegal refusal to comply with my first PAIA request and the indications that her budgetary pretext was false, to fake a letter from him on her own computer while he was abroad, dismissing my 59-page petition in a single sentence, with an scanned image of his signature pasted below it (with his consent, LASA pleaded). Looking the other way as I protested and showed my fundamental rights were being violated. Then, when I petitioned the Board again, insultingly showing me the road and telling the rest of the Board to ignore my further communications. Then defaming me to the chairperson of the Portfolio Committee, in his letter covering his lying report, when I petitioned the Board for the third time, now copying the Minister and Parliament.

42. His lies proliferating in court as he was trying to shore up his collapsing story about why he never signed his approval (or disapproval) of my recommendation by the selection panel as the Approval Framework required of him, and as provided at the foot of the document (with its legal nonsense, at his instance, about a further interview), Nair claimed in court that he didn't have to – a lie repeatedly and squarely contradicted by LASA's pleadings and interlocutory affidavits.[76] The judge didn't note this; again the LAC is sure to.

43. Unlike the judge who accepted and believed it, the LAC is also sure to find stupidly ridiculous and manifestly false Nair's evidence, building on his just-mentioned lie, but again explicitly contradicted by LASA's pleadings and interlocutory affidavits,[77] that all candidates interviewed by the selection panel were eligible for interviews by his so-called second round interview panel, including those rejected and eliminated by the selection panel, and that a candidate rejected by the selection panel could properly have been appointed instead of me[78] – stultifying the whole purpose of the selection process by the selection panel comprised of LASA's most senior lawyers in the region: to identify the most suitable candidate for appointment, as the Recruitment code puts it.[79]

44. The LAC is certain to find Nair's evidence to have been obviously untruthful just about whenever he opened his mouth. On a proper allocation of the final burden of persuasion to LASA, therefore, the LAC is certain to find that LASA failed to justify its abortion of my appointment to the Pietermaritzburg Senior Litigator post for which I'd been unanimously recommended. It failed to do so, because its various explanations given were obviously untrue. So what?

45. Pioneered by the U.S. Supreme Court, there's a finely developed body of international labour jurisprudence, supported by the ILO, and therefore binding on our labour tribunals, regarding what inference may properly be drawn where it's been shown that an employer has lied (or its explanation is not worthy of credence) about its reason given for not hiring a job applicant belonging to a constitutionally protected class (racial, political, etc). Copying and pasting from my heads, the judge very ably set this law out in his

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[76] Record, page 502, line 25 to page 503, lines 1–25; heads, paragraphs 146–7.

[77] Heads, paragraph 148.

[78] My manuscript note of Nair's evidence on which I relied for the above-mentioned paragraph of my heads was off; Nair alleged that all candidates were eligible for his so-called second round interviews, not that all would necessarily be interviewed again: record, page 349, lines 7–15 and 21–3; page 350, lines 10–11; page 407, lines 13–17; page 408, line 25 to page 409, lines 1–25 to page 410, lines 1–2 and 10–12; and page 450, lines 7–10.

[79] Heads, paragraphs 90–8.

judgment.[80] Doing the same, he also accurately set out the facts I presented placing me in such a class.[81] He didn't demur at my evidence that in applying for the post I'd been vulnerable to unfair political discrimination.

46. But instead of applying the law that he'd enunciated, and proceeding to draw the due inference indicated by the evidence – the known facts and the exposed and obvious lies – the judge dismissed my claim to have been unfairly discriminated against on political grounds as 'mere speculation'.[82] As if I'd not set up a plausible, prima facie case for it – all I was required to do under international and local unfair discrimination law – answered with one lie after another. Yet during oral argument, the judge took my point and taxed LASA's counsel with it: that an employer's mental prejudice against a job applicant is rarely announced, precisely because it's unconstitutional and therefore gravely illegal, and must therefore invariably be inferred from a conspectus of all the available evidence, weighed with the probabilities.[83] Besides the pivotal evidence I presented that the various justifications advanced for not appointing me were false and pretextual, the judge entirely failed to consider all the other evidence indicating unfair discrimination reviewed in my heads.[84]

47. To conclude: in bringing my claim against LASA I was aware I was breaking three basic rules: never sue a corporation, never represent yourself, and never sue from principle. But I thought the principle extremely important in our post-apartheid order – that a job applicant should not be prejudiced by his political activism, driven by his moral and social conscience, no matter how opprobrious his cause is generally perceived to be – and that my case was so clear that any attentive judge would grasp it. I did not expect the judge to

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[80] Judgment, paragraph 66.

[81] Judgment, paragraphs 30–41.

[82] Refusal, paragraph 5.

[84] I should disclose that documents that came to hand after the trial, considered with others I already had, point at possible corruption in the selection process; in that although I'd been formally, unanimously 'identified' in the recommendation as 'the most suitable candidate for appointment', as the Recruitment code puts it, it may have been intended to appoint a rejected candidate instead: a former Labour Court judge. And this is why my appointment was quietly iced, until I walked away, making way for his appointment in my place. (Recruitment corruption at LASA is commonplace. the previous recruitment for the same post had also been irregularly aborted off the record after the due selection of a suitable candidate by the selection panel; and I've uncovered corruption in other recruitments I've looked at, including the Mthatha Senior Litigator one, a sham for the books.) I'm investigating this possibility with a pending PAIA request, but I'm not optimistic that the records it will elicit will be decisive. So I'm not charging that the selection process was corrupt, and that my appointment wasn't proceeded with for the reason that the said rejected candidate had been favoured for appointment behind the scenes instead of me, because the evidence I have suggesting this is currently too light. If this changes, the LAC will certainly be told.

[84] Heads, paragraphs 246–7.

be nodding off during the afternoon sessions,[85] and finally claiming perversely, but revealingly as to his negative animus, that I ought rather to have taken LASA's abortion of my appointment 'on review'.[86] As if I shouldn't have come bothering him to deliver the justice I craved, and had laboured bitterly year after year before trial to achieve, in the face of every obstacle corruptly placed in my way,[87] viciously defamed all the while, contemptuously redoubled when I complained of it.[88] In a matter of such enormous importance, and with so much on the line extending far beyond my personal interest in the case, and with so much fact to traverse and complex argument to present, including relevant, applicable international labour jurisprudence mentioned in my opening address, I did not expect the judge to prescribe that our heads shouldn't exceed a manifestly insufficient 'fifteen to twenty pages',[89] suggesting that he'd already made up his mind to toss my case. I did not expect that five months after I filed my replying argument,[90] the judge hadn't even troubled himself to read our heads,[91] and was hearing our oral

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[85] I have an audio recording of the trial on DVD, capturing my repeated unnatural pauses as I waited, horrified, for the judge to reopen his eyes and come to. He was literally half-asleep at times. I dared not risk offending him by asking him to take a coffee break to wake up.

[86] Judgment, paragraph 74. I had no cause of action for any review, and duly referred my complaint to the CCMA and then the Labour Court in compliance with the procedural prescripts of the EEA.

[87] Heads, paragraph 256.

[88] Heads, paragraphs 260–5; record, page 485, lines 4–23. Reckless of their professional obligations as officers of court, LASA's counsel themselves put the boot in, wantonly lying to the judge in their answering heads that my precisely accurate CV was 'grossly inflated', which is to say I'm a liar guilty of CV fraud. (Mokoena SC, who argued the case in court, came into the matter after all heads had been filed, and did not draw the answering heads; and he's consequently innocent of this final defamation of me by LASA's counsel, calculated to defeat the ends of justice by prejudicing the judge against me with more lies to make me appear dishonest and therefore an unreliable witness.)

[89] At the end of the trial, the judge asked for heads of argument comprising four sections, 'background, evidence, analysis and conclusion', i.e. in the form of a draft judgment, so he could 'copy and paste from them', 'to expedite judgment production': a fine idea. But he stipulated not more than 15–20 pages: a hopelessly inadequate, improper and prejudicial limitation imposed on me after such a long and important trial with so much oral and documentary evidence and local and international unfair discrimination jurisprudence to canvass and discuss. Unpicking and refuting LASA's many outright lies and tricky half-truths and cataloguing all the contradictions was an immense job, as will be apparent from a look at my heads. After drawing them, as finely detailed as necessary, comprehensively and meticulously referenced to the documentary record, pleadings, affidavits, to the evidence (my notes), and to my law and case bundle, I prepared an unreferenced summary of 20-pages as directed; but I emphasized both in its head-note and at the oral argument that it was no substitute for my heads. From his several mistakes in the judgment identified in my application in regard to several simple facts dealt with in my heads, it seems the judge didn't read them through.

[90] On or about 6 December 2013 (date of signature).

[91] In his chambers before oral argument on 28 May 2014, the judge said jocosely: 'I think you can assume I'm literate and will read your heads.' The oral argument was set down for three days, 28–30 May, but on the basis just quoted the judge asked us to merely outline our main points; and in the result the oral argument wasn't

argument without having prepared for it[92] ten months after the evidence, and relying only on his fading and defective memory of it[93] presented in the course of a nine-day trial concluded the best part of a year earlier. In giving judgment, I did not expect the judge to misstate my case, omitting critical facts and including irrelevant matter, [94] and portray as maladroit and whimsical my precisely considered tactical and strategic decisions taken,[95] wrongly forced by him on the record[96] and improperly pressed by him off it.[97] I did not expect the judge to sugar Nair's lies for his judgment, by stretching and exaggerating them to help them go down.[98] And that besides getting the final onus wrong, he should also have placed on me an impossible, pivotal, evidential onus I very obviously didn't bear and couldn't possibly have discharged.[99] And finally after the trial trucking with LASA without my knowledge in unfavourably disposing of my plea for his directive that it hand over the extra copy of the trial record transcript it had printed for me.[100]

48. As said in the beginning, the stakes in this case are massive, and the implications vast. Professional and personal networks and loyalties being what they are in the real world, I appreciated from the outset that I was up against very long odds, and that notwithstanding his oath of office it would be no easy thing for a judge to impeach the conduct of his own (then) court president, and now president of the biggest, most

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long. I repeatedly emphasized during argument that my case was made in my heads, drawn in the form of a draft judgment, as he'd unambiguously implied after the trial he'd wanted. And that my barest sketch of it in oral argument was no substitute. Besides proof of pretext, the further evidence I relied to generate the inference that I was unfairly discriminated against, canvassed in paragraphs 246 –7 of my heads, wasn't recited in the judgment. Its paragraph 46 sets out a wrong, crude mishmash instead.

[92] At the end of the trial, the judge asked us to file written argument, saying that once it was in, he would want to ask us questions. I understood him to mean he'd read our heads, and question us on them. This didn't happen at all.

[93] As evidenced by the judge's many basic factual mistakes, identified in my application

[94] Judgment, paragraph 46. Besides proof of pretext, the further evidence I relied to generate the inference that I was unfairly discriminated against, canvassed in paragraphs 246 –7 of my heads, wasn't recited in the judgment; its paragraph 46 sets out a wrong, crude mishmash instead.

[95] Judgment, paragraphs 29 and 68.

[96] His refusal to allow me to cross-examine Vedalankar, Clark and Board member du Rand, stated during the debate of LASA's failed applications on the first day to quash my subpoenas of them. On why I ultimately elected not to call Vedalankar, Clark and du Rand, and settled for affidavits by the latter two in lieu of their oral evidence, see heads, paragraphs 103–4.

[97] His veiled warning in chambers not to go after the big fish (paragraph 36 above).

[98] Application, paragraphs 269–72 and 262–7.

[99] Application, paragraphs 273–82; judgment, paragraph 67.

[100] Per Mtati's wrongly dated letter in October 2014, received on the 13th: 'Cele J, through his office, suggested that the Respondent accommodate the Applicant by providing him with the electronic copy of the record which the Respondent did.'

important high court in the country, and thereby trigger a gargantuan scandal. But the truth must out, and justice needs doing fearlessly.

49. The Judicial Services Commission's response to my complaint about Mlambo JP's perversion of Ministerial and Parliamentary enquiries into my complaints was that it was no concern of theirs, on the technical basis that it didn't involve judicial misconduct per se. My complaints to the Public Service Commission were passed on to the Public Protector, but in view of the then approaching trial my file was closed; and with the dismissal of my claim, there's small chance of it being reopened. These official doors having closed on me for setting matters to rights, your lordships' correct decision of this petition is tremendously important for the ventilation of the truth, and for law and justice in our country. An unattended[101] splinter, so easily removed,[102] has led to widespread gangrene at the top of a major public entity, generally perceived to be the jewel in the crown of the Justice cluster, and a model of good governance. The matter has reached a pivotal moment.

50. Having regard to the profusion of contradictory lies that have spewed out of LASA, including to the highest authorities, in the cover-up following the illegal abortion of my appointment, to get away with and escape accountability for it – successfully so far, like Nixon nearly did after Watergate – your lordships can expect absolutely any lie from LASA in its answering papers, any subterfuge to persuade you to shut down further enquiry into this matter by refusing this petition. Since in-house attorney Mtati acting on instructions[103] can offer you no more than hearsay about the case,[104] and hasn't stinted at committing the most grotesque, poisonous perjury on affidavit on Nair's instructions to prejudice me in the court's eyes before trial;[105] and since the judge found Nair to have

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[101] I petitioned the Board five times in all, plus individual members, plus the Board secretary, all to no avail.

[102] I repeatedly pleaded for a timely, conciliatory resolution before the thing escalated unnecessarily.

[103] Record, page 390, lines 16–21; heads, paragraph 135. When conversing amicably at court before the delivery of judgment, I urged Mtati to seek a personal exit strategy in view of the several false interlocutory affidavits he'd made on Nair's instructions, replete with lies, he shrugged: 'I'm only an agent.'

[104] Record, page 390, lines 6–11. Mtati was appointed Corporate Services Executive in LASA's national office as from 1 July 2010. It's common cause he wasn't party to any decision-making about the abortion of my appointment, and has no direct knowledge of it.

[105] Heads, paragraph 268. Mtati: 'The most disturbing, reprehensible, unprofessional and brazen act of disrespect came recently when the Applicant left the KZN province and attended unannounced and without warning at the office of [Mlambo JP] at the South Gauteng High Court. [He] did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is represented this amounts to professional misconduct.' This lying defamation of me was the pure invention of a deeply cunning criminal mind, contrived to poison the court against me, in a bid to defeat the ends of justice (see further: application, paragraph 312) Which foul lie Nair supported with a confirmatory affidavit, surfaced after trial, only to meekly retreat from it

been untruthful under oath on any number of scores,[106] I respectfully entreat your lordships to require CEO Vedalankar, and not the former discreditable and unreliable persons, to depose to any answering affidavit under LAC rule 4(6) in regard to why I should be denied leave to argue my case before three senior, experienced, and attentive judges of appeal. At the centre of the case is the truth or otherwise of the budgetary insufficiency justification[107] for the abortion of my appointment to LASA's most senior professional position in KwaZulu-Natal, and it was Vedalankar who twice advanced it to me in her letters.[108] The prospect of being jailed for perjury may chill any inclination she might have to repeat under oath to your lordships the lies she told me. Like a helicopter, the unwelcome truth must eventually land, somewhere; and if you'll allow it, the proper place for it will be the Labour Appeal Court.

Dated at Eshowe on 7 December 2014.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on 7 December 2014 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he affirms its contents to be true to the best of his knowledge and belief.

SOUTH AFRICAN POLICE SERVICE
STATION
07 12 14
ESHOWE
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATHS

Name: Tobulani Dansa

Address: Eshowe SAPS

Capacity: Policeman Lt 0643427-1

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in court when I disputed it, pointing out that I'd never seen or met Mlambo JP, had never set foot in the South Gauteng High Court, and didn't even know where it was: record, page 485, lines 20–25 to page 486, lines 1–17.

[106] Judgment, paragraph 67.

[107] Heads, paragraph 5.

[108] In her letters of 18 October 2010 and 28 January 2011 (trial document bundle, pages 101–7 and 210–58). Vedalankar is also well placed to deal with Nair's new story in evidence blaming her for aborting the Mthatha Senior Litigator recruitment, diametrically contradicting the reason she gave me in her letters and later confirmed on affidavit. She can also deal with Nair's denial in court that he was responsible for authoring her letters to me (writing or instructing), and his claim that he had no hand in them, despite all indications to the contrary. And that she or Mlambo JP, not him (Nair), added the further new lies inserted into the report to the Minister before it was submitted in 'updated' form to the chairperson of the Portfolio Committee some months later. The look of it is that Nair used Vedalankar in his cover-up. The time's arrived for a division, and the isolation of the rogue(s)

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IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

Case Number DA21/14

In the matter between:-

ANTHONY ROBIN BRINK Petitioner

and

LEGAL AID SOUTH AFRICA Respondent

RESPONDENT'S ANSWERING AFFIDAVIT TO THE APPLICANT'S PETITION

I, the undersigned,

THEMBILE VUYO MTATI

do hereby make oath and state that:-

1. 1.1 I am an adult male person employed a Corporate Services Executive in the employ of the Respondent with my principal address at 29 De Beer Street, Braamfontein, Johannesburg.

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102.3. The Respondent also disapproves of the condescending manner and blackmail which characterizes this application and the Judges of this court.

CONCLUSION

103. I submit that the Petitioner has failed to demonstrate the material aspect upon which this honourable court could upset the decision of the court *a quo*.

104. Accordingly, the Respondent prays that the above court dismiss this Petition with costs.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit that was signed and sworn to, before me, at Johannesburg on this the 22nd January 2015. The regulations contained in the Government Notice No. 1258 dated 21st July 1972 (as amended) and Government Notice No. 1648 dated 19th August 1977 (as amended) having been complied with.

COMMISSIONER OF OATHS

ZANELE CHAUKE
COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA
7th FLOOR BRAAMFONTEIN CENTRE
23 JORISSEN STREET
TELEPHONE (011) 403-2755

R37

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

Case no: DA21/14

In re case no: D529/11

In the matter between

ANTHONY ROBIN BRINK — Petitioner

and

LEGAL AID SOUTH AFRICA — Respondent

NOTICE OF OBJECTION TO RESPONDENT'S OPPOSING AFFIDAVIT

To: Judge President Basheer Waglay, Labour and Labour Appeal Courts of South Africa, and to the judges designated to consider the petition.

And to: Legal Aid South Africa
c/o Durban Justice Centre
332 Anton Lembede Street
Durban
(Mr Ngcamu)

The petitioner, Anthony Robin Brink, hereby notes his objection to the respondent's opposing affidavit on the grounds that:

- it is out of time and non-compliant with Labour Appeal Court rule 4(6);
- comprises hearsay on all material points, unconfirmed and uncorroborated by the respondent's National Operations Executive and Chief Executive Officer directly involved in and having personal knowledge of the case;
- repeatedly contradicts the respondent's own case at trial, and in its pleadings, interlocutory affidavits, reports and correspondence;
- contains novel false claims not made at trial and in the respondent's pleadings, interlocutory affidavits, reports and correspondence;

- conflates unrelated and irrelevant facts and issues in a new manner at odds with the respondent's case at trial;
- is dishonest, misleading, and shot through with demonstrable perjury;
- employs red herrings to distract from the documented, objective facts inconsistent with and destructive of the defence version, which hard facts summarised in the petition the respondent entirely avoids answering;
- falsely disputes the trial court's finding that the respondent's single witness was shown to be repeatedly mendacious in his evidence; and further falsely disputes the petitioner's exact quotation of the judge's language in making this finding; and,
- repeatedly resorts to meretricious displays of high-toned indignation, baseless attacks on the petitioner's personal and professional integrity, obloquy, and derision to prejudice the court against the petitioner and to distract from the merits of his case and the gravity of his contentions, particularly apropos the misconduct, on the record, of the respondent's Board chairperson Mlambo JP in the matter,

– all intended to pervert the just decision of the petition on an appraisal of the objectively established facts, and all precisely identified in the petitioner's supporting affidavit to follow.

Signed at Eshowe on 27 January 2015

ANTHONY ROBIN BRINK
PETITIONER
1 Boast Street, Eshowe, KwaZulu-Natal
Telefax: 086 672 0776

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

L.A.C CASE NO: DA21/2014

LABOUR COURT CASE NO: D529/11

In the matter between:

ANTHONY ROBIN BRINK Petitioner

and

LEGAL AID SOUTH AFRICA Respondent

RESPONDENT'S NOTICE OF MOTION:

APPLICATION FOR CONDONATION

(I.T.O RULE 12 OF THE RULES OF THE LABOUR APPEAL COURT)

BE PLEASED TO TAKE NOTICE THAT the Respondent will, either at the hearing of the Petitioner's petition, or on a date to be determined by the Registrar of this honourable Court, make an application for an order in the following terms:

1. that the late filing of an Answering affidavit by the Respondent be and is hereby condoned;

2 that the period of ten (10) days provided for in rule 4 (6) of the Rules of this honourable Court be and is hereby extended to a date after the filing of the Respondent' answering affidavit;

3. that any party who opposes this application be and is hereby ordered to pay the costs of this application; and

4. further and/or alternative relief.

KINDLY ENROLL THE MATTER ACCORDINGLY

DATED AT JOHANNESBURG ON THIS THE 5th DAY OF FEBRUARY 2015

pp

LEGAL AID OF SOUTH AFRICA

Respondent's Attorneys

29 De Beer Street

Braamfontein

Johannesburg

Per Mr T. Mtati

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TO: **THE REGISTRAR OF THE LABOUR APPEAL COURT**

JOHANNESBURG

AND TO: **Mr A R BRINK**

Petitioner

The Flat,

1 Boast Street

Eshowe

Kwazulu Natal

Received o.b.o Petitioner

_____

Time and Date

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LABOUR APPEAL COURT OF SOUTH AFRICA
DURBAN

Case no.: DA21/14

Honourable Justices Waglay JP; Davis and Sutherland JJA

ORDERED on 18 February 2015

In the matter between

ANTHONY ROBIN BRINK PETITIONER

and

LEGAL AID SOUTH AFRICA RESPONDENT

ORDER

Having read the petition and considered the matter, the Court made the following order in this matter:

The petition for leave to appeal is refused with no order as to costs.

Reasons for refusing the petition:

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1. This court does not give reasons for its order refusing a petition for leave to appeal. This is in line with international practice and does not offend any constitutional principle.

2. The refusal of a petition for leave to appeal signifies that this court is of the view that the intended appeal has no reasonable prospects of success and that there is no compelling reason why it should be heard. This court therefore, in general terms, concurs in the reasoning of the judgment of the Labour Court.

3. Where a costs order is made against the petitioner, it is made to signify that the petition is devoid of any merit whatsoever.

BY THE COURT

REGISTRAR

	ACTIONS/DECISIONS	Responsible Person	Due date
1.	**WELCOME AND APOLOGIES**		
1.1	The Chairperson declared the meeting open and welcomed all present.		
1.2	The following apologies were noted • Ms S Monaledi • Mr V Jarana		
2.	**REGISTER OF INTERESTS** The Register of Interests was circulated and duly noted by all members present.		
3.	**MINUTES**		
3.1	**Minutes of the previous meeting** The minutes of the previous meeting held on 29 May 2010 were adopted.		
3.2	**Matters Arising Schedule** The Matters Arising Schedule was noted.		
4.	**MATTERS FOR APPROVAL** **<u>ALL COMMITTEES</u>**		
4.1	**Draft Annual Report 2009/10 including Annual Financial Statements** The Board approved the Draft Annual Report 2009/10 subject to the following amendments: • p16 that the designation of the person be placed next to their names in the same format as the name, • That the qualification (**CA(SA)**) be added to Ms Luthuli's credentials; • p78 under Mr Ramdas' name; 'City of Johannesburg; • P 76 that Judge Mlambo and Mr Makume's details be updated to reflect their new positions; The Board commended management on a comprehensive Annual Report that made good reading.	BS	31.08.10
4.2	**MTEF 2011/14 CONSOLIDATED** The Board approved the recommendations as contained in clause 8 of the document: *8.1 The Board approve the MTEF for the period ending 2011/12-2013/14.*	CFO	30.09.10
	8.2 The Board approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of Annexure I.	CEO	01.11.10

Legal Aid South Africa

ANNEXURE I

REPORT TO BOARD

16 July 2010

Impact of OSD funding shortfall on budget 2010/11

1. Background

1.1. The 2010/11 budget includes the outstanding OSD funding of R53.8million. This amount constitutes:

OSD Phase	Amount	Status
OSD Phase 1	R23.8 million	Implemented
OSD Phase 2	R30million	Not yet implemented
OSD Phase 2 back payment	R42million	Not yet implemented

1.2. On the 14 July 2010 Legal Aid SA COO met with both DoJ DDG, Mr Vuso Shabalala , as well as Adv Pieter du Rand, Legal Aid SA board member in order to clarify the position of DoJ regarding the outstanding OSD funding of R53.8 million for the 2010/11 budget period, as well as its effect to the MTEF baseline.

1.3. DoJ has indicated that they do not have funds to cover for the R53.8 million OSD shortfall. The Executive Authority has however in a meeting with the Legal Aid SA Board Chairperson expressed his wish to have Legal Aid SA service delivery maintained and that DoJ should make funds available to cover the OSD shortfall through the mid-year budget adjustments in September/October 2010.

2. **2010/11 Budget period**

2.1. In the event DoJ is unable to secure funds to cover the OSD Phase 1 shortfall, Legal Aid SA will have a deficit of R23.8 million in the 2010/11 Budget. Salaries for 2010/11 are budgeted at 97% with recruitment currently being at about 94%.

2.2. In order to mitigate the probable deficit, the following measures are proposed:

a) Court coverage is currently approximately 90% at Distric Courts and 100% at Regional Courts. For the remaining of the 2010/11 budget period, District Courts will be progressively reduced to no lower than 80% coverage whilst Regional Courts will be progressively reduced to no lower than 90% coverage. About R16 million will be saved from this measure, though its effect will be a reduction in the number of days that we are able to cover District Courts and Regional Courts. This has a direct negative impact on service delivery. Any further reduction on filled legal practitioner positions will result in a further percentage reduction in court coverage
b) The recruitment process will be reviewed, centralizing the decision on filling of posts at Executive level, with due regard to the need to prioritise critical positions;
c) Any savings derived during the financial year be reserved to cover part of the anticipated OSD shortfall.

2.3. In the event DoJ is unable to secure the OSD Phase 2 funding, the result will be that,

a) a potential labour unrest within Legal Aid SA will increase;
b) Legal Aid SA legal practitioners will be paid less than their counterparts in DoJ (who have already implemented OSD Phase 2), and those in NPA (in the event NPA finalise payments of OSD Phase 2).

3. **MTEF 2011/12 onwards**

Should DoJ not secure OSD funding in full, Legal Aid SA will have to revise its MTEF 2011/12 onwards. With the current macro increase on budget allocation received from National Treasury, Legal Aid SA salaries will continue to impact negatively on the Operational and Capital budget unless posts are either frozen or abolished. This will have a significant negative impact on service delivery and good progress Legal Aid SA has already achieved in providing legal representation to many indigent persons in the country.

4. Recommendation

To provide for the anticipated OSD shortfall funding of R23.8 million, it is recommended that:

I. Savings from the 2010/11 financial year be used to fund the OSD shortfall;
II. District Court coverage be approximately no lower than 80% coverage, while Regional Court coverage is reduced to no lower than 90% coverage, for the remaining part of the 2010/11 budget period. This will derive a saving of about R16million to cover the shortfall.

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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Medium Term Budget Policy Statement

2010

Speech

Pravin Gordhan

Minister of Finance

27 October 2010

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I am pleased to be able to table a comprehensive *Adjusted Estimates of National Expenditure* to accompany the *Adjustments Appropriation Bill* and – for the first time – a *Division of Revenue Amendment Bill*, for the consideration of the House. I cannot deal with all the adjustments in detail, but let me highlight the main points.

In total, the adjusted expenditure level is R2.5 billion lower than the February budget estimate, which included an unallocated contingency reserve of R6 billion. Contributing to this decrease is a lower provision for state debt costs due to the current strength of the rand and the decrease in interest rates, and savings declared by departments amounting to almost R2 billion.

The main additional allocations in the Adjustments Appropriation are as follows:

1. R1.8 billion in roll-overs arising from commitments related to unspent balances in 2009/10;
2. R6.2 billion to cover higher remuneration costs;
3. R396 million for various self-funding department-specific activities;
4. R2.2 billion in unforeseeable and unavoidable expenditure adjustments recommended by the Treasury Committee this year, including
    a) R769 million to cover property rates due to municipalities on behalf of provinces, funded through the *devolution of property rate funds grant*,
    b) R320 million for occupation-specific dispensation salary adjustments in the Department of Justice and Constitutional Development, the National Prosecuting Authority and Legal Aid South Africa,

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PAYMENT MADE BY : NAT: DEPT JUSTICE & CONST DEV
(BASD28) DISBURSEMENT NO : 000325484
OFFICE : NAT: DEPT JUSTICE & CONST DEV
PAYMENT DATE : 15/12/2010
CONTACT PERSON : HELP DESK
PAYMENT METHOD : CREDIT TRANSFER
CONTACT TEL NO : 0860 800 904 OR 012 309 9001

PAYEE NAME : LEGAL AID BOARD
BANK NAME : FIRSTRAND BANK LIMITED
PAYMENT ADDRESS : PRIVATE BAG X76
BANK BRANCH : BRAAMFONTEIN 054
BRAAMFONTEIN
BRANCH NUMBER : 251905

ACCOUNT TYPE : CURRENT ACCOUNT

ACCOUNT NO : 62224831471
2017
DISBURSEMENT STATUS : PAID

MICR NUMBER : 0

SUPPLIER CONTACT DETAILS : LEGAL AID BOARD TELEPHONE NUMBER:

SOURCE DOC PAYMENT TYPE NUMBER	SOURCE DOCUMENT NUMBER PAYMENT DESCRIPTION	PURCHASE ORDER NUMBER	AMOUNT
SUNDRY 00541218	LAB/DECEMBER 2010 LEGAL AID BOARD	NOT APPLIC	R 89453000.00

TOTAL : R 89453000.00

**** END OF REPORT

DBBS07BS ****

ZMN

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CONFIRMATORY AFFIDAVIT

IN RE: FIRST COMPLAINT AGAINST WAGLAY JP

UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT

I, Christopher Frank Milman Rawlins, make oath and say:

1. I am a retired accountant residing at 23 Norfolk Road, Berea, Durban.

2. I have read Anthony Brink's First Complaint against Waglay JP, signed and attested on 15 June 2017, and scanned and emailed to me on the same day, and I confirm that the allegations he makes regarding my knowledge of and involvement in the matters to which he has deposed are all true.

3. Annexure 'A' to the Complaint is indeed the anonymous, unsigned, undated and unstamped 'memorandum' that I found in the DA21/14 petition case file at the Durban Labour and Labour Appeal Court on 1 April 2015, which a registry clerk photocopied for me; and annexure 'B' is indeed the inventory I made of the contents of the case file, including the said memorandum, which I had a registry clerk verify on 2 April 2015 before applying the court stamp to certify it, as described in paragraphs 20–24 of the Complaint. And indeed, the memorandum was still in the court file when I looked again in August 2016.

Signed at Durban on 16 June 2017.

CHRISTOPHER FRANK MILMAN RAWLINS

Signed before me at Durban on 16 June 2017 by the deponent who acknowledged that he knows and understands the contents of this affidavit, stated that he has

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no objection to taking the Oath, confirmed that he considers it binding on his conscience, and swore that the contents of this affidavit are true.

210415-2
M. KHUZWAYO

COMMISSIONER OF OATHS

Name: MHLABUNZIMA KHUZWAYO

Address: 82 BOTANIC GARDENS Rd

Capacity: SAC

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
2021 -06- 16
BEREA
KWAZULU-NATAL

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

188, 14th Road, Noordwyk, Midrand, 1685
Private Bag X10, Marshalltown, 2107
Tel: +27 10 493 2500 (Switchboard)
E-mail: info@ judiciary.org.za
www.judiciary.org.za

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JUDICIAL CONDUCT COMMITTEE

Enq: Lynette Bios

Tel: (010) 493 2500(switchboard)

Fax: 086 640 9601

Mr. A Brink

25 Balcomb Avenue

Zini River Estate

Mtunzini

Per email: anthonybrink.sa@gmail.com

Our Ref: JSC/533/17

Dear Mr. Brink

RE: FURTHER COMPLAINTS AGAINST JUDGE PRESIDENT MLAMBO OF THE GAUTENG DIVISION OF THE HIGH COURT AND JUDGE PRESIDENT WAGLAY

The Judicial Service Commission (JSC) hereby acknowledges receipt of your complaints.

Your complaints will be forwarded to the Judicial Conduct Committee for consideration.

The Secretariat will notify you of the outcome of your complaint in due course.

Yours sincerely,

L BIOS

Secretariat for the Judicial Service Commission

Date: 29/08/2017

OFFICE OF THE CHIEF JUSTICE
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JUDICIAL CONDUCT COMMITTEE

Enq: Lynette Bios

Tel: (010) 493 2500(switchboard)

Fax: 086 640 9601

Advocate A Brink

25 Balcomb Avenue

Zini River Estate

Mtunzini

Per email: anthonybrink.sa@gmail.com

Our Ref: JSC/533/17

Dear Advocate Brink

RE: COMPLAINT AGAINST JUDGE PRESIDENT WAGLAY OF THE LABOUR AND LABOUR APPEAL COURTS

Kindly find the attached response from Judge President Waglay.

The Secretariat requests you to submit your comments (if any) by the close of business on 09 July 2018.

Yours sincerely,

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Secretariat for the Judicial Service Commission

Date: 28/06/2018

The office of the Honorable Mr. Justice Basheer Waglay

Judge President of the Labour Appeal Court and the Labour Court Of South Africa

and Judge of the High Court of South Africa (Western Cape)

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The Chairperson

Judicial Conduct Committee

RE: Complaint; Adv. Brink.

1. I refer to the letter addressed to me by the secretary of the Judicial Service Commission, Ms L Bios, regarding the complaint filed by Adv. Brink.

2. Adv. Brink's complaint is four fold;
   i. That Judges President Mlambo, Davis and I and Judge of Appeal Sutherland conspired against him in that Judge President Davis, Sutherland JA and I refused his petition after taking into account superfluous documents particularly an unsigned and unfiled affidavit;

ii. That we did not properly consider his petition because we did not give him a proper opportunity to oppose the condonation which was sought by the Respondent for filling their opposition out of time;

iii. That in any event we did not consider his petition as some junior clerk made the decision and not us as the panel; and finally,

iv. That there was a conspiracy managed by Mlambo JP who sought to and eventually appointed his "colleague" one Ngcamu to the post which the complainant should have been appointed.

3. All of the above is patent nonsense.

4. The petition was considered by Davis JP, (or JA as he is in the Labour Appeal Court) Sutherland JA and me. We did not consider the condonation application of the respondent as we concluded that the petition was without merit and we unanimously decided to refuse his petition. I may add that the Registrar of Labour Appeal Court (LAC) collects the petitions, makes copies of only the relevant documents, collates them and places them in three individual files and has them delivered to the three judges who are allocated the petitions. The files only contain relevant documents properly filed. All petitions are considered on the same day in the boardroom, after appropriate debate. Once the decision is made it is communicated to the Registrar who then informs the parties.

5. In this matter the complainant's petition was properly considered and refused and he was informed about it.

6. The complainant talks about documents he found in the Labour Court file. That has nothing to do with the Labour Appeal Court (LAC). The LAC has its own files, retained by its registrar Mr Phophi who is based in Johannesburg.

7. Finally, although it does not need to be said, I say it anyway. Mlambo JP has no role to play in the decisions of the LAC. Although I understand that the complainant has also filed a complaint against Mlambo JP in connection with this matter and intends to do so against Davis JP and Sutherland JA. I doubt that either of them will have anything further to add on this matter.

Yours faithfully

Basheer Waglay JP

BRINK'S COMMENTS ON WAGLAY JP'S RESPONSE TO HIS GROSS MISCONDUCT COMPLAINT

I, Anthony Brink, affirm:

1. I am the complainant in a complaint of gross misconduct filed with Judicial Service Commission ('JSC') in July 2017 against Waglay JP under section 14 of the Judicial Service Commission Act 9 of 1994 ('JSC Act'), and acknowledged by the Secretariat the following month. At its request on 14 June 2018, I resubmitted a copy of my complaint on the same day. The following are my invited comments on Waglay JP's response to my complaint.

2. To discredit my complaint, Waglay JP begins by falsely distilling it, and then ridiculing his caricature of it.

3. He makes allegations that are objectively demonstrably false in several instances and highly dubious in others.

4. In and among his variously clearly untrue and doubtful allegations, he weaves soothing bromides about how things are ordinarily done in his Labour Appeal Court ('LAC') – in doing so, obfuscating the incontrovertible, obvious, gross procedural irregularity in his disposal of my petition for leave to appeal the dismissal of my labour action[1] that tipped me to investigate it by having my LAC case file examined.

5. Throughout his response, in different ways, Waglay JP feigns unfamiliarity with the smoking gun in the case: the real evidence of the 'memorandum'[2] in my LAC file, which clearly perverted his disposal of my petition, having regard to the surrounding countryside of peculiar facts canvassed in my complaint.

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[1] As mentioned in paragraphs 10 and 11 of my complaint, I established years after the trial of my action in the Labour Court that it had been correctly dismissed – in the practical result, if not on the law and on the evidence before the trial judge. His most basic reversible legal and factual errors are identified in my petition: annexure 'C' to the complaint.

[2] Complaint, annexure 'A'.

6. Criticised in summary above, Waglay JP's disingenuous and deceptive response to misdirect the Judicial Conduct Committee ('Committee') in its determination of my extraordinarily serious[3] complaint against him will be finely analysed and laid bare below. In a word, his response is shockingly dishonest.

Ad paragraph 2 of the response.

7. Waglay JP tees off by claiming my complaint comprises 'four' legs, which he enumerates in four subparagraphs – only, wrongly and misleadingly on every score, as is plain from the black-and-white of my complaint.

Ad paragraph 2, subparagraphs i–iv.

Ad i.

8. It's absolutely false to claim, as Waglay JP does, that I allege in my complaint a four-part 'conspiracy'[4] between Mlambo JP, himself, and Davis and Sutherland JJA.

9. Apropos of the latter two appeal judges, my complaint records that there's no record in the appeal court file that they considered and decided my petition.[5] For this and other reasons discussed below, I'm sure they've no knowledge of the case, much less 'conspired against [me]' over it.

10. Apropos of Mlambo JP: I might begin by quoting Vahed J of the KwaZulu-Natal division of the High Court in his just delivered[6] reasons for dismissing Legal Aid South Africa's abortive application to interdict[7] my use of

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[3] Albeit indeed extraordinarily serious, involving, as it does, perversion of the judicial process through improper interference of a judge, my complaint is not extraordinary, in that it's neither the first of its kind made to the Judicial Service Commission, nor first of its kind made against a Judge President. The Judicial Conduct Committee is currently seized with another such complaint, also involving a Judge President, John Hlophe JP, head of the Cape High Court, but with the distinction that he's the active rather than the passive accused in the enquiry.
[4] He says 'conspired' in this subparagraph, 'conspiracy' in his subparagraph iv.
[5] Complaint, paragraph 21. It's unimaginable in the constitutional era that a judge can take a judicial decision with colossal repercussions – in casu involving the integrity of a judge president and many millions of rands – and that he should make no public record of it.
[6] On 25 June 2018.
[7] By seeking to have me banned as a vexatious litigant for repeatedly applying to court to compel compliance with duly made requests for access to LASA's records. At court, just before argument, LASA conceded my first five applications, which I'd set down together. It then tried derailing my sixth application to enforce full and proper compliance with its total surrender treaty, and my

the Promotion of Access to Information Act 2 of 2000 ('PAIA') in my continuing investigation of high-level corruption in the organisation ('LASA'): I'm a 'trained lawyer and an advocate'.[8] Words are my tools of trade,[9] and I use them with meticulous care – particularly when engaging with power, for as I'm keenly aware, one deficiency on the frontline, one misstep on the high-wire, and it's all over.

11. In neither my complaint against Waglay JP nor in any of my eight complaints against Mlambo JP do I formally charge the latter with authoring the memorandum that perverted Waglay JP's decision of my petition, and none of these several complaints currently pending before the Committee require it to make a finding that he did.

12. As I've made clear, however, I'm quite sure Mlambo JP authored the memorandum and passed it to his long-time erstwhile colleague in the Labour- and Labour Appeal Courts,[10] having regard to the stack of evidence to which I refer in paragraphs 36, 39 and 40 of my complaint, and I'm all the more certain now from the most recent potently cogent addition to the pile, namely his opening ad hominem attack on me and on my 'language' in his response to my eight complaints against him[11] – almost identical to the opening ad hominem

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seventh application to compel compliance with a final PAIA request it had agreed to respond to, by applying to have me banned as a vexatious litigant. At the hearing, Vahed J gave the application short shrift, and didn't even call on me to argue against it.

[8] Reasons for judgment delivered on 25 June 2018 in Pietermaritzburg High Court case 12124/16 heard and dismissed on 27 October 2018, paragraph 6. I'm also an experienced magistrate of the district, civil, and regional benches, my longest unbroken service having been as full-time civil trial magistrate for several years, with a sterling record on appeal. The quality of my civil judgments was raised appreciatively by judges in chambers when I went to meet them on joining the Bar.

[9] My legal writing has repeatedly been commended from the bench, including by the Chief Justice. During argument of an urgent application I drew pro bono for Professor Sam Mhlongo for an amicus curiae hearing in the seminal nevirapine case, Chaskalson CJ pertinently commended my papers, so Khoza SC informed me afterwards (I was tied up in the Eastern Cape as a regional magistrate at the time, so he argued the case for me). I'm the author of several well reviewed books in recondite technical, philosophical and ideological subjects, online with reviews by inter alia high-ranking scientists and leading investigative journalists at www.openbooks.tig.org.za.

[10] Complaint, paragraph 3.

[11] I canvass it in my comments on Mlambo JP's response, and in an annotation to the copy of my complaint I provided the JSC on 14 June 2018, at the foot of page 12, flagged under paragraph 36 on that page.

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attack on me and on my 'language' made in the memorandum. In both instances the method used to discredit me, and my case with it, is exactly the same.

13. If I'm right about this and it was indeed LASA chairperson Mlambo JP who slipped Waglay JP the memorandum that perverted the decision of my petition,[12] as the evidence suggests to me on the compelling probabilities,[13] this hardly evinces a conspiracy in the popular contemporary negative sense, which Waglay JP plainly intends, of unfounded, deluded and ridiculous, rather than the neutral legal sense of two or more minds covertly applied to a nefarious purpose.

14. Nor do I allege, as Waglay JP falsely claims, that he and the two other appeal judges he names 'refused my petition after taking into account superfluous documents particularly an unsigned and unfiled affidavit.' Waglay JP's statement here is materially misleading to the Committee on four counts:

15. *First*, as just said above, my complaint neither alleges nor implies any conspiracy between the four judges whom Waglay JP names, himself included.

16. *Second*, Waglay JP misleadingly exaggerates the documentation at the core of my complaint by speaking of 'superfluous documents', whereas he's well aware, not least because it's annexed to my complaint,[14] that it's a single document, the memorandum, that threw the case, and nothing else.

17. *Third*, by calling it 'superfluous', Waglay JP falsely implies that the memorandum had no bearing on the outcome of my petition. And the necessary corollary of this false implication is that due process was followed in treating my petition like any other; only, on his own version discussed below, it wasn't.

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[12] Besides the consistency of Mlambo JP's attacks on me, referred to in paragraphs 36, 39 and 40 of my the complaint, there's also the fact, mentioned in paragraph 6 of my complaint, that it must have been a 'well-connected, top-level LASA officer, especially motivated to torpedo my petition' who got the memorandum to Waglay JP under the counter, bypassing the registrar – someone Waglay JP 'knew and trusted', as noted in paragraph 34 of the complaint.

[13] It's also telling that in his response to my complaints Mlambo JP doesn't say he's mortified to learn that someone at LASA acted to corrupt the judicial process by getting at the Judge President with the memorandum dishonestly urging the dismissal of my petition; and that he's going to investigate and find out who in his organisation did such a wicked thing.

[14] Annexure 'A' to the complaint.

18. *Fourth*, Waglay JP falsely and misleadingly mischaracterises the document on two scores, by referring to it as 'an unsigned ... affidavit'. As is apparent on its face, the memorandum bears no resemblance to an 'unsigned ... affidavit' in any respect: it's anonymous; no author's named in it; and there's no provision for signature and attestation by a commissioner of oaths. Quite the contrary, the document is unambiguously styled 'MEMORANDUM' between tramlines under the appeal case header stating the parties and the appeal case number.

19. Waglay JP knows full well that I'm not complaining that he took into account 'an unsigned ... affidavit' in rejecting my petition. By misdescribing and mischaracterising the memorandum in these weasel words, his intention appears to be to distract from the gravity of his judicial misconduct by suggesting that at worst he erroneously entertained no more than a technically defective legal process.

20. In the same way, Waglay JP also dissembles unfamiliarity with the memorandum, as if he's not seen it before. Oddly, he doesn't exactly say so; he doesn't say that the memorandum is complete news to him. He doesn't say he's horrified to learn about it from my complaint, and that as head of the LAC he'll be conducting a thorough investigation to find out how it came to be in the file. Instead, caught dead to rights, he pretends it's not there:

21. *Fifth*, Waglay JP falsely alleges that the memorandum is 'unfiled'.[15] Quite the contrary, as Rawlins found and the registrar's clerk confirmed,[16] it was unquestionably filed – in the real sense that it's physically in the court file. And unless this criminal evidence has since been removed and destroyed, it's still there.[17]

22. By calling for the file, the Committee can see this for itself – like someone else anxiously did, after I'd incidentally mentioned the memorandum in my

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[15] Later in his response, Waglay JP repeats the falsehood in a variant discussed in paragraphs 65–6 below.
[16] Complaint, paragraphs 20–3, and annexure 'B', bearing the registrar's stamp.
[17] It was still in the file in August 2016, more than a year after Rawlins discovered it in April 2015: see paragraph 24 of the complaint, and Rawlins's confirmatory affidavit.

PAIA litigation against LASA in the Magistrate's Court.[18] Re-examining the file at my request in August 2016, Rawlins found that someone had retrieved the file from the registry subsequent to his original examination of it in April 2015, had searched the file for the memorandum and found it, and, presumably after examining it, had returned it to the file, only now at the top of the papers, out of the original order[19] in which Rawlins had found it.[20]

23. Certainly, though, the memorandum wasn't properly filed in the ordinary course, as is plain from the fact that it doesn't bear the registrar's stamp.[21] And the obvious reason it didn't cross the registrar's counter for filing in the usual manner, getting stamped on the way, is that it was surreptitiously delivered to Waglay JP with the criminal purpose of defeating the ends of justice by improperly influencing him to throw my case.[22]

Ad ii.

24. Waglay JP seriously misdirects the Committee in claiming I complained to the JSC that I was denied 'a proper opportunity to oppose [LASA's] condonation [application]', which LASA brought after I notified my objection[23] to its nonchalant late filing of its affidavit opposing my petition, in non-compliance with the LAC rules,[24] which I'd myself slaved to comply with in petitioning in time.

25. Waglay JP's violation of due process in this regard is not my complaint to the JSC at all, which is that he dismissed my petition on account of the improper

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[18] Complaint, paragraphs 24–5.
[19] It was the eighth document in the LAC file when Rawlins called for and inspected it in April 2015. See certified inventory, annexure 'B' to the complaint.
[20] Complaint, paragraphs 20–23. Waglay JP hasn't in his response suggested that Rawlins planted the memorandum; and it's to be hoped that no one at some future time makes the serious mistake of suggesting he's an unprincipled crook. To the contrary, a devout practising Catholic, he's our country's first conscientious objector, who paid a heavy price for his personal integrity by going into decades of bitter political exile rather than complying with an apartheid military call-up in the early 60s. See his biography at goo.gl/QjAjiF.
[21] Complaint, annexure 'A'.
[22] The charge facing Hlophe JP on different facts.
[23] Complaint, annexure 'E'.
[24] Complaint, paragraphs 13–14.

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influence exercised on him by the memorandum. His misrepresentation of my actual complaint is clearly intended to distract from it.

26. The reason I didn't complain to the JSC that I was denied 'a proper opportunity to oppose [LASA's] condonation [application]' is that the JSC has no jurisdiction to deal with the objective fact that in his alacrity to throw out my petition Waglay JP denied me due process (a) by preventing me from opposing LASA's application for condonation, and (b) by disposing of the case on a consideration of my petition and LASA's opposing affidavit in the appeal case file (if he considered them at all) before the latter affidavit was properly before court upon the grant of an order condoning its delivery out of time.

27. Waglay JP's gross procedural irregularity here would have been a matter for the Supreme Court of Appeal to treat on review.[25]

28. As stated in my complaint,[26] I'd objected[27] to the fact that LASA hadn't bothered complying with the time limit for filing its affidavit opposing my punctually filed petition, and I'd required it to apply for condonation, which it did.[28]

29. Waglay JP says I complained that I was not given 'a proper opportunity to oppose the condonation [application]'. This is itself misleading, because never mind 'a proper opportunity', he denied me any opportunity at all – in a glaring procedural irregularity that was the first indication to me of something seriously remiss in the disposal of my petition. But this is not my complaint to the JSC, because, as said, it's none of its business.

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[25] The reason I didn't take the matter on review by the Supreme Court of Appeal is that I'd begun wondering about the correctness of my original cause of action in my labour claim, and was further investigating it with record requests made under PAIA. After prolonged illegal and unconstitutional resistance, and litigation brought to compel compliance with my requests, I finally forced out of LASA the complete, uncensored recommendation report by the selection panel, which confirmed I'd been barking up the wrong tree in my pleadings and at trial in the Labour Court. I discuss this in paragraphs 10–12 of my complaint. The course I've chosen is a rescission application to the Labour Court to be based on the fraud, easily shown, i.e. that the evidence of LASA's single witness at trial was perjured in multiple basic respects, and that documents sourced after trial prove it. I'll be seeking leave to proceed on fresh pleadings, basing my claim on simple recruitment corruption in the form of cronyism.

[26] Complaint, paragraphs 13–15.

[27] Complaint, annexure 'E'.

[28] Complaint, annexure 'F'.

30. To sum up, Waglay JP's violation of my fundamental right to 'Access to courts' guaranteed by section 34 of the Bill of Rights in Chapter 2 of the Constitution,[29] of which due process in litigation is implicitly integral[30] isn't part of my complaint to the JSC, because the JSC has no jurisdiction to address it. But it's certainly part of the *objective incontrovertible factual background of striking gross irregularity* in the disposal of my petition – ultimately explained by the memorandum that perverted it. In plain speech, the reason Waglay JP summarily tossed my petition before all the papers were in and before the matter was ripe for consideration is that the memorandum persuaded him that like me my petition was rubbish – the exact burden of the memorandum, which he understood perfectly; and trusting its author, he acted on it accordingly, by sending me away non-suited.

Ad iii.

31. This is precisely not my contention; and it's atrocious that Waglay JP should misdirect the Committee by making this utterly false claim. In truth and in fact, my complaint clearly and unambiguously states precisely the opposite.[31]

Ad iv.

32. Again, none of this forms any part of my complaint against Waglay JP, and he disgracefully misdirects the Committee in alleging otherwise, to distract it from its narrow enquiry into my actual complaint, which is that he abdicated his judicial independence in succumbing to improper influence in dismissing my petition:

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[29] 'Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.'

[30] Like equality of arms in litigation, entailing equal access to all material evidence – another implicit incident of this fundamental right, recently affirmed by the Constitutional Court, which LASA denied me by furtively concealing from me, with a Koki marker blacking it out, the **KEY** all-explanatory evidence of Mlambo JP's long former judicial relationship with my rival for the top post, recorded on the selection panel's recommendation report, and finally released uncensored, but only after I'd sued for it and was about to argue for it, years after the trial and dismissal of my wrongly-founded labour claim.

[31] Complaint, paragraphs 34 and 35.

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33. *First*, Ngcamu wasn't 'eventually appointed ... to the post [to] which the complainant [Brink] should have been appointed'. To the contrary, the still budgeted and funded post remains vacant.[32] In my complaint I stated that Ngcamu was 'interviewed and shortlisted'[33] for the post, not appointed. My petition states LASA's risibly false version[34] that after I'd been selected and recommended for it, the post was 'frozen' for lack of budget to fill it.[35] In his response to my complaint, Waglay JP is shockingly unreliable with the basic facts.

34. But his demonstrated unfamiliarity with these most basic facts of the case shows that he didn't bother reading my petition before tossing it on the strength of what the memorandum unpleasantly had to say about it and me, and not even when I put it before him a second time as an annexure to my complaint.

35. *Second*, by enclosing the word I used in my complaint – 'colleague' – in sneer quotes, Waglay JP falsely insinuates that my assertion of Mlambo JP's and my rival applicant Ngcamu's long judicial relationship between 'for "±6 years" before he applied for the post'[36] is questionable. By trying to dilute it in this way, he reveals his queasiness about my eventual discovery of this potent fact, unearthed by determined PAIA litigation years after trial and judgment in my failed labour claim and his dismissal of my petition.

36. In truth and in fact, and contrary to Waglay JP's false implication, there's no doubt about the said judicial relationship at all, because, exactly as I stated in my complaint, it's indisputable that 'Mzochitwayo Ngcamu AJ (as he used to be)'

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[32] Illegally. As the Constitutional Court noted in paragraphs 8 and 9 of its judgment in Zungu v Premier of the Province of KwaZulu-Natal and Others [2018] ZACC 1 (22 January 2018), allowing a budgeted, funded post to be 'left vacant' constitutes a 'breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position ... vacant.' With Mlambo JP's blessing, LASA has unlawfully breached the PFMA annually since 2010 – and furtively, since the so-called freezing of LASA's three remaining top legal professional, critical Senior Litigator posts has never featured in any of LASA's annual performance reports.
[33] Complaint, paragraph 11.
[34] For all the reasons laid out in my petition, annexure 'C' to my complaint.
[35] Complaint, annexure 'C', paragraphs 11–14.
[36] Complaint, paragraph 12.

had been 'LASA Board chairperson Mlambo JP's judicial colleague for "±6 years" in the Labour Court'[37] to which Mlambo JP had repeatedly appointed him.

37. *Third,* Mlambo JP's conduct – be it in participating in 'a conspiracy' (Waglay JP's notion, not mine) or in any other regard – is not the subject of my complaint against Waglay JP, which is that he allowed himself to be improperly influenced by the memorandum in the disposal of my petition for leave to appeal. And it's deplorably misleading for him to misrepresent to the Committee my complaint against him by falsely alleging otherwise.

Ad 3.

38. Waglay JP is very correct in concluding about his preceding paragraph 2, subparagraphs i–iv, that 'All the above is patent nonsense.' Only, it's his nonsense not mine. He sets up a straw man and he shoots it down.

Ad 4.

39. Here Waglay JP offers the Committee the anodyne assurance that in the consideration and dismissal of my petition, everything went off just as it should have – perhaps with one exceptional qualification, which he doesn't mention here (after alluding to it in his preceding paragraph 2.ii), namely that my petition struck him and Davis and Sutherland JJA as such obvious junk that they didn't need to wait a minute longer before turfing it out; and accordingly there was no need to wait for me to answer LASA's condonation application[38] and for LASA to reply, and to then carefully assess and decide LASA's case for condonation in his customary, commendably thorough manner.[39]

40. What Waglay JP doesn't own up to the Committee is that, besides the memorandum and the condonation application, he had two primary affidavits

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[37] This approximate '±6 years' time period I quoted is directly sourced from the selection panel's recommendation report, recording (a) Ngcamu's background and qualifications, inter alia as a former long-time acting judge of the Labour Court (repeatedly appointed by Mlambo JP, which court he headed at the time) and (b) the reason the panel rejected and eliminated him from the running for the post: he lacked right of appearance, so had never litigated a case on his feet in the High Court, never mind in the country's top appeal courts.

[38] Complaint, annexure 'D' (material excerpt).

[39] Complaint, paragraph 19.2, citing Waglay JP's fine, careful judgment in the Eberspächer case.

before him in the LAC case file: mine supporting my petition and LASA's opposing it. But he's silent about LASA's opposing affidavit. He doesn't say he disregarded it and didn't read and ponder what it contended about my case; and that he didn't do so for the reason that it wasn't properly before him, having been delivered out of time, objected to on account of this, and therefore the subject of a pending condonation application. He just doesn't mention it.

41. Fact is, LASA's opposing affidavit was in the petition file – physically, but not lawfully, to the extent that it was improperly before him and therefore not ready to read and consider, because it had been delivered out of time, and this procedural irregularity hadn't yet been excused by way of an order for condonation, made upon an evaluation of (a) LASA's excuse(s) advanced in its condonation application in the court file; (b) my answer to it (I never did get to answer it, because Waglay JP rushed to throw my petition out before I'd completed and filed my answering affidavit opposing it, still in time to do so); and (c) LASA's reply (unnecessary, because by prematurely and irregularly deciding the main case, and thereby closing the door on me before I could get a word in to refute the blatant lies[40] LASA told him about why it came to court late

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[40] I identified and refuted these lies in my answering affidavit in LASA's failed application to the Pietermaritzburg High Court (case 12124/16) to blow me out of court as a vexatious litigant (for successfully suing repeatedly for duly requested but persistently illegally and unconstitutionally refused records, and then suing to enforce (a) full and proper compliance with LASA's total surrender treaty signed at court just before argument, and (b) compliance with a further PAIA request specifically envisaged in the settlement agreement):
210. On 8 December 2014, immediately after dispatching my petition for leave to appeal to the JP of the LAC at his chambers in Johannesburg, via the Post Office's express, next-day, door-delivery courier service, two days before it was due, I emailed Mtati, as a courtesy, to inform him that I'd just done so, and vouched this by attaching (a) a scan of the courier's waybill; (b) a scan of the final signature page of my petition bearing my and the commissioner of oath's signatures; and (c) the unsigned final PDF of the petition, because I'd previously found that LASA's email programme traps attachments over 3MB, and the scan of my signed petition exceeded this and was too large to go through. As I explained in my email, my considerate purpose in doing this was to give Mtati a head-start on answering my petition, as the rules allowed him only ten days to do so. (I'd raced to comply with my own ten days allowed to draw, sign, file and serve; and I expected LASA to comply likewise.) A copy of my email to Mtati is annexed marked 'Q'.
211. As permitted by the rules of the LC, I then formally served my signed petition on LASA as required, by faxing it within an hour or so to its Durban correspondent, appointed by notice to me for my service of all court processes in my appeal; and after doing that, drew, signed, filed and served my service affidavit.
212. That is, I duly served a copy of my petition on LASA at its Durban office appointed two days before it was due under the LAC rules.
213. It's impossible that LASA's corresponding attorney in Durban, Ngcamu, my erstwhile rival for the Senior Litigator post and a former judge of the LC for six-and-a-half years, so I discovered

to oppose my petition, Waglay JP rendered LASA's condonation application moot).

42. Waglay JP doesn't say he didn't read LASA's opposing affidavit. He doesn't say he didn't need to read it – either because it wasn't properly before him, or

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in April 2016, (a) didn't advise Mtati that I'd duly served my petition on him, and (b) just dropped the fax of my petition into an office file like an inexperienced articled clerk. And indeed this wasn't ever alleged.
214. LASA filed an opposing affidavit on or after 22 January 2015, well out of time. When Sekgota phoned to ask whether I'd received it, I confirmed I had, but mentioned it was late, to which he responded, 'We'll argue that 15 December [sic] to 15 January are dies non.'
215. That is, LASA's excuse for filing late was its belief that it wasn't.
216. I told Sekgota he was wrong, because there're no dies non in applications and petitions, only in High Court actions.
217. Mtati and his head office lawyers evidently accepted my lesson for them in civil procedure, and recognised their mistake, because this true explanation given to me for why LASA filed late never came up again. But instead of honestly stating it and asking the court's pardon for it, Mtati fabricated two new false excuses for opposing me out of time.
218. In his affidavit making LASA's case for condonation, to which he swore under penalty of being jailed for perjury, and also being sacked and struck off, Mtati claimed he'd not known I'd petitioned until after his return in January from LASA's annual holiday, when out of curiosity he had a look at my case document index online and saw my signed petition posted there. (My heads of argument, the judgment dismissing my claim, national newspaper reporting about it, my petition, and further documents, including Mtati's perjured condonation affidavit, are openly accessible at: goo.gl/WAuLK6.)
219. Naturally Mtati deceptively omitted to mention to the JP my email to him, which flatly contradicted his new excuse and exposed it as a blatant lie. And there's no possible pretending he didn't read it, because in telling this new lie of his under oath Mtati blundered by annexing to his condonation affidavit my scan of the waybill I'd emailed to him – but not the signature page of my petition, nor the final unsigned PDF I'd also emailed him. He made very sure not to share those with the JP, contradicting his new lying explanation for opposing me out of time.
220. Mtati's second false excuse, intended to garnish his first, refuted it. Immediately on receiving my petition at the Johannesburg LAC, delivered the day after I couriered it and faxed to LASA's appointed correspondent, in time and with a day to spare, registry clerk James Kamanga there phoned to say he needed an appeal case number from the LAC registry in Durban. Which he very obligingly immediately himself obtained, and phoned back shortly afterwards the same morning to convey it and to tell me he'd already given it to LASA so there was no need for me to.
221. Which means LASA had a copy of my signed and attested petition by fax the day before I filed it at the LAC, and got a new case number the next day, the day it arrived at the LAC, one day ahead of my ten days allowed to file and serve. All in good time and all in good order.
222. In a logically incomprehensible manner, Mtati tried falsely blaming the day between service of my petition on his correspondent and the allocation of a new appeal case number as reason to be confused about whether I'd petitioned or not, as a further basis to justify his inaction on receiving my petition and just pushing off for LASA's annual summer holiday without attending to oppose it. Except that his correspondent had received both my signed petition by fax, and the new Durban LAC case number by phone from the LAC in Johannesburg, so there could be no honest confusion about whether I'd petitioned or not.
223. The true reason, revealed to me by Sekgota, was that they all thought LASA's national Christmas holiday – dies non in high Court actions – didn't count in the reckoning of LASA's ten days to oppose my petition.

because my petition was such obvious garbage that he didn't even need to hear what LASA had to say about it.[41]

43. Nor of course does he say that he didn't even read my petition, because it was clear to him from the memorandum that it was complete rubbish. In other words, he doesn't say the memorandum spared him the trouble of reading any of the papers.

44. Shown in my petition,[42] the trial judge made the most basic legal blunders vitiating the fairness of the trial even before getting his facts wrong.[43] The Committee will agree that no appeal judge giving my petition an honest, attentive reading could have concluded that it disclosed no fairly arguable case for appeal, because it identifies a multitude of fundamental reversible errors. Put another way, the contents of my petition absolutely eliminate the possibility that Waglay JP, Davis and Sutherland JJA 'unanimously ... concluded that the petition was without merit'.

45. Waglay JP's claim that 'We did not consider the condonation application of the respondent [LASA] as we concluded that the petition was without merit' implies that, besides LASA's sworn excuses for filing its opposing affidavit out of time, which he says weren't considered, he assessed the other evidence on affidavit before him before arriving at his conclusion that my petition was worthless. As said, he doesn't say that he also 'did not consider' LASA's opposing affidavit; he's silent about it.

46. This evidence on affidavit before Waglay JP comprised my supporting affidavit, and LASA's opposing affidavit not properly before him, the subject of a pending condonation application, and therefore – if the petition papers were read

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[41] Cf Vahed J's dismissal of the just mentioned application without calling on me to argue, the difference being that it was clear from the debate that he'd studied my 'expansive heads of argument' (from which he later 'borrow[ed] freely') before the hearing, in which I demonstrated that LASA's case was still-born, so there was really nothing for me to add from the bar. They're online at goo.gl/GUKfNj.

[42] Annexure 'C' to the complaint.

[43] Concerning LASA's transparently false financial insufficiency justification for aborting my appointment (comprehensively dismantled in my petition), which lying justification was repeated in the memorandum, see paragraphs 31–4 of the complaint and the annexures to which they refer.

at all, as Waglay JP claims – were considered before I'd had the opportunity under the audi rule to answer and refute the two flagrant lies told him on oath to justify LASA's filing of the opposing affidavit out of time.

47. Which is to say, on his own showing, Waglay JP denied me my fundamental right to due process; and to my considerable prejudice, because had he heard me in the condonation application, and not hurriedly slammed the door on me before I could answer it, he'd have appreciated that (a) LASA's two excuses given under oath for filing its opposing affidavit late were both perjured; (b) the same deponent to LASA's affidavit in the main case, opposing my petition, lies freely under oath whenever necessary to pervert a legal process, and (c) his several claims in his opposing affidavit were untrustworthy, more especially where they contradicted LASA's own shambolic case at trial.

48. Waglay JP's manifestly untruthful claim that the 'three individual files' compiled by the registrar for each of 'the three judges who are allocated the petitions ... only contain relevant documents properly filed' is flatly contradicted by the fact that the petition file in the Durban Labour Appeal Court registry contains the memorandum, as the registrar's office certified.[44]

49. And being unstamped by the registrar, the memorandum certainly wasn't 'properly filed'.

50. It's not my complaint that additional copies of the memorandum were made and passed to Davis and Sutherland JA in the files that Waglay JP claims the registrar prepared for them. They would have been horrified by it. So I'm sure they weren't shown it.

51. Furthermore, it's inconceivable to me that apprised by the registrar that LASA had filed a condonation application, in which my answering affidavit opposing it was still due, Davis and Sutherland JA would have countenanced and participated in Waglay JP's (a) violation of my constitutional right to due process by prematurely considering my petition, along with LASA's affidavit opposing it, before the latter had been properly received into the evidence, and

[44] Complaint, paragraph 23 and annexure 'B'.

(b) dismissal of my petition in those grossly irregular circumstances. In other words, I'm sure Davis and Sutherland JA weren't given a file with LASA's yet to be answered condonation application in it.

52. Waglay JP tells the Committee how petitions are ordinarily dealt with in the Labour Appeal Court. I don't doubt it, but the real evidence in the master file archived in the Durban LAC registry – found by Rawlins, and certified present in the file by the registrar's clerk – contradicts and exposes as false Waglay JP's feeble, untrue claim that 'The files only contain relevant documents properly filed.' To the contrary, the court file contains an irrelevant document not properly filed: the memorandum. And it's there for all to see right now.

53. If indeed the registrar prepared files for Davis and Sutherland JJA containing copies of all 'relevant documents properly filed', I don't doubt this would have been true of their files; because had they contained the irrelevant, improperly filed memorandum, they'd surely have cried foul. But it's wholly improbable that Davis and Sutherland JJA had all the 'relevant documents properly filed', because had that been so, they'd have appreciated that the case wasn't yet ripe for decision.

54. The flat fact that the memorandum was found in, and remains in, the master petition file archived in the Durban LAC registry contradicts and refutes Waglay JP's false claim here.

55. His false denial that the main LAC file contains the memorandum dishonestly suggests that the concrete foundation of my complaint to the JSC about this is just wind.

56. The Committee can safely exclude the possibility that the memorandum was placed in the primary LAC file containing the original documents[45] *after* my petition had been dismissed, and without Waglay JP's knowledge, because the

[45] Namely, the file kept and archived by the LAC registry in Durban. In his paragraph 4, Waglay JP describes the usual process, in which his registrar makes three files, one for each of the three judges of appeal allocated to decide the petitions. The first file opened contains the original court processes, and the other two contain copies.

author of the memorandum wouldn't have had any reason to torpedo a petition already sunk.

Ad 5.

57. My petition was manifestly not 'properly considered and refused', and this is incontestable having regard to the objective facts. It was rejected prematurely before all the papers were in, in a gross breach of the LAC's own rules, to say nothing of the most basic principle of natural justice to which I was entitled the benefit: the audi alteram partem rule. In his handling of my petition, and LASA's interlocutory application for condonation, Waglay JP denied me due process in the LAC as regulated by the rules of the court he heads.[46]

58. The complete explanation of why he did so is contained in my LAC file: the real evidence (the memorandum) that he allowed himself to be improperly influenced against me and my petition, and thereby induced to summarily and prematurely dismiss my plea for leave to appeal Cele J's dismissal of my claim.

59. Waglay JP says I 'was informed about' the fact that my petition was refused. Sure I was – right in the middle of drawing my answering affidavit to oppose LASA's condonation application, on the basis that its two excuses tendered on oath for opposing me late were outright lies.[47] So the fact that I 'was informed' that my petition had been rejected, stated by Waglay JP here, is deceptive distraction to create a patina of propriety over a grossly irregular proceeding.

60. Since Waglay JP denied me the opportunity to refute LASA's lies to him, and on this basis defeat LASA's fraudulent condonation application and thereby exclude from his consideration the profusion of other lies told in LASA's main affidavit opposing my petition, including brand new lies not told at trial, 'the complainant's petition was' clearly not 'properly considered', contrary to his false allegation to the Committee about this.

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[46] As noted above, Waglay JP's violation of my fundamental right to due process is a matter outside the JSC's jurisdiction.

[47] Complaint, paragraphs 16–17; and footnote 40 above.

Ad 6.

61. Every assertion Waglay JP makes in this paragraph is untruthful, false and misleading.

62. *First*, he persists in falsely exaggerating that I complain of 'documents' found in the court file, as if he doesn't know exactly what I'm talking about. In truth and in fact, as my complaint makes perfectly clear, it concerns a single memorandum in the court file and nothing else.

63. *Second*, he falsely alleges that I claim to have 'found' the memorandum 'in the Labour Court file.' This is absolutely untrue. In my complaint I claim precisely to have found it in 'the petition file'[48] (under Durban Labour Appeal Court case number DA21/14) and not in the Durban Labour Court file (LCD529/11).

64. *Third*, to construct the false alibi that he couldn't have violated Article 4 of the Code of Judicial Conduct as charged, by failing to maintain 'Judicial Independence', to wit by allowing himself to have been influenced against me and my petition by the memorandum and to have summarily dismissed my petition as it energetically urged, Waglay JP untruthfully distances himself from the scene of the crime.

65. He says my discovery of the memorandum 'in the Labour Court file ... has nothing to do with the Labour Appeal Court (LAC).' Quite the contrary, since the memorandum was indeed found in the LAC file, in truth and in fact it has everything 'to do with the Labour Appeal Court (LAC)', and more particularly 'to do with' him as head of that court, who dealt with my petition personally.

66. He falsely claims that 'The LAC has its own files, retained by its registrar Mr Phophi who is based in Johannesburg.' Indeed, 'The LAC has its own files', different from the Labour Court's files, but they're not 'retained by its registrar Mr Phophi who is based in Johannesburg', where the trial court sat in a different city. The registrar in Durban keeps the files of LAC cases in regard to Durban

[48] Complaint, paragraphs 20 and 21.2.

cases, not registrar Phophi in Johannesburg. My LAC case file is in Durban, and there's no such file in Johannesburg – so I directly ascertained from enquiries I made personally at the Johannesburg Labour Appeal Court registry, which I visited in July 2016.[49]

67. Understanding from the LAC rules that I had to deliver my petition directly to Waglay JP within 10 days, and believing him to be at his chambers in Johannesburg at the time, I'd couriered it directly to him there. On its arrival, my petition was allocated case number DA21/14 (D for Durban, A for appeals).[50]

68. After the dismissal of my petition – in Johannesburg, and not in Durban, as falsely stated on the dismissal order[51] – the case file was transferred to the Durban LAC registry for archiving there. It was not 'retained by [LAC] registrar Mr Phophi who is based in Johannesburg.'

69. In responding to my complaint, Waglay JP can't get even his most basic facts straight.

Ad 7.

70. Of course, generally speaking, 'Mlambo JP has no role to play in the decisions of the LAC',[52] as Waglay JP's predecessor as head of the LAC. Of course

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[49] In my answering affidavit in LASA's vexatious application, I affirmed:
76. The Memorandum turned up during a search of the petition file in April 2015. I wanted to see whether there was any record of Davis and Sutherland JJA's decision of my petition in Durban, as alleged on the order oddly issued by the registrar of the LAC in Johannesburg. There isn't. And there's no possible duplicate file containing any such record in the latter's office, because in July 2015 I drove up to the LAC in Johannesburg especially to check, and personally established this as a fact from two registry clerks up there.

[50] The Durban LAC case number appears on the memorandum, annexure 'A' to my complaint. Obtained from the LAC registry in Durban, the Durban LAC case number was annotated on the face of my petition by a clerk in the Johannesburg LAC registry shortly after receiving my petition by courier. So he told me on the telephone.

[51] Complaint, annexure 'G'. I established from a thorough investigation that none of the appeal judges named in the order were in Durban on the date the order claimed they were.

[52] The Committee might find it relevant that as a ***non-executive*** director and chairperson of LASA's Board of Directors Mlambo JP also 'has no role to play in the decisions of' CEO Vedalankar and NOE Nair, LASA's management executives jointly delegated by its Approval Framework to confirm or reject selection panel recommendations of Senior Litigator candidates; but in cavalier breach of LASA's internal regulations and indifferent to such niceties as the rule of law in public administration, he's illegally arrogated to himself the power to approve and reject such candidates as he pleases, in committee (for appearances) with various incompetent, unauthorised national management executives. In a word, Mlambo JP just does whatever he likes.

'it does not need to be said'. Strangely enough, though, Waglay JP finds it necessary to 'say it anyway.' He's evidently concerned to exculpate his long-time former superior in the Labour Appeal Court, under whom he'd been deputy head of court before being appointed Judge President himself when Mlambo JP was appointed to head the Gauteng Division of the High Court.

71. My instant complaint is against Waglay JP, arising from his judicial misconduct in the disposal of my petition, not against Mlambo JP. As said above, I've not specifically charged Mlambo JP with perverting the decision of my petition; and for the purpose of determining my complaint against Waglay JP (and my complaints against Mlambo JP), I don't require the Committee to make a finding as to who authored and gave the memorandum to Waglay JP, strenuously urging him to reject my petition.

72. It's untrue that I've 'filed a complaint against Mlambo JP in connection with this matter', to the extent that 'this matter' before the Committee is the criminal perversion of my petition for leave to appeal, and more particularly Waglay JP's breach of Article 4 of the Code of Judicial Conduct in abdicating his judicial independence in throwing my petition out on the strength of the memorandum's contentions that I'm an off-beam professional reprobate bringing obviously baseless cases to trial and on petition.

73. It's equally untrue that I 'intend... to [file complaints] against Davis JA and Sutherland JA.' Nowhere in my complaint do I state or suggest such an intention, as Waglay JP falsely alleges. Certainly not at this stage on the information currently known to me, because, as I've said, I don't believe they were party to the unlawful and corrupt disposal of my petition. Waglay JP just makes it up as he goes along. His intention here seems to be to portray me as funny in the head, endlessly complaining about everybody, baselessly.

74. Waglay JP betrays his concern that the Committee should not ask Davis and Sutherland JJA about 'this matter', by claiming to 'doubt that either of them will have anything further to add'. Quite the contrary, I'm confident that both will positively confirm to the Committee that neither had anything to do with the

case, and will refute Waglay JP's false claim in his response that 'we unanimously decided to refuse [my] petition.'

75. Waglay JP's intention in dissembling this 'doubt' is clearly to put the Committee off questioning Davis and Sutherland JJA about my complaint, or more precisely, about Waglay JP's claims about them in his response to it, with a view to verifying them.

76. To assist the Committee arrive at the truth of the matter, in its further investigation, obviously necessary, a draft interrogatory for Davis and Sutherland JJA will follow the submission of these comments.

77. Wherefore I persist with my complaint.

Signed at Eshowe on 9 June 2018.

ANTHONY BRINK

Signed before me at Eshowe on 9 June 2018 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

Name: ANDREW MANDLOKOSI NSELE

Address: S.A.P. 73 MAIN STREET ESHOWE.

Capacity: W/OFFICER

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
2018 -07- 09
ESHOWE
KWAZULU-NATAL

36 Pearson Street
Eshowe, KwaZulu-Natal
29 November 2019

The Honourable Chief Justice Mogoeng Mogoeng,
Chairperson and Information Officer:
Judicial Service Commission
188 14th Road, Noordwyk
Midrand 1685

Dear Justice Mogoeng

1. **The Judicial Conduct Committee's failure to finalise gross misconduct complaints against Mlambo JP and Waglay JP** [1]
2. **Your deputy information officer's unlawful failure to respond to a request for access to certain JSC records, duly made under section 18 of the Promotion of Access to Information Act ('PAIA'), and a plea for belated compliance with it** [2]
3. **A further PAIA request** [3]
4. **Outline of further intended gross misconduct complaints being held up by non-compliance with PAIA** [4]
5. **Retaliation** [5]
6. **The possibility of a conciliatory resolution** [6]

INTRODUCTION

1. I write to you in your capacity as chairperson and information officer of the Judicial Service Commission ('JSC') in a matter of unprecedented gravity, surely

[1] Paragraphs 3–30.
[2] Paragraphs 31–8.
[3] Paragraph 39.
[4] Paragraphs 40–48.
[5] Paragraphs 49–60.
[6] Paragraphs 61–3.

eclipsing the Constitutional Court's complaint against the head of the Western Cape Division of the High Court, Hlophe JP.

2. Coming right after your several recent public statements[7] in defence of the judiciary against the fake bribery and judicial capture allegations put about in social and other media, this will surely be the most appalling letter you've ever read; and well you might wonder at first whether I'm not part of the malicious 'campaign to delegitimise the judiciary',[8] bent on 'harming the reputation of our judges'[9] with yet more malicious corruption[10] claims about them.

THE JUDICIAL CONDUCT COMMITTEE'S FAILURE TO FINALISE GROSS MISCONDUCT COMPLAINTS AGAINST MLAMBO JP AND WAGLAY JP

3. In mid-2017 I lodged eight gross misconduct complaints under section 14(1) of the Judicial Service Commission Act 9 of 1994 ('the JSC Act') with the JSC's Judicial Conduct Committee ('JCC') against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, arising from his unlawful, unconstitutional, dishonest, and in two instances criminal, misconduct, wilfully committed not on the bench but in his capacity as then chairperson of Legal Aid South Africa[11] ('LASA'), manifestly 'incompatible with or unbecoming the holding of judicial office', as section 14(4)(e) of the JSC Act puts it, and with 'the core values of integrity, impartiality and transparency, set out in the Judicial Norms and Standards' to which 'the Judiciary commits itself'.[12]

4. My complaints charged Mlambo JP with suborning perjury; repeatedly conniving at and colluding in the illegal and unconstitutional suppression of public records duly requested under the Promotion of Access to Information Act 2

[7] In the period August to November 2019, quoted herein, referencing publications and their dates, but omitting article titles. I recognise that your speech reported by the media may not be perfectly verbatim.

[8] *Citizen*, 3 October 2019.

[9] *Citizen*, 8 October 2019

[10] The 'corruption' called to your attention in this letter doesn't concern lucre, but rather the general sort, no less serious, defined by the Oxford English Dictionary as '6.II.6 Perversion or destruction of integrity in the discharge of public duties by ... favour; the use or existence of corrupt practices, esp. in a state, public corporation, etc.' And by 'corrupt' I mean precisely '3.B.3 Debased in character; infected with evil; depraved; perverted; evil, wicked' and '4.B.4 Perverted from uprightness and fidelity in the discharge of duty'.

[11] As a putative guarantee of constitutional, legal and ethical probity in the conduct of LASA's operations, section 4(1)(a) of the Legal Aid Act 22 of 1969, in operation at the material time, required that LASA's Board include a judge, impliedly and in practice to chair it. Section 8(1) of the succeeding and current Legal Aid South Africa Act 39 of 2014 now explicitly prescribes: 'The judge appointed in terms of section 6(1)(a) is the chairperson of the Board.'

[12] Media Briefing Announcement, Office of the Chief Justice, September 2019.

of 2000 ('PAIA') to obstruct an investigation of jobs-for-pals recruitment corruption at LASA in which he was centrally involved; and lying and false 'confidential' reporting on multiple scores to the Minister of Justice and Constitutional Development (as the Department was then called), and then to the Portfolio Committee of the National Assembly for the same Department, to put down and pervert enquiries they'd separately and independently instituted into this corruption and its cover-up, involving inter alia the said persistent illegal and unconstitutional withholding of duly requested records[13] to hinder its exposure.

5. Unlike the Constitutional Court's complaint against Hlophe JP, arising from what he's alleged to have said behind closed doors, my complaints against Mlambo JP are all founded on supporting documents, which is to say are 'evidence-based',[14] supported by 'credible evidence',[15] 'concrete proof',[16] 'verifiable documentary ... proof'.[17] All are substantiated by real 'evidence to support [my] confidence-damaging allegations that any judge is corrupt'.[18]

6. In the same period, I filed a gross misconduct complaint against Basheer Waglay JP, head of the Labour- and Labour Appeal Courts, for failing to observe the 'fierce independence'[19] he swore to maintain as a judge in trying his cases, and breaking his judicial oath to 'administer justice to all persons alike without fear, favour or prejudice'.

7. Like my complaints against Mlambo JP, my complaint that Waglay JP acted under improper influence was similarly objectively supported by 'concrete proof',[20] 'verifiable documentary ... proof'[21] in the form of an anonymously written,

[13] Most of the documents were ultimately clawed out of LASA via multiple pre-trial discovery processes, comprising an application to compel after LASA's total refusal to discover any one of the documents requested at the original pre-trial conference, followed by two additional pre-trial conferences held at court under judicial supervision; and then, after trial, via numerous applications to court under section 78 of PAIA – nine to date, the first five, set down together, conceded by LASA at the point of argument in the Magistrate's Court, and the sixth, to compel LASA's full and proper compliance with its settlement agreement, partially conceded by disgorging further records in successive batches under pressure of set-downs of the application. (My claim to the balance of the promised records is pending). Three PAIA applications are pending in the High Court, the first of which was argued on 30 August 2019, with judgment reserved.

[14] *Citizen*, 8 October 2019.

[15] SAnews.gov.za, 14 September 2019.

[16] *Ibid*.

[17] *Ibid*.

[18] *Ibid.*

[19] *Ibid.*

[20] *Ibid*.

[21] *Ibid*.

unsigned, undated, and unstamped 'memorandum' crudely disparaging me to devastate my credibility, and dishonestly misrepresenting the issues in my case at trial and my case on appeal – calculated to poison him against me, prejudice his consideration of my petition for leave to appeal, and pervert its decision, as indeed it did.

8. Fortunately for me, this criminal instrument used to defeat the ends of justice was inadvertently left in the court file, and turned up some months later during my investigation of the peculiar circumstances in which Waglay JP had strangely prematurely and irregularly dismissed my petition in the middle of a condonation application LASA had brought after opposing me out of time, before all the affidavits were in and the matter was ripe for consideration.

9. As requested, the registrar's office made and provided a copy of this hard 'evidence of taking instructions on how to prepare a judgment, evidence of being influenced one way or the other by people other than considering what has been presented before them',[22] and certified an inventory listing the court file's contents, including the 'memorandum'.[23]

10. My purpose in making my complaint against Waglay JP certainly wasn't to 'delegitimise the outcome'[24] of my petition and to discredit his 'judgment against'[25] it given on 18 February 2015,[26] because by the time I made my complaint on 15 June 2017, I'd already learnt that my action in the Labour Court had been *correctly dismissed* a year-and-a-half earlier on 18 September 2014, in that my cause of action had been completely wrong.[27]

[22] News24, 14 August 2019, quoting Judiciary spokesman Nathi Mncube.

[23] The 'memorandum' was still in the file when last checked, only it had been moved to the top of its contents, which means after I mentioned in an affidavit having found it someone went back to look, drew it, and then put it back, out of its original order.

[24] *Citizen*, 3 October 2019.

[25] *Ibid*.

[26] Without reasons, in the brief standard-form template used to dismiss all such petitions.

[27] Deliberately kept ignorant of the true facts by the determined illegal suppression of a pivotal document I'd duly requested, I'd wrongly surmised and pleaded *covert unfair discrimination* as the reason my appointment to LASA's top legal professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg, had been blocked following my unanimous recommendation for the post by a duly constituted selected panel of LASA's top lawyers in KwaZulu-Natal. The actual reason for the silent, off-the-record, unauthorised, illegal backroom abortion of my recruitment, only discovered long after the trial – with great difficulty and via persistent litigation – turned out to be everyday jobs-for-pals recruitment corruption. Years after Waglay JP's dismissal of my petition for leave to appeal the dismissal of my unfair discrimination action, I discovered from the selection panel's complete recommendation report – repeatedly requested and repeatedly refused on shifting grounds, but finally disgorged by suing for it – that unfair discrimination had nothing to do with it; the reason I wasn't appointed was everyday cronyism, in that LASA Board chairperson Mlambo JP, then head of the Labour- and Labour Appeal Courts, wanted the appointment of my rival applicant, his long-time judicial colleague Ngcamu AJ (as he used to be), whom he'd repeatedly got appointed as an acting judge of the Labour Court over a period of six-and-a-half years prior to his application for the top post (so the

11. Given that section 15(2)(d) the JSC Act prescribes that meritless complaints found to be 'frivolous or lacking in substance' 'must be dismissed',[28] the JCC clearly didn't think my complaints against Mlambo JP and Waglay JP were 'gratuitous allegations of corruption',[29] 'scurrilous claims of corruption within the Judiciary'.[30] Quite the contrary, satisfied that I'd made out prima facie, answerable cases against the two accused Judge Presidents on all counts, it required both to respond to them.

12. To recap, consistent with your admonition to 'watch us closely'[31] and not to allow 'complacency to set in'[32] by reposing our trust in the courts with our eyes closed, 'otherwise our constitutional democracy is gone',[33] and consistently with your call on the public to 'come forward'[34] 'with evidence of judges implicated in corruption'[35] and 'share it with us'[36] – since 'the South African public deserve a corruption-free Judiciary',[37] 'a credible, independent and truly transparent Judiciary'[38] – I did indeed 'come forward' to the JCC 'with evidence of judges implicated in corruption' annexed to complaints I made, signed after 'raise[ing my] hand to tell the truth, the whole truth and nothing but the truth'.[39] Nothing in my affirmed complaints and affirmed comments on the judges' responses to them 'is untrue'[40] and I was and remain 'prepared to give evidence even in a

recommendation report crucially revealed) – regardless of the fact that the selection panel had disqualified and rejected him for not meeting the job criteria, in that he lacked right of appearance in the High Court and any litigation experience on his feet there. (My dogged persistence in pursuing the post foiled the plan to appoint him instead of me.) Eight months after my successful interview, and as I was pressing for my appointment, I was told the post had been 'frozen' for lack of budget to fill it. There's no record of any such decision, and LASA's financial records show that in truth the post was and has remained budgeted by LASA and funded by the Treasury via the Justice Department. Completely different, radically contradictory, mutually exclusive and destructive stories cooked up by National Operatrions Executive Brian Nair, also contradicted by LASA's own records, were told to the Board for not filling the post, along with two other such posts, which, despite being budgeted and funded, have remained 'frozen' to date – *illegally*, as the Constitutional Court confirmed in paragraphs 8 and 9 of *Zungu v Premier of the Province of KwaZulu-Natal and Others* (CCT136/17) [2018] ZACC 1 (22 January 2018): '[L]eaving ... vacant' a budgeted and funded 'position' in an organ of state is a 'breach of the provisions of the Public Finance Management Act (PFMA)', namely section 53(4). On receipt of the withheld records I've sued LASA for, I'll be returning to the Labour Court with a common law rescission application founded on newly discovered documents showing that LASA's defence of insufficient budget to fill the post was a fraud on the trial judge, and I'll be persisting with my claim to my appointment on fresh pleadings.

[28] Like Hoffman SC's obviously spurious complaint against you, dismissed under this section in September 2013.

[29] SAnews.gov.za, 14 September 2019.

[30] Media Briefing Announcement, Office of the Chief Justice, September 2019.

[31] News24, 23 November 2019.

[32] *Ibid*.

[33] *Ibid*.

[34] *Citizen*, 3 October 2019.

[35] *Ibid*.

[36] SAnews.gov.za, 14 September 2019.

[37] *Ibid*.

[38] *Ibid*.

[39] *Mail & Guardian*, 11 October 2019.

[40] *Ibid*.

court of law or commission of enquiry'[41] and 'to testify as to its veracity'.[42] I was equally prepared to 'make my identit[y] known to the Judiciary'[43] and didn't hide behind any 'mask'[44] by making my complaints anonymously.[45]

13. You appealed to the public to 'tell us which judge has been ... corrupted and by whom'. In the latter regard, I did so in my invited comments on Waglay JP's response to my complaint against him. On a conspectus of the cogent circumstantial evidence available weighed with the probabilities,[46] I identified the obviously well placed, well connected, highly motivated author of the anonymous, unstamped[47] 'memorandum' slipped past the registrar directly to Waglay JP to torpedo my petition as having likely been then LASA Board chairperson Mlambo JP,[48] under whom Waglay JP had served as Deputy Judge President, and whom he had succeeded as Judge President of the Labour- and Labour Appeal Courts.

14. But I didn't 'give information'[49] about the judicial corruption indicted in my complaints 'to the police or the media'[50] as you urged, because I preferred that the JCC deal with my 'credible evidence of ... corruption against the Judiciary'[51] under its statutory mandate, rather than the criminal courts and court of public opinion, and that the judiciary itself act to 'root out these injurious practices'[52] by two of its senior fellows. (The 'police or the media'[53] will necessarily be my last resort in the event that the JCC fails to prosecute my complaints properly and in due time.)

[41] SAnews.gov.za, 14 September 2019.

[42] *Ibid*.

[43] *Ibid*.

[44] *Ibid*.

[45] Like the anonymous complainant who blew the whistle on a Sassa executive manager for fixing jobs for 'his girlfriends'; for not 'following due process'; and for appointing 'people in positions even though the applicants did not meet the job criteria'. (News24, 'Public Protector probes Sassa manager for alleged abused of state funds and power', 25 November 2019). Similar unethical abuse of power by Mlambo JP is mentioned in paragraph 46 and footnote 27.

[46] I'm a civil law specialist advocate of three-and-a-half decades standing, with extensive experience also as a district and regional court magistrate, including several years as a full-time civil trial magistrate, and a sterling appeal record.

[47] Not having been stamped by the registrar, the 'memorandum' obviously didn't pass over his reception counter in the ordinary course and was given to Waglay JP surreptitiously.

[48] How the JCC handles the complaint will determine whether I file a formal charge against Mlambo JP for this.

[49] *Citizen*, 3 October 2019.

[50] *Ibid*. Subsequent to making my complaints to the JCC, I copied them to South Africa's leading investigative journalist Martin Welz, editor and publisher of *Noseweek*, and he telephoned me for over an hour to discuss them.

[51] SAnews.gov.za, 14 September 2019.

[52] *Ibid*.

[53] *Ibid*.

15. As you frankly conceded, 'Any South African who cares about our constitutional democracy, any South African who cares about the future of our children, we say to you, we're not a perfect institution.'[54] Indeed so: no less than three Judge Presidents in our country currently stand accused of the most serious imaginable corruption. And although you affirmed during your 17th Nelson Mandela Lecture a few days ago, 'I am not saying there is something wrong with our judges. I am confident in us',[55] you seemed to have had at least one particular instance in mind when adding, 'You must be worried when you read a judgment and you are struggling to make sense of it.'[56]

16. That the JSC itself is not invulnerable to corruption you acknowledged too:

> You have got to observe carefully. You have got to watch how people are being interviewed because there are times when you can tell certain people have been shielded from being asked critical questions. How can you have an independent judge ... when questions are asked to them, people build a scrum around them. When these things happen, you must know that people are attempting to capture the judiciary.[57]

17. For your information only, since the JCC is currently seized with them, I enclose copies (printed in a compressed format) of my complaints; the accused judges' haughty and mendaciously evasive responses; and my comments on them, in which I point up their aggravating dishonesty. Perusing them you'll readily appreciate the enormity of the matter, the egregiousness of the judicial misconduct in question, and the immense damage to public confidence in the judiciary that they portend – threatening to 'delegitimise the Judiciary and endanger constitutional democracy'[58] by collapsing public confidence in the judicial process and its officers.

[54] News24, 3 October 2019.
[55] News24, 23 November 2019.
[56] *Ibid.*
[57] *Ibid.*
[58] SAnews.gov.za, 14 September 2019.

18. When remarking at your media briefing on 13 September 2019 that only a judge 'completely bereft of legal professional and judicial ethics'[59] would act corruptly, with Mlambo JP seated alongside you[60] as the very face of judicial 'integrity, impartiality and transparency'[61] and of the 'credible, independent and truly transparent Judiciary'[62] that 'South Africans need and deserve',[63] you couldn't have been aware of his unlawful, unconstitutional and criminal misconduct described and documented in my complaints against him, showing that he's 'completely bereft of legal professional and judicial ethics'[64] and that in practice he scorns the 'core values of integrity, impartiality and transparency'[65] to which you absolutely sincerely said the judiciary is committed. Nor could you have been aware of the 'concrete proof'[66] put up with my complaint against Waglay JP that in rejecting my petition for leave to appeal the dismissal of my labour claim, he was 'taking instructions on how to prepare a judgment [and] being influenced one way or the other by people other than considering what has been presented before [him]'.[67]

19. On 11 February 2019, during a phone call to request another copy of my complaint against Waglay JP (the acknowledged original I'd delivered had been lost), JSC secretary Lynnette Bios responded to my query about progress in the prosecution of my complaints against Mlambo JP, also made way back in mid-2017, that they were being dealt with under section 17 of the JSC Act.

20. You'll understand my disgust at this. Section 17 governs the disposal of 'serious, non-impeachable' misconduct, for which the maximum possible 'remedial steps [that] may be imposed' under subsection (8) are an apology, reprimand, warning, compensation order, counselling, training, or other appropriate corrective measure, excluding impeachment, to which 'appropriate remedial action will be limited' under subsection (1)(a).

[59] *Ibid.*
[60] *Ibid.*
[61] Media Briefing Announcement, Office of the Chief Justice, September 2019.
[62] SAnews.gov.za, 14 September 2019.
[63] *Ibid.*
[64] *Ibid.*
[65] Media Briefing Announcement, Office of the Chief Justice, September 2019. See paragraph 4 above.
[66] SAnews.gov.za, 14 September 2019.
[67] Judiciary spokesman Nathi Mncube quoted by News24, 14 August 2019

21. Clearly on any proper, honest appraisal, Mlambo JP's exceptionally serious, dishonest, unlawful, unconstitutional and criminal misconduct, closely detailed and substantiated in my complaints, is eminently impeachable and falls to be dealt with under section 16, governing the disposal of 'impeachable complaints'[68] of 'gross misconduct'.[69]

22. Despite Ms Bios's assurance in her letter of 29 August 2017, acknowledging receipt of my complaint against Waglay JP made six weeks earlier, that 'The Secretariat will notify you of the outcome of your complaint in due course', it's yet to do so in the two-and-a-half years since. So much for section 195(1)(g) of the Constitution: 'Transparency must be fostered by providing the public with timely, accessible and accurate information'.

23. The JCC's mishandling of and dragging anchor with my gross misconduct complaints against Mlambo JP and Waglay JP flies in the face of everything you stated absolutely sincerely in your leadership talk at Ekurhuleni in July 2019:

> We have got to make it our business not to beatify others at the expense of others, not to make others untouchable, and not to allow anybody, including me, to be awarded an underserved saintly status. … We are determined not to be told who is clean and who is dirty. We are going to research it ourselves and where there is smoke we will follow it up to its logical conclusion.[70]

It likewise contradicts your absolutely sincere claim that 'all allegations of corruption against judges are closely examined'[71] (per the reporter's paraphrase); that the judiciary had 'never avoided holding their own accountable';[72] that it 'had never shied away from openly pursuing any judge who is rightly or wrongly accused of misconduct';[73] and that 'Most cases of alleged misconduct against judges have been speedily finalised',[74] the exceptions being the Hlophe JP,

[68] '16 Committee may recommend appointment of Tribunal in respect of impeachable complaints'.
[69] Per section 16(1).
[70] *The Mercury*, 18 July 2019.
[71] Dailymaverick.com, 4 October 2019.
[72] *Citizen*, 3 October 2019.
[73] News24, 3 October 2019.
[74] *Ibid.*

Motata J, Preller J, Mavundla J, and Phoswa J complaints, delayed for 'good reasons',[75] namely 'a series of legal challenges that led to inordinate delays which nobody could have done anything about.'[76]

24. In contradistinction to those judges' cases, no 'legal challenges'[77] have impeded the prosecution of my complaints against Mlambo JP and Waglay JP. To any reasonable observer, the JCC's 'inordinate delays'[78] in dealing with my complaints 'legitimately'[79] 'raise concerns about the speed'[80] at which the JCC has done its work – or rather, not done it – more especially since no 'good reasons'[81] exist to explain it, like the various 'legal challenges'[82] raised by Hlophe JP, Motata J and Phoswa J that I'm aware of.

25. The JCC indeed 'could have, but failed to, expedite this process'[83] of prosecuting my complaints against Mlambo JP and Waglay JP; and my dissatisfaction over its slow-walking can't credibly be written off to 'ignorance or frustration'[84] on my part.

26. Whereas a man accused of shoplifting a piece of cheese invariably gets prosecuted to verdict/sentence within weeks at the most, two Judge Presidents accused of the most extreme 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution',[85] with the gravest implications for 'the reputation of our judges',[86] and for 'our constitutional democracy',[87] sit pretty, confident of their impunity, untouched, undisciplined, above the law, years afterwards.

27. In the circumstances, it appears that contrary to your absolutely sincere belief and assurance about this, the judges on the JCC are indeed reluctant to

[75] *Ibid*.
[76] *Ibid*.
[77] *Ibid*.
[78] *Ibid*.
[79] IOL, 3 October 2019.
[80] *Ibid*.
[81] News24, 3 October 2019.
[82] *Ibid*.
[83] *Ibid*.
[84] *Ibid.*
[85] Per section 14(4)(a) of the JSC Act.
[86] *Citizen*, 8 October 2019.
[87] News24, 3 October 2019.

'hold... their own accountable'[88] in the Mlambo JP and Waglay JP particular cases – if not actually disposed to 'build a scrum around them'[89] and 'cover up'[90] their capital misconduct.

28. The JCC's decision to deal with my complaints about Mlambo JP's manifestly impeachable misconduct, including his crimes, under section 17, thereby exposing him to no more than a slap on the wrist under subsection 17(8), speaks precisely to the JCC 'want[ing] to cover up'[91] what he's done; and it traduces your absolutely sincere assurance that 'We are dead against corruption'[92] in the judiciary.

29. As Jefferson put it to Washington in 1784, the foundation of constitutional orders like ours is 'the denial of every pre-eminence', but the JCC's conduct illustrates that on the ground the law isn't actually flat and isn't being applied equally to the higher and lower orders in our country – diametrically contradicting your opening observation in your judgment in *Public Protector v South African Reserve Bank* [2019] ZACC 29 (22 July 2019):

> [1] Accountability, equality before the law and transparency are some of the values on which our constitutional democracy was founded. It ought therefore never to matter who a person, natural or juristic, is whenever the need arises to breathe life into these values.

30. Only, at the JCC apparently it does matter. When it comes to 'holding all, including the high and mighty, accountable for their alleged or perceived wrongdoing',[93] the seemingly 'hypocritical'[94] judges of the JCC evidently lack the energy and appetite to prosecute Mlambo JP and Waglay JP for their 'high crimes and misdemeanours' (in the fitting old English of the US Constitution governing presidential impeachment) – again flatly contradicting what you said

[88] *Citizen*, 3 October 2019.
[89] News24, 23 November 2019.
[90] IOL, 3 October 2019.
[91] *Ibid.*
[92] SAnews.gov.za, 14 September 2019.
[93] *Public Protector*, paragraph 2.
[94] News24, 23 November 2019: 'Mogoeng also said judges were the ones who administered oaths to presidents and members of Parliament, expecting them to be loyal to their oath of office. He said it would be "hypocritical" to expect them to commit to doing what the Constitution demanded, if judges didn't do the same.'

at the start of your judgment in *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11 (31 March 2016):[95]

> [1] One of the crucial elements of our constitutional vision is to make a decisive break from the unchecked abuse of State power and resources that was virtually institutionalised during the apartheid era. To achieve this goal, we adopted accountability, the rule of law and the supremacy of the Constitution as values of our constitutional democracy. For this reason, public office-bearers ignore their constitutional obligations at their peril. This is so because constitutionalism, accountability and the rule of law constitute the sharp and mighty sword that stands ready to chop the ugly head of impunity off its stiffened neck.

YOUR DEPUTY INFORMATION OFFICER'S FAILURE TO RESPOND TO A REQUEST FOR ACCESS TO CERTAIN JSC RECORDS, DULY MADE UNDER SECTION 18 OF THE PROMOTION OF ACCESS TO INFORMATION ACT, AND A PLEA FOR BELATED COMPLIANCE WITH IT

31. On 6 March 2019, I filed a PAIA request for access to certain JSC records. The contextual notes appended to my request made plain that my main purpose[96] in seeking access to the documents specified in the first part of my request was to ascertain how the JCC had practically swept my eight gross misconduct complaints against Mlambo JP under the carpet. The second part of my request concerned the nomination of a certain female former LASA management executive for appointment to a tribunal constituted under section 16 of the JSC Act to try the Constitutional Court's complaint against Hlophe JP; her appointment to the tribunal; followed by her resignation from it before it sat, and the reason for this odd development.[97]

[95] Hereafter referred to as *EFF 1*.

[96] Under section 11(3) of PAIA my reasons for requesting access to the records were irrelevant to the decision of my request. I indicated them nonetheless.

[97] See paragraph 46 below.

32. Copies of my request and its covering email are annexed marked 'A' and 'B'. Following a reminder, your deputy information officer Nelson Phakola assured me that my request would be responded to. His email is annexed marked 'C'.

33. In breach of his promise, and contradicting your absolutely sincere assurance that 'The judiciary commits itself to ... transparency',[98] since 'South Africans need and deserve a credible, independent and truly transparent Judiciary',[99] I received no response to my request.

34. That is, instead of being 'truly transparent' and conducting itself in conformity with one of the 'core values'[100] of our open democracy, the JSC has showed itself to be truly opaque, 'ducking and diving as if we want to cover up',[101] in the manner of apartheid officials after a death in detention.

35. In mitigation, the JSC's failure to comply with its constitutional information transparency obligations is nothing out of the ordinary in democratic South Africa. In fact it's balefully typical of the 'shocking dereliction of duties by public ... bodies to realise South Africans' constitutional right of access to information', as the Access to Information Network ('ATI') noted in 2016, reporting that that '46% of requests submitted to government were refused – i.e. no information was provided' and that '58% of these refusals were deemed refusals – i.e. the requests were ignored.' 'Only 34% of requests submitted to government were granted in full.' Pointing up these findings, a press release by the information transparency advocacy organisation Right2Know is annexed marked 'D'.

36. Hoping to achieve the JSC's compliance with my request by extra-curial means, I made a formal human rights violation complaint to the South African Human Rights Commission ('SAHRC') on 10 July 2019, protesting that by ignoring my request the JSC had infringed my fundamental civil right to public body information guaranteed by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution. Unfortunately, notwithstanding its special statutory powers under section 83(3) of PAIA to monitor public body compliance with PAIA; to

[98] Media Briefing Announcement, Office of the Chief Justice, September 2019.
[99] SAnews.gov.za, 14 September 2019.
[100] Media Briefing Announcement, Office of the Chief Justice, September 2019.
[101] IOL, 3 October 2019.

assist the public access records; and to mentor public body information officers in how to respond lawfully to record requests and thereby respect and give effect to requesters' constitutional right to information, my formal complaint to this Chapter 9 institution responsible for overseeing public body compliance with PAIA[102] was batted away on the basis that 'it may be best for you to proceed to court in this matter. The JCS's failure to respond to your request and/or provide you with information relating to the fees you need to pay to have your request processed is reviewable in court as you have noted.'[103]

37. I demurred at suing under section 78 of PAIA to compel delivery of the requested JSC records because the respondent in such an application would have to have been you in your capacity as JSC information officer *ex officio* under section 1 of the Act.[104] And suing you, the Chief Justice, who I respect and admire immensely, was a dreadful prospect. No simple matter either, because section 25 of the Supreme Court Act 59 of 1959 would have required that I first obtain the consent of your Constitutional Court to call you to court.

38. It's unimaginable to me that you knew about, much less acquiesced in, the illegal and unconstitutional tacit refusal of my PAIA request. Hence this appeal to you in your capacity as JSC information officer to see to your deputy information officer's belated compliance with it.[105]

A FURTHER RECORDS REQUEST

39. I enclose a further PAIA request for access to records concerning the JCC's handling of my complaint against Waglay JP.

OUTLINE OF FURTHER INTENDED COMPLAINTS BEING HELD UP BY NON-COMPLIANCE WITH PAIA REQUESTS

40. I've several further gross misconduct complaints to make against Mlambo JP, in which I'll demonstrate that he disregards the rule of law at whim;

[102] Section 84 of PAIA requires the SAHRC to report annually on this to the National Assembly.

[103] My complaint to the SAHRC and the correspondence between us that followed are privately accessible in a Dropbox folder online at https://goo.gl/Ut9eH5.

[104] Your deputy information officer hadn't actually decided my request; he'd merely assured me it would be responded to.

[105] Subsection 17(2) of PAIA provides: 'The information officer of a public body has direction and control over every deputy information officer of that body.'

that 'the core values of integrity, impartiality and transparency, set out in the Judicial Norms and Standards'[106] have zero meaning for him; and that he is 'completely bereft of legal professional and judicial ethics'[107] – of personal ethics too – but I'm being obstructed and delayed in this by the JSC's tacit,[108] and LASA's express,[109] illegal and unconstitutional refusals to comply with my record requests.

41. Some of my further intended complaints against Mlambo JP will concern his procedural and ethical corruption of staff recruitment at LASA; his brazen illegal intrusion of himself as a *non-executive* director of LASA's Board by interfering in recruitment operations and decisions,[110] and his disregard for the rule of law in flouting LASA's internal regulations – its Recruitment code[111] and Approval Framework – precisely governing recruitment procedure at LASA to ensure fairness; transparency; the elimination of improper considerations in employment decisions by executive management, such as a Board member's personal preference for a particular candidate; and the approval, by management executives delegated by the Approval Framework,[112] of the best available candidates for appointment to advertised vacant posts following their recommendation by selection panels constituted under the Recruitment code to shortlist, interview, select and recommend applicants for them.

42. Aided by internal documents and inside information leaked to me by sympathetic current and former high-ranking LASA officers, my investigation of

[106] Media Briefing Announcement, Office of the Chief Justice, September 2019.

[107] SAnews.gov.za, 14 September 2019.

[108] Section 27 deems a failure to respond to a records request within 30 days to be a refusal.

[109] I have several applications pending against LASA to compel its delivery of records contemptuously refused on Chief Legal Executive Hundermark's instructions under section 45 of PAIA as an alleged waste of LASA's time; and a further such application is in preparation to compel the delivery of records he refused on this basis earlier this year, some later turned over. As said, my first five applications brought in the Magistrate's Court were conceded on Hundermark's instructions on the morning they were to be argued, and his waste-of-time story was abandoned. An application to compel LASA's full and proper compliance with its settlement agreement by turning over all requested records sued for was partially conceded by turning over further records in two batches; and an application is pending to compel delivery of the remainder, along with a compliant section 23 affidavit regarding non-existent records. The first of three High Court PAIA applications I brought in 2016, 2017 and 2018 was argued on 30 August 2019; judgment was reserved and is due imminently.

[110] In his State of the Nation Address on 16 February 2018, President Cyril Ramaphosa mentioned this general problem at public entities: 'We have found ... that board members get involved in operational measures. ... We will remove board members from any role in [them].'

[111] Fully named 'Policies and Procedures on Recruitment, Induction, Probation and Relocation'.

[112] Section 8.2.2 (b) of LASA's Approval Framework governing 'Appointments', read with 'Key to Levels', stipulates that the management executives 'delegated for approval' of 'appointment recommendations' concerning grade LP10 'Senior Professional staff' posts like Senior Litigator posts are the 'NOE' who gives 'Final approval', subject to the assent of the 'CEO': she 'Must agree'.

the pervasive, systemic corruption of Senior Litigator recruitment at LASA,[113] by drilling into it with multiple PAIA requests[114] followed by multiple applications to court to compel compliance with them when illegally and unconstitutionally refused,[115] has revealed that Mlambo JP has totally corrupted these recruitment processes, both openly on the record and covertly behind the scenes. That is, I've found this corruption to extend far beyond the original single instance I began probing with PAIA in August 2010.[116]

43. My relentless investigation of this corruption, undaunted by every obstacle thrown up to hamper it, has laid bare the radically contradictory, mutually exclusive and destructive lies told to me and to the highest authorities to cover it up,[117] as well as LASA's ongoing illegal contraventions of section 53(4) of the Public Finance Management Act 1 of 1999[118] in deliberately not filling its budgeted and funded Senior Litigator posts at the seats of the High Court at Pietermaritzburg and Durban[119] with the appropriately qualified and experienced candidates duly recommended for them by a duly constituted selection panel in November 2009, exactly one decade ago.

44. All thanks to Mlambo JP, this corruption has totally deprived the indigent in KwaZulu-Natal of expert litigation services since the Board's creation of LASA's Senior Litigator posts in November 2006 (two posts in especially populous KwaZulu-Natal, because of the special need and demand), along with seven other

[113] A former LASA national management executive, who chaired the selection panel that interviewed applicants for the Mahikeng Senior Litigator post, informs me that the candidate he and his panel recommended was passed over and a rejected candidate was appointed instead. LASA (Hundermark) has illegally and unconstitutionally refused my request for access to material records in this regard, and I've sued for them; the case was argued in the High Court on 30 August 2019 and reserved judgment is pending. I've sourced a record showing that Mlambo JP, unlawfully sitting in committee with several management executives equally unqualified and unauthorised by the Recruitment code and Approval Framework, illegally re-interviewed and then illegally vetoed the appointments of three Senior Litigator candidates who'd been duly recommended by selection panels. How their posts were filled with other persons, after Mlambo JP's illegal abortions of their recruitments, is unclear to me because again LASA (Hundermark) is illegally and unconstitutionally withholding requested records in this regard; they're the subject of pending litigation to compel their production. Following the illegal abortions of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments, the fully budgeted and funded posts have been corruptly 'frozen', unfilled for a decade, under a welter of changing, radically contradictory explanations, some of which are quoted with supporting records in my complaints to the JCC.

[114] Virtually all illegally and unconstitutionally refused on shifting, spurious grounds, ultimately abandoned at court, some of which were then vexatiously revived. LASA's persistent aggravated PAIA delinquency since 2010 is chronicled in a 'Special Report' to the SAHRC, online at https://goo.gl/Ut9eH5.

[115] My PAIA applications are accessible via the above hyperlink. I also used multiple pre-trial discovery processes; see footnote 13.

[116] See footnote 113.

[117] Mlambo JP's lies to the Justice Minister and to the chairperson of the Justice Portfolio Committee are treated in my fifth to eighth complaints. After I categorically refuted one of his blatant lies to them, it was feebly retracted in an affidavit made on his behalf and on his instructions after consultations, as 'an error', 'palpably an error'.

[118] See the Constitutional Court's decision in *Zungu* quoted in footnote 27. For radically contradictory reasons advanced, the extra Senior Litigator post created for the Eastern Cape in March 2010 at Mthatha has also been illegally 'frozen' off the record since May that year.

[119] The Auditor General has never picked up and reported this major ongoing illegality involving underexpenditure of millions of rands annually.

such posts in other provinces, after the National Assembly raised its concerns about reports received of deficient legal professional expertise available at LASA – repeatedly acknowledged by Mlambo JP and then Legal Development Executive, now Chief Legal Executive Patrick Hundermark[120] – and pertinently asked whether LASA employed Senior Litigators to remedy the problem.

45. On 30 August 2019, I argued an application[121] in the High Court at Pietermaritzburg[122] for an order compelling LASA's surrender of duly requested records, all illegally and unconstitutionally refused on the disingenuous basis that my requests were an obvious waste of LASA's time.[123] Judgment was reserved,[124] and I expect it will flush out numerous further documents needed to support more complaints against Mlambo JP concerning his wholesale corruption of recruitment operations at LASA and its cover-up – other grossly unethical and inappropriate job-fixing too:

46. In your Nelson Mandela Lecture you pointed out very correctly that 'Power corrupts', and asked the public to enquire, 'Who are we uncomfortably or indecently friendly to?'[125] What I've learned about this will inform a future complaint against Mlambo JP for his grossly unethical abuse of power as LASA chairperson in trading *favours* with LASA staff[126] – a matter notorious in the organisation according to a former national management executive who detailed it to me; but, as said, I've been held up in drawing and lodging this intended complaint by LASA's[127] and the JSC's[128] illegal and unconstitutional failures to turn over records needed for it.

[120] Since elevated to membership of LASA's Board as an executive director.

[121] See footnote 13.

[122] It was launched in October 2016. By several means immaterial to detail here, Hundermark succeeded in delaying the hearing for years.

[123] Section 45 of PAIA permits the refusal of requests that are 'manifestly frivolous or vexatious' or unreasonably time-consuming to respond to. Since 2013, LASA (Hundermark) has reflexively refused all my requests on this spurious ground. At court in February 2016, a few months before I launched my first PAIA application in the High Court in October, LASA (Hundermark) abandoned this waste-of-time story and agreed to surrender all the records I'd sued for – then revived it to refuse my next and all following requests.

[124] It's due imminently under section 5.2.6 of the Judicial Norms and Standards, allowing judges three months to write and deliver their reserved judgments.

[125] News24, 23 November 2019.

[126] That is, 'corruption or sectional beneficial use or abuse of institutional power', as you put it in paragraph 4 of *Public Protector*.

[127] One of the records for which I sued LASA in the application currently pending judgment in the High Court at Pietermaritzburg is the notice issued to a LASA officer calling on her to give reasons why she shouldn't be suspended pending the determination of a charge of gross dishonesty brought against her. I'm informed that she responded by resigning, after which – despite this rotten background – she was fixed an appointment on the tribunal established to try Hlophe JP, from which she also strangely resigned. Part Two of my PAIA request for JSC records in March 2019 probes the reason for this.

[128] See Part Two of my PAIA request for JSC records, annexure 'A' hereto.

47. I also intend making a second complaint against Waglay JP for tossing my petition for leave to appeal without the concurrence of the two other appeal judges named in the order dismissing it. An examination of the court file has established that there's no record whatsoever that they ever considered and decided my petition against me; and it's inconceivable to me that a judge can make a judicial decision without recording it – such as by signing below the words 'I agree'.

48. But there'll be little point in filing any further gross misconduct complaints with the JCC if, as it appears, it's unwilling to deal properly and expeditiously with complaints against 'certain people',[129] whom it's thus far 'shielded from being asked critical questions'[130] and from being held to account. It would be as futile as laying a complaint at a police station about a rogue policeman whose colleagues are more interested in protecting him than upholding the law.

RETALIATION

49. Interviewing applicant's for judgeships last month, you said, 'I like people who speak truth to power'[131] – having remarked in your judgments that taking on the powerful invariably comes at a heavy personal cost. In *EFF 1* you observed that 'allegations and investigation of improper or corrupt conduct against all, especially powerful public office-bearers, are generally bound to attract a very unfriendly response'.[132] In *Public Protector,* referring to the apartheid and colonial eras 'preceding our constitutional democracy',[133] you recalled more specifically:

> [4] Harsh consequences including smear or other writings bereft of intellectual integrity could flow from displaying the nerve to speak out or act against injustice, corruption or sectional beneficial use or abuse of institutional power or public resources. It was potentially

[129] News24, 23 November 2019.
[130] *Ibid.*
[131] *Mail & Guardian*, 11 October 2019.
[132] Paragraph 55.
[133] *Public Protector*, paragraph 3.

career-limiting[134] and even life-threatening for those who were supposed to know their place to seek to have the right thing done by challenging the "entitled" perpetrators of injustice or their allies.

50. A few days before making these observations in that judgment, you said much the same in a speech: 'Justice Mogoeng called for vigilance on how those who tried to investigate figures who were deemed untouchable were bombarded with insults and negativity even when there were indications that there was something worth probing.'[135] This sure speaks to me. My 'allegations and investigation of improper or corrupt conduct against'[136] your judicial brethren Mlambo JP and Waglay JP, about whom I'd complained in court papers before approaching the JCC with the solid 'indications that there was something worth probing'[137] did indeed 'attract a very unfriendly response'.[138] For 'challenging the "entitled" perpetrators of injustice'[139] and for having had 'the nerve to speak or act out against injustice, corruption or sectional beneficial use or abuse of institutional power or public resources'[140] by these 'powerful public office-bearers',[141] exceedingly 'harsh consequences ... flow[ed]'[142] for me alright, and I attracted the most violent retaliation possible short of a bullet in the head.

51. To neutralise me as a whistleblower, in the manner of the Mob rubbing out witnesses, Mlambo JP and his consigliore Hundermark (fixed an acting judicial appointment for his loyalty) went all out to annihilate me by wrecking my reputation, destroying my legal career, depriving me of my livelihood, strangling me financially, and having me stripped of my fundamental civil rights in our democracy, like a 'communist' listed by the Minister of Justice during apartheid.

[134] Precisely for 'displaying the nerve to speak or act out against injustice, corruption or sectional beneficial use or abuse of institutional power or public resources' in the apartheid era 'preceding our constitutional democracy', I lost my post as a full-time civil magistrate in the early 1990s. Threatening the Justice Department with a review application, I'd successfully challenged my irregular transfer out of town at the behest of then Deputy Minister of Justice Danie Schutte, mobilised against me by my opponent in a noise nuisance dispute (his noise), using his political connections with the local branch of the National Party in the Tammany Hall manner. (This back-story was reliably leaked to me by a senior court officer afterwards.) On the day the Director General backed down and cancelled the transfer, I was demoted to traffic court. (I then quit and joined the Bar.) As described in this 'RETALIATION' chapter, I paid yet again, now in the constitutional democratic era, the 'career-limiting' price of 'challenging the "entitled" perpetrators of injustice or their allies' in the judiciary.

[135] *The Mercury*, 18 July 2019. (The talk mentioned in paragraph 23 above.)

[136] Paragraph 55.

[137] The Mercury, 18 July 2019.

[138] *Ibid.*

[139] *Public Protector*, paragraph 4.

[140] *Ibid.*

[141] *Ibid.*

[142] *Ibid.*

52. To discredit my complaints by discrediting me, Mlambo JP and his 'all[y]'[143] Hundermark have conducted an ongoing smear campaign against me, defaming me to the Minister,[144] to the chairperson of the Justice Portfolio Committee,[145] to the courts,[146] and, most recently to you[147] – as witness Mlambo JP's vicious *ad hominem* attack on me in his response to my complaints against him, wantonly smearing me as a 'racist'[148] (who doesn't 'love this country and all its people')[149] to dishonestly imply that my eight complaints against him were motivated by racial animus.

53. Mlambo JP's 'writings'[150] to me, to the Minister, to the Portfolio Committee, to the courts, and to you have been entirely 'bereft of intellectual integrity'[151] to say the least of it, and they reveal him to be a complete stranger to the truth.[152]

54. For pleading Mlambo JP's corruption in the Labour-[153] and Labour Appeal Courts,[154] and Waglay JP's in the Magistrate's Court[155] and High Court,[156] Mlambo JP and Hundermark contrived to have me struck off the roll of advocates with a complaint to the Bar in November 2015 that I'd scandalised the

[143] *Ibid.*

[144] See my fifth to eighth complaints to JCC.

[145] *Ibid.*

[146] See my first complaint to the JCC. Other lying calumnies in aggravation of damages were catalogued in page after page of my heads of argument in my labour case.

[147] Mlambo JP improperly addressed his response to my complaints directly to you, not to the JCC. You appear not to have read it, however, and to have duly passed it on to the JCC, because during your presentation of the judiciary's annual report in October 2019 you mentioned only the long pending complaints against Hlophe JP and Motata, Preller, Mavundla, and Phoswa JJ, and not my long pending complaints against Mlambo JP and Waglay JP, showing you weren't aware of them.

[148] I categorically refute Mlambo JP's despicable lie about me in light of some private information provided in my comments on his response.

[149] SAnews.gov.za, 14 September 2019.

[150] *Public Protector*, paragraph 4.

[151] *Ibid.*

[152] Mlambo JP's dishonest 'writings' are the subject of my complaints to the JCC. My invited comments on his response to them show it to be equally dishonest.

[153] In my original statement of claim. On a silk's advice as to trial strategy, I didn't plead Mlambo JP's misconduct in my amended statement of claim on which my case was tried, nor did I impeach it at trial; contrariwise, to confine the issues I stated that I held him clear.

[154] In my petition for leave to appeal. Neither the trial judge Cele J nor the appeal judge(s) Waglay JP (et al.) found any fault with my case against Mlambo JP made in my court papers. During argument I specifically asked Cele J whether he was minded to criticise any aspect of the manner in which I'd litigated against LASA, so that I might address it (LASA was seeking punitive costs for my criticism of Mlambo JP in my original statement of claim). He amiably waved me away, and later complimented both sides for our conduct in the case, after delivering judgment. Neither of his judgments dismissing my claim and my application for leave to appeal stated or implied anything adverse about my forthright criticism of Mlambo JP in my original statement of claim. Had Waglay JP been troubled by the equally mordant case I made against Mlambo JP in my petition for leave to appeal, and by my forthright identification of Cele J's many radical reversible errors*, he could have said so and penalised me in costs. He didn't, and in dismissing my petition made no costs order. (*As basic as misallocating the onus of proof (as he and LASA conceded); refusing to allow me to cross-examine key LASA witnesses specially subpoenaed for the purpose; failing to consider the contradictory, mutually exclusive and destructive excuses, unsupported and contradicted by the records, advanced for not appointing me; also his misconduct in dozing during the afternoon sessions and failing to prepare for the oral argument by reading my extensive heads of argument – as he jocosely volunteered in his chambers.)

[155] To illustrate the extent of the background corruption I was up against, I put the 'memorandum' up with one of my PAIA applications.

[156] After discovering the 'memorandum', I launched a semi-urgent interdict application to the High Court at Pietermaritzburg. Although timeously delivered to the sheriff's office for service, the papers weren't served before the hearing as a result of a communication failure, and my case was struck from the roll.

court.[157] Without hearing me, or even informing me of the complaint against me, the Bar resolved to apply that I be ignominiously expelled from its ranks. You explained its unreconstructed *denkstil* in *Public Protector*:

> [3] For centuries preceding our constitutional democracy, untouchability was so entrenched or virtually institutionalised that it was unthinkable for some to challenge the apparent or actual criminality, naked injustice or corruption that reigned in our country. So normalised was impunity and injustice that some citizens were not only expected to accept their unjustly prescribed inferiority, but to also succumb to the "preferred" impermissibility for them to be critical of the untouchables.

55. When some months later I chanced to learn of the Bar's intention to have me professionally decapitated for not 'succumb[ing] to the "preferred" impermissibility ... to be critical of the untouchables'[158] and for my allegedly unprofessional 'challenge [to] the apparent or actual criminality, naked injustice or corruption that reigned in our country' among 'the untouchables'[159] in the judiciary, and I requested a hearing, the learned leaders of the Bar agreed to reverse their *ex parte* decision and deigned at last to observe that elementary principle of natural justice, the *audi alteram partem* rule, with which they appear hitherto to have been unfamiliar.

56. I answered the charge that I'd professionally disgracefully impugned Mlambo JP's and Waglay JP's integrity by furnishing the Bar with copies of my vouched complaints to the JCC, and that was the end of it. Still, with news of the Bar's original decision having spread through the professional grapevine, the attempted hit on me has stained my name; I've picked this up in my interactions with my colleagues and the bench.

[157] Nominally signed by Hundermark's then immediate subordinate and subaltern Legal Executive Thembile Mtati, but almost certainly drawn by Hundermark, the 'complaint deals with the manner in which Advocate Brink conducts his litigation, [his] unwarranted, abusive and defamatory statements made against members of the bench ... Judge President Mlambo of the North and South Gauteng Divisions of the High Court [and] Judge President Waglay of the Labour Court ... [T]he conduct of Advocate Brink is not befitting of an officer of the Court more so to act as a Magistrate. The language used is unprofessional, the manner he relates to colleagues and Judges requires sanction.'

[158] *Public Protector*, paragraph 3.

[159] *Ibid*.

57. Mlambo JP and Hundermark copied their complaint[160] to the Magistrates Commission, which passed it on to the Justice Department without thinking to investigate it. For the reason you identified in *Public Protector*, quoted just above, my contract as an acting magistrate in Eshowe, KwaZulu-Natal, was thereupon summarily terminated[161] a few days later, without notice to me of the complaint, let alone a hearing, and I was thrown off the bench.[162]

58. I only learned of LASA's hand in my sacking eighteen months later when at the end of May 2017 the Chief Magistrate at Pietermaritzburg telephoned to ask me to apply for another acting appointment at another court in the region, where I was needed to relieve the resident magistrate away on Regional Court test. To our mutual surprise, the Deputy Minister refused to appoint me, on account of the complaint against me.[163] That is, for 'displaying the nerve to speak out or act against injustice, corruption or sectional beneficial use or abuse of institutional power or public resources'[164] and for having had the temerity to 'challenge the apparent or actual criminality, naked injustice or corruption ... of the untouchables',[165] Mlambo JP and Hundermark had succeeded in getting me both fired and blacklisted[166] as a professional reprobate unfit to preside as a magistrate[167] – turning things seriously 'upside down'.[168]

59. Like former President Jacob Zuma resorting to every possible legal trick to derail his corruption prosecution, Mlambo JP's fixer Hundermark's next gambit to obstruct my investigation of his boss's corruption and finish me off good and

[160] Again, nominally signed by Mtati.

[161] Like all acting magistrates on contract, I was employed on routinely renewed rolling three-month contracts, suddenly ended.

[162] The reason my contract wasn't renewed, which my permanent colleague understood and conveyed to me, and which I accepted at the time, was that I'd served a maximum two years on contract. In fact, as I later learned, there's no such policy limit, and other acting magistrates have served very much longer.

[163] The Chief Magistrate's secretary emailed me on 1 June 2017: 'The Deputy Minister's office has sent us communication regarding a pending complaint from Legal Aid against you and so at this stage it does not as though your appointment will be authorised.'

[164] *Public Protector*, paragraph 4.

[165] *Public Protector*, paragraph 3.

[166] The Magistrate's Commission explained to the Chief Magistrate on 13 June 2017 that 'the complaint was lodged to prevent Mr Brink from being appointed as an Acting Magistrate due to his prior behaviour.' A 'Deputy Minister Memo' to the Justice Department's deputy information officer on 7 July 2017 confirmed: 'LASA informed the Magistrates Commission during November 2015 of their concerns for Adv Brink to be appointed as an Acting Magistrate. The Office of the Deputy Minister will in the normal course consult with the Magistrates Commission whether they have information on the their system regarding retired or ex magistrates or acting magistrates that the Deputy Minister should be aware of when considering applications from Heads of Court. It is during this process of consultation that the Magistrates Commission provided us with the concerns raised by LASA.'

[167] See footnote 157: '[T]he conduct of Advocate Brink is not befitting of an officer of the Court more so to act as a Magistrate.' My blacklisting likely also cost me a permanent appointment to a civil magistrate post for which I was interviewed in August 2017 ('Mr Brink, you have a very impressive CV'), after which, silence.

[168] *Public Protector*, paragraph 104.

proper was to apply[169] to the High Court at Pietermaritzburg in October 2016 for orders interdicting me[170] from accessing any more of LASA's records[171] and banning me from seeking relief from the courts[172] as an alleged 'vexatious litigant' – for repeatedly suing for records needed for my corruption investigation, whenever illegally and unconstitutionally denied me, including records Hundermark had formally pledged to hand over in a settlement agreement made[173] with me at the Magistrate's Court in February 2016 after totally capitulating to my first five PAIA applications brought to compel their delivery to me, as well as records he'd implicitly undertaken to provide in response to what we agreed would be my final PAIA request to be made in the matter of LASA's Senior Litigator posts.[174]

60. A year later on 27 October 2017 the High Court at Pietermaritzburg found Hundermark's malicious, vexatious application to be so obviously devoid of merit that I wasn't even called on to argue, and it was dismissed immediately after LASA's counsel sat down. And so the hunting shot missed.

THE POSSIBILITY OF A CONCILIATORY RESOLUTION

61. I conclude by recording that I'm not on any 'vindictive crusade'[175] (even less 'against the innocent').[176] Now that it's in the JCC's hands I appreciate I no longer control the ball, but for my own part I'd infinitely prefer a global, conciliatory resolution of my complaints to the JCC and my claims against LASA,[177] closing this sordid saga so that I might move on with my life after ten

[169] With Mlambo JP's approval: as with all litigation by and against LASA, the case was reported to the Board in a quarterly litigation report by Hundermark's corporate legal department.

[170] With the same corrupt intent, Gavin Watson interdicted the Special Investigating Unit from investigating his and other Bosasa executives' tender corruption in 2009 – see 'How Bosasa's Watson evaded SIU attention', *Citizen*, 2 April 2019.

[171] That is, deprived of my fundamental right to information in the democratic era, guaranteed by section 32 of the Bill of Rights.

[172] That is, deprived of my fundamental right to seek relief from the courts in the democratic era, guaranteed by section 34 of the Bill of Rights.

[173] Via Legal Executive Mtati, present at court and taking and acting on Hundermark's telephonic instructions. The pledge was dishonoured: some records were turned over, but many key records were retained, and LASA's section 23 affidavits certifying non-existent records were uselessly non-compliant – as both the magistrate pointed out and as LASA's counsel conceded in court on the record. These failures to honour the settlement agreement are the subject of a pending application to compel full and proper compliance with it.

[174] My investigation was substantially complete.

[175] *Public Protector*, paragraph 104.

[176] *Ibid.*

[177] On its end, all 'the biggest law firm on the African continent' (as LASA bills itself) has to do is return to the rule of law by (a) removing the illegal, off-the-record, unauthorised block on its recruitment process for its still vacant, still budgeted, still funded, critical, top legal professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg, which was illegally 'frozen' off the record ten years ago this month when I was unexpectedly and disagreeably recommended for it instead of Mlambo JP's judicial friend Ngcamu; (b) quit contravening section 53(4) of the PFMA by at last applying the salary funding it has budgeted for and received, and still budgets for and

wasted, joyless years, completely consumed by my ongoing struggle for justice, at immense, irrecoverable personal cost. Which has only steeled my resolve.

62. Otherwise, *aluta continua* against 'the "entitled" perpetrators of injustice',[178] the 'untouchables'[179] 'completely bereft of legal professional and judicial ethics',[180] with all my power and 'deploying all the resources at [my] command.'[181]

63. As my indefatigable pursuit of justice in my case over the past decade[182] must show beyond any doubt, clearly I don't 'know [my] place'[183] and don't cringe before corrupt power, and I'm unshakeably determined to 'have the right thing done'[184] in this matter by all and by any lawful means, whatever it takes.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

receives, for the post ever since it was created in November 2006; (c) resume due process by concluding and finalising my appointment with effect from 1 January 2010, the earliest date I said I could begin when asked about this by the selection panel – in which event I'll withdraw my pending court applications; abandon my further intended applications currently in preparation; withdraw my complaints to the JCC; and abandon my further intended complaints, currently on hold pending the delivery of duly requested records needed to support them.

[178] *Public Protector*, paragraph 4.

[179] *Public Protector*, paragraph 3.

[180] SAnews.gov.za, 14 September 2019.

[181] *EFF 1*, paragraph 86.

[182] Numerous litigations, many shelves full of papers.

[183] *Public Protector*, paragraph 4.

[184] News24, 23 November 2019.

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

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

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number:

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

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

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

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

Judicial Service Commission

188 14th Road, Noordwyk, Midrand, Gauteng

By email, under section 18(1):

To Secretary Lynette Bios

And to Deputy Information Officer Sello Chiloane

B. Particulars of person requesting access to the record

(a) The particulars of the person who requests access to the record must be recorded below.
(b) Furnish an address and/or fax number in the Republic to which information must be sent.

Full names and surname	:	Anthony Robin Brink
Identity number	:	5902255116081
Postal address	:	36 Pearson Street, Eshowe 3815, KwaZulu-Natal
Fax number	:	N/A
Telephone number	:	083 779 4174
E-mail address	:	anthonybrink.sa@gmail.com

C. Particulars of person on whose behalf request is made:

N/A

D. Particulars of record

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

NOTE: Contextual notes to Parts One and Two of this section are annexed hereto.

PART ONE

1. The record of the decision to dispose of the requester's (Brink's) (a) eight gross misconduct complaints to the Commission against Mlambo JP (ref: JSC 533/17), and (b), Brink's further gross misconduct complaints, arising from Mlambo JP's response to them, made in his invited comments on his response, merely under section 17 of the Judicial Service Commission Act 9 of 1944 governing 'serious, non-impeachable complaints'.

2. In addition to item 1 above, the rest of the documents in case file JSC 533/17 kept by the Commission in Brink's complaints against Mlambo JP, i.e. the complete contents of the file, including any and all annotations on its cover – but excluding Brink's complaints; Mlambo JP's response to them; and Brink's invited comments on his response, all of which latter documents Brink already has in his possession.

3. All email records archived on the Commission's email server from 1 June 2017 to the date on which this records request is complied with, responsive to a search on 'Brink' and/or 'Mlambo' and/or '533/17'.

4. The Commission's annual reports to Parliament for 2017 and 2018 made under section 6 of the said Act.

5. The Judicial Conduct Committee's six-monthly reports to the Commission in 2017 and 2018 made under section 10(2) of the said Act.

PART TWO

6. The terms of reference of the Tribunal appointed under section 16 of the said Act to investigate and report on the complaints to the Commission made against Hlophe JP.

7. Mlambo JP's nomination of attorney Noxolo Maduba for appointment to the said tribunal in 2012/2013. (*Note: Only the part of the record reflecting the identity of Mlambo JP as the person who nominated Maduba for appointment is required; the text of his commendation of her in the nomination, i.e. its contents, hit by section 12 of PAIA, may be redacted.*)

8. Maduba's letter of appointment to the said Tribunal in or about February 2013.

9. Hlophe JP's (and/or other) subsequent objection(s) to her appointment.

10. Maduba's response, if any, to the objection(s).

11. Maduba's letter of resignation from the Tribunal.

E. Fees

*(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid. (b) You will be notified of the amount required to be paid as the request fee. (c) The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.*

On advice under section 22(1) of the amount of the request fee to be paid and of the Commission's bank account details, the fee will be paid by EFT.

F. Form of access to record

Mark the appropriate box with an "X".
(a) Your indication as to the required form of access depends on the form in which the record is available.
(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.
(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in written or printed form -

X	copies of records		inspection of record

2. If record consists of visual images - N/A
3. If record consists of recorded words or information which can be reproduced in sound - N/A
4. If record is held on computer or in an electronic form -

	printed copy of record		printed copy of information derived from the record*	X	copies in computer readable form – to be emailed as file attachments.

G. Notice of decision regarding request for access

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

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

By email.

Signed at Eshowe on 6 March 2019

SIGNATURE OF REQUESTER

CONTEXTUAL NOTES

> *The law is a web for small flies, the big ones burst through.*
>
> Anacharsis (6th Century BC) quoted by Plutarch (c. 46–120 AD)
> Jonathan Swift (1667–1745) and Honoré Balzac (1799-1850)
> made the same observation.

AD PART ONE

Over the period June–July 2017, the requester ('Brink') lodged eight gross misconduct complaints with the Commission against Legal Aid SA ('LASA') Board chairperson Dunstan Mlambo JP, head of the Gauteng Division of the High Court,[1] and, as requested, resubmitted them in November 2017 in a single indexed and paginated bundle.[2] All complaints complied with section 14 of the Judicial Service Commission Act 9 of 1944 ('the Act').

Brink's exceptionally serious complaints, all finely particularized and founded on supporting documents, indicted Mlambo JP's:

- subornation of perjury committed on his instructions in an answering affidavit deposed to on his behalf by his de facto attorney, LASA Legal Executive Thembile Mtati, opposing Brink's application under section 25 of the Supreme Court Act 59 of 1959 for leave to subpoena him for cross-examination on his capital misconduct (outlined below), which perjury comprised an elaborate, malicious fabrication contrived to defame Brink and devastate his credibility in court, and thereby pervert the judicial

[1] Further complaints will follow upon LASA's surrender under court order of records it has illegally refused, for which Brink has sued under section 78 of PAIA. His applications to compel access, both in the Eshowe Magistrate's Court and the High Court at Pietermaritzburg, are pending. His three High Court applications have been set down for argument in ten days time, on 15 March 2019. An application to compel full and proper compliance with LASA's settlement agreement concluded in February 2016, on capitulating to five PAIA applications brought there, will be set down after disposal of the High Court cases.

[2] The bundle is accessible in this Dropbox folder online: …….

decision of the application – i.e. perjurious defamation to defeat the ends of justice;[3]

- repeated and persistent collusion in and connivance at LASA CEO and information officer Vidhu Vedalankar's clearly illegal and unconstitutional repeated blanket refusals to comply with requests for information Brink duly made under section 18 of the Promotion of Access to Information Act 2 of 2000 ('PAIA') in 2010, with the corrupt object of perpetuating a mendacious cover-up of recruitment corruption in which he, Mlambo JP, was centrally involved (see below), by suppressing documentary evidence exposing it (disgorged many years later, after protracted illegal obstruction, by suing for it under section 78 of PAIA);
- lying and false reporting to the Justice Minister and to the Justice Portfolio Committee of the National Assembly on multiple scores – in the latter case crimes under sections 17(2)(d) and (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 – in a secret ('confidential') false report he made 'Re: Adv Anthony Brink' to pervert enquiries they had separately and independently instituted at Brink's instance – in the latter case to corruptly defeat the National Assembly's constitutional oversight responsibility over LASA imposed by section 55(2)(b)(ii) of the Constitution – namely enquiries into:
  - § Vedalankar's clearly false budgetary insufficiency excuse (contradicted and refuted by LASA's own financial records, finally disgorged with PAIA many years later, after first being refused), concocted on 18 October 2010 in response to a searching PAIA request by Brink in August 2010 (repeatedly refused) probing the silent, unrecorded, unauthorised, illegal abortion of Brink's recruitment to LASA's top legal professional post in KwaZulu-Natal, namely its still vacant, still

[3] Mentioned below, Mlambo JP resorted to exactly the same kind of false and malicious defamation of Brink to discredit his misconduct complaints against him to the Commission.

budgeted, still funded Senior Litigator post at Pietermaritzburg,[4] after his successful interview and recommendation for the post on 12 November 2009 by a selection panel of LASA's most senior lawyers in the region; at which interviews the panel disqualified and rejected Mlambo JP's judicial friend, Ngcamu AJ (as he used to be) – whom Mlambo JP had repeatedly over a period of about six years got appointed to act as a fellow judge on the Labour Court bench headed by him at the time, and who was then back at the side-bar[5] – for the reasons that he had no right of appearance in the High Court and had zero litigation experience on his feet there;

§ repeated clearly illegal and unconstitutional blanket refusals to comply with Brink's PAIA requests in 2010 probing the propriety and legality of the abortion of his recruitment, under cover of the said false financial insufficiency excuse eventually fed him eleven months later under rising pressure to account, in which reports to the Minister and to the Portfolio Committee Mlambo JP falsely and mendaciously alleged full, timeous, and due compliance with Brink's PAIA requests, whereas in truth and in fact, as Mlambo JP knew full well from Brink's repeated petitions to him for his intervention in the exercise of his fiduciary duty to LASA to ensure statutory and constitutional compliance by its management executives, Brink's requests had been totally refused: both of them obviously illegally and unconstitutionally, and the first unlawfully out of time as well.

Which lying financial insufficiency excuse (contradicted and refuted by LASA's own records, later disgorged with PAIA) Mlambo JP mendaciously

[4] In Zungu v Premier of the Province of KwaZulu-Natal and Others [2018] ZACC 1 (22 January 2018, the Constitutional Court observed that allowing a budgeted post to be 'left vacant' constitutes a 'breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position ... vacant.' That is, the abortion of Brink's recruitment was also illegal under the PFMA.

[5] According to a media report, the Commission had rejected his application for a permanent appointment as a judge on account of his failure to disclose misconduct convictions by the Law Society.

repeated to the Minister and to the Portfolio Committee in his 'confidential' reports to falsely put down Brink's true complaints to them and to successfully pervert their enquiries into the obviously irregular and unlawful abortion of Brink's recruitment – also, to the same corrupt end, mendaciously advancing a novel false logistical/practical excuse (contradicted and refuted by LASA's own records), invented to patch a hole in the original financial excuse that exposed it as obviously false.[6]

In short, Brink charged Mlambo JP with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Act, eminently warranting his suspension and removal from office under section 177(3) and section 177(1)(a) of the Constitution.

The fact that Mlambo JP was required to respond to Brink's complaints shows that (a) they were found not to be 'frivolous or lacking in substance', per section 15(d), and peremptorily subject to summary dismissal under section 15(2), and that contrariwise they were found to make out serious prima facie answerable cases on all counts; and (b) that Mlambo JP's misconduct complained of was found to 'fall within the parameters of any of the grounds set out in section 14(4)', per section 15(1), namely 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution' (section 14(4)(a)); a 'wilful … breach of the Code of Judicial Conduct' (section 14(4)(b)); or 'other wilful … conduct … incompatible with or unbecoming the holding of judicial office' (section 14(4)(e)).

[6] A few months after Mlambo JP's false and mendacious secret report to the Portfolio Committee in June 2011 had been thoroughly exposed and refuted in legal pleadings by Brink filed in July and October 2011, National Operations Executive Brain Nair abandoned the two absolutely false and mendacious financial and false logistical/practical excuses that Mlambo JP gave the Minister and the Portfolio Committee for Brink's non-appointment, and replaced them in his 'Report to Board' in November 2011 with new, totally different, also absolutely false and mendacious excuses (contradicted and refuted by LASA's own records) namely 'recruitment challenges' and the alleged professional incompetence of and non-delivery by LASA's incumbent six Senior Litigators. In other words, the discredited and refuted lies that Mlambo JP told the Minister and the Portfolio Committee to pervert their enquiries were dropped and substituted with other lies. Indeed, after Brink exposed and refuted the lying false logistical/practical excuse advanced to the Minister and to the Portfolio Committee, it was expressly retracted on affidavit by Mtati, Nair confirming, as 'an error', 'palpably an error'.

In his response to Brink's complaints addressed to the Chief Justice, Mlambo JP massively compounded his gross misconduct by falsely and maliciously defaming Brink as a racist,[7] and by telling him several other objectively demonstrable lies.

On 11 February 2019, during a telephone call received from Commission secretary Lynette Bios about a different matter, Brink enquired about the status of his complaints against Mlambo JP, to which she responded that it had been decided to deal with them under section 17.

Section 17 governs the disposal of 'serious, non-impeachable complaints' only.

If the secretary's information to Brink that his eight capital complaints against Mlambo JP, profoundly aggravated by his dishonest response to them, are to be dealt with merely under section 17 was correct, it means that the judge who took this decision reckons Mlambo JP's extraordinarily grave misconduct, including his crimes, detailed and documented in Brink's complaints, and disclosed in his response to them, was not gross misconduct contemplated by section 14(4)(a) of the Act and section 177(1) of the Constitution.

It means – in ludicrous contradistinction – that whereas Motata J's conduct in driving drunk, crashing his car into a wall, racially abusing the owner of the wall, and then at trial calling him a racist and falsely denying his intoxication, was duly found by the Judicial Conduct Tribunal chaired by Jappie JP to be impeachable gross misconduct, Mlambo JP's subornation of perjury to falsely defame and discredit Brink so as to pervert an application for leave to subpoena him for cross-examination on his misconduct; his repeated collusion in and connivance at LASA information officer Vidhu Vedalankar's persistent illegal and unconstitutional blanket refusals to

[7] In his invited comments on Mlambo JP's response, Brink mentioned that his late life-partner was African. His current lady partner is Indian.

comply with Brink's PAIA requests, so as to suppress evidence of recruitment corruption in which he was centrally involved; his lying and false reporting to pervert ministerial and parliamentary enquiries into this illegal, unethical, and unconstitutional conduct; and then his false and malicious smearing of Brink as a racist in his response to Brink's complaints, and his other many clearly false allegations made in his response to counter Brink's complaints, is merely 'serious' criminal and other egregious misconduct – but it is 'non-impeachable', per the heading of section 17, in the opinion of the judge who decided to proceed against Mlambo JP only under section 17; and that all this extreme misconduct charged and documented by Brink, and further disclosed in Mlambo JP's response, warrants no higher a sanction than an apology, reprimand, warning, compensation order, counselling, training, or other appropriate corrective measure, under section 17(8) – besides impeachment – to which range of puny penalties 'remedial action will be limited' under section 17(1)(a).

Even a child can see that the decision to sweep Mlambo JP's aggravated criminal and other capital misconduct under the carpet in this manner doesn't come close to meeting the rationality requirement for valid and lawful administrative action, and won't survive public exposure and judicial review.

Brink's reason for making this request under PAIA for access to the Commission's records specified in Part A – albeit that section 11(3) of PAIA holds his reason to be irrelevant to the Commission's information officer's decision whether to grant it or not – is to investigate the circumstances in which the obviously grossly irregular, indefensible, insupportable decision was made to deal only under section 17 with Brink's plainly impeachable capital misconduct complaints against Mlambo JP, profoundly aggravated by his response to them, with the transparent aim of ensuring that under section 17(8) he escapes justice with a slap on the wrist; and to establish the identity of his friend of his on the JSC who imagines that Brink's capital

charges are going to be quietly disposed of in this unlawful manner, and that his identity and his attempt to protect his friend like this aren't going to be very publicly ventilated and exposed to anti-corruption and Constitution watchdog NGOs and the national newspapers.

Having regard to the stunning double standards being applied, the decision to proceed against Mlambo JP under section 17 only, *yokuthi uvele udonswe ngendlebe*, will undoubtedly interest Hlophe JP facing impeachment by a Tribunal under section 16.

AD PART TWO

A former Free State Provincial Executive of LASA has alleged to Brink that Mlambo JP used his influence to secure the appointment in February 2013 of former LASA Bloemfontein Justice Centre Executive Noxolo Maduba to the Tribunal established to investigate and report on the complaints to the Commission made against Hlophe JP; and that after the latter objected to her appointment, she resigned it.

Whether this information is correct remains to be determined. Commission deputy information officer Sello Chiloane vaguely recalled it in a telephone call he made to Brink on 14 November 2016.

If it's true, the significance of Mlambo JP's agency in achieving Maduba's appointment, his special motivation for doing so, and why it was grossly inappropriate and unethical in the particular circumstances, is not relevant to state here, but will be detailed in an ethics complaint to the Commission upon delivery of the documents requested in Part Two and of another

document for which Brink has sued LASA in the High Court at Pietermaritzburg.[8]

Brink is not seeking access to any record contemplated in section 12(d) of PAIA, namely 'a record referred to in paragraph (gg) of the definition of "administrative action" in section 1 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000),[9] regarding the nomination, selection or appointment of … any … person by the Judicial Service Commission'. That is, Brink is not seeking access to any record revealing *the specifics of the nomination* nor the *reasons the Commission decided to select and appoint Maduba*, i.e. information bearing on the decision-making process, which is protected by section 12 – only confirmation of the fact that Mlambo JP nominated her, and some records generated subsequent to her appointment, and therefore not hit by section 12, concerning her resignation and the reasons for it.

[8] The application, case 11187/16P, is set down for argument on 15 March 2019, along with two similar PAIA applications, cases 14224/17P and 5239/18P.

[9] Section 1 of PAJA, 'Definitions', provides:
'In this Act, unless the context indicates otherwise- "administrative action" means any decision taken, or any failure to take a decision, by-
(a) an organ of state, when-
(i) exercising a power in terms of the Constitution or a provincial constitution; or (ii) exercising a public power or performing a public function in terms of any legislation; or
(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision,
which adversely affects the rights of any person and which has a direct, external legal effect, but does not include-
…
(gg) a decision relating to any aspect regarding the nomination, selection or appointment of a judicial officer or any other person, by the Judicial Service Commission in terms of any law'.

R40
B

Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

Request for access to records under PAIA

1 message

Anthony Brink <anthonybrink.sa@gmail.com> 6 March 2019 at 15:42
To: Lynette Bios <lbios@judiciary.org.za>
Cc: Sello Chiloane <Chiloane@concourt.org.za>

Dear Ms Bios
I attach a PAIA request for the Commission's information officer's or deputy information officer's response as soon as reasonably possible (per the Act) please.
Yours sincerely
Anthony Brink
Cc: DIO Sello Chiloane

JSC PAIA request 6 March 2019.pdf
74K

2287

R40
C

Gmail Anthony Brink <anthonybrink.sa@gmail.com>

Unanswered PAIA request

3 messages

Anthony Brink <anthonybrink.sa@gmail.com> 23 April 2019 at 14:28
To: nphakola@judiciary.org.za
Cc: schiloane@judiciary.org.za, Sello Chiloane <chiloane@concourt.org.za>, Lynette Bios <lbios@judiciary.org.za>

Dear Mr Phakola
I attach an important letter for your immediate attention please.
Yours sincerely
Adv AR Brink

Phakola 23 April 2019.pdf
30K

Nelson Phakola <nphakola@judiciary.org.za> 24 April 2019 at 14:49
To: Anthony Brink <anthonybrink.sa@gmail.com>
Cc: Sello Chiloane <schiloane@judiciary.org.za>, "Sello Chiloane (Concourt)" <chiloane@concourt.org.za>, Lynette Bios <lbios@judiciary.org.za>

Dear Adv. Brink

Receipt of your below email is acknowledged and I will revert back to you soon.

Regards

Nelson Phakola

Deputy Information Officer

[Quoted text hidden]

anthonybrink.sa@gmail.com <anthonybrink.sa@gmail.com> 25 April 2019 at 11:26
To: Nelson Phakola <nphakola@judiciary.org.za>

Thanks, Mr Phakola.

Anthony Brink

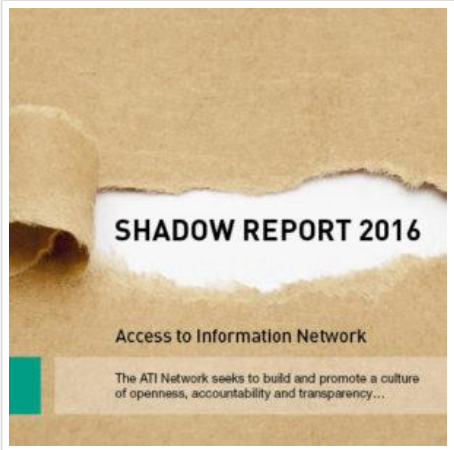
Sent from my Windows 10 device

[Quoted text hidden]

New report reveals shocking failure by public and private bodies to uphold South Africans' right of access to information

Posted in: Campaign Updates, InfoAccessNow | February 23, 2017

New research by the Access to Information Network (ATI Network)[1] has revealed a shocking dereliction of duties by public and private bodies to realise South Africans' constitutional right of access to information.



See the full Shadow Report 2016 online here.

The Shadow Report 2016 was compiled with statistics from requests for information made using the Promotion of Access to Information Act, 2000 (PAIA) by the 13 civil society organisations which make up the ATI Network. The Report covers the period 1 August 2015 to 31 July 2016, during which ATI Network members submitted 369 PAIA requests to government and private bodies. Key findings of the Shadow Report 2016 are:

- 46% of requests submitted to government were refused – i.e. no information was provided.
- 58% of these refusals were deemed refusals – i.e. the requests were ignored.
- Only 34% of requests submitted to government were granted in full.
- 64% of the appeals submitted to government were deemed to have been dismissed – i.e. the appeals were ignored.
- 67% of requests submitted to private companies were refused – i.e. no information was provided.
- Only 13% of requests submitted to private companies were granted in full.

These findings, in particular the number of PAIA requests and appeals which are simply ignored by government, are deeply concerning. They point to a clear failure by both public and private bodies to realise our right of access to information.

We are, however, encouraged by the progress made in the extent to which certain public bodies are expanding the number and categories of records which they will make automatically available to the public, i.e. without the need to submit a PAIA request.

It is in the State's interests to make information widely, publicly and automatically available. Making information automatically available not only significantly reduces the number of PAIA requests submitted, and therefore reduces the associated administrative burden, it also increases public trust in and cooperation with decision-makers.

The Shadow Report 2016 contains the following key recommendations:

- Public bodies must be encouraged to broaden their categories of automatically available information, and all such information should be placed on their websites.

- All licences should include a condition requiring the licence holder to make a copy of its licence available on its website or to anyone on request.

- Greater adherence to the severability clauses in PAIA would promote the objectives of PAIA while protecting information that should not be disclosed.

- The terms “trade secrets” and “commercial information” in PAIA should be clearly defined, to prevent their use as unsubstantiated excuses for failing to disclose records which should be publicly available.

- Capacity constraints within public bodies need to be addressed to ensure that the obligations under PAIA can be met.

About the ATI Network

The ATI Network was established in 2008 in response to the need for civil society collaboration to strengthen the effective use and implementation of PAIA, the mechanism via which our constitutional right to access information should be realised. The ATI Network currently consists of the following members (in alphabetical order):

amaBhungane Centre for Investigative Journalism

Centre for Applied Legal Studies

Centre for Environmental Rights

Corruption Watch

Equal Education Law Centre

Khulumani Support Group

Open Democracy Advice Centre

Oxpeckers Investigative Environmental Journalism

Probono.org

Public Service Accountability Monitor

Right2Know

South African History Archive

Wits Justice Project

For more about this report, contact:

Toerien van Wyk

Acting SAHA Directorate and FOIP Coordinator

011 718 2563

foip@saha.org.za

Annette Gibbs

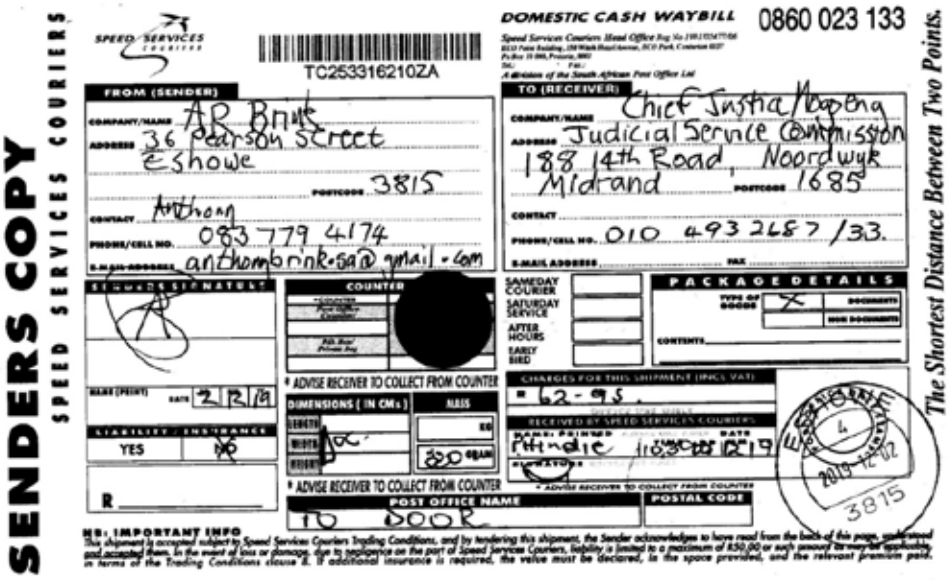
Centre for Environmental Rights

agibbs@cer.org.za

082 467 1295

1 Formerly known as the Promotion of Access to Information Act (PAIA) Civil Society Network.

Brink to Mogoeng CJ, Nov 2019: Waybill and Delivery Confirmation



SENDERS COPY
SPEED SERVICES COURIERS

SPEED SERVICES COURIERS

TC253316210ZA

DOMESTIC CASH WAYBILL 0860 023 133

FROM (SENDER)
COMPANY/NAME AR Brink
ADDRESS 36 Pearson Street Eshowe
POSTCODE 3815
CONTACT Anthony
PHONE/CELL NO. 083 779 4174
E-MAIL ADDRESS anthonbrink-sa@gmail.com

TO (RECEIVER)
COMPANY/NAME Chief Justice Mogoeng
ADDRESS Judicial Service Commission 188 14th Road, Noordwyk Midrand
POSTCODE 1685
CONTACT
PHONE/CELL NO. 010 493 2687 /33.
E-MAIL ADDRESS
FAX

SENDER'S SIGNATURE
NAME (PRINT) DATE 2/12/19
LIABILITY INSURANCE YES NO
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AFTER HOURS
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PACKAGE DETAILS
TYPE OF GOODS X DOCUMENTS NON DOCUMENTS
CONTENTS

CHARGES FOR THIS SHIPMENT (INCL VAT)
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RECEIVED BY SPEED SERVICES COURIERS
NAME PRINTED Phindile SIGNATURE DATE 2/12/19
* ADVISE RECEIVER TO COLLECT FROM COUNTER

ESHOWE 4 2019-12-02 3815

HB: IMPORTANT INFO
This shipment is accepted subject to Speed Services Couriers Trading Conditions, and by tendering this shipment, the Sender acknowledges to have read from the back of this page, understood and accepted them. In the event of loss or damage, due to negligence on the part of Speed Services Couriers, liability is limited to a maximum of R50,00 or such amount as may be applicable in terms of the Trading Conditions clause 8. If additional insurance is required, the value must be declared, in the space provided, and the relevant premium paid.

The Shortest Distance Between Two Points.

The Shortest Distance Between Two Points.

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Item Number: TC253316210ZA **was last scanned on:** 2019/12/04 **at** 09::

Location last scanned: PTAFR

Currently has status of: POD

TRACKING LINE	TYPE	DATE	TIME	BRANCH	COMMENTS
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3	UDPS	2019/12/04	06:32	PTAFR	LATEMAIL
4	RECEIVE	2019/12/04	06:02	PTAFR	
5	COLL DOC	2019/12/04	00:53	JHBNET	C392525969

TRACKING LINE	TYPE	DATE	TIME	BRANCH	COMMENTS
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4	RECEIVE	2019/12/04	06:02	PTAFR	
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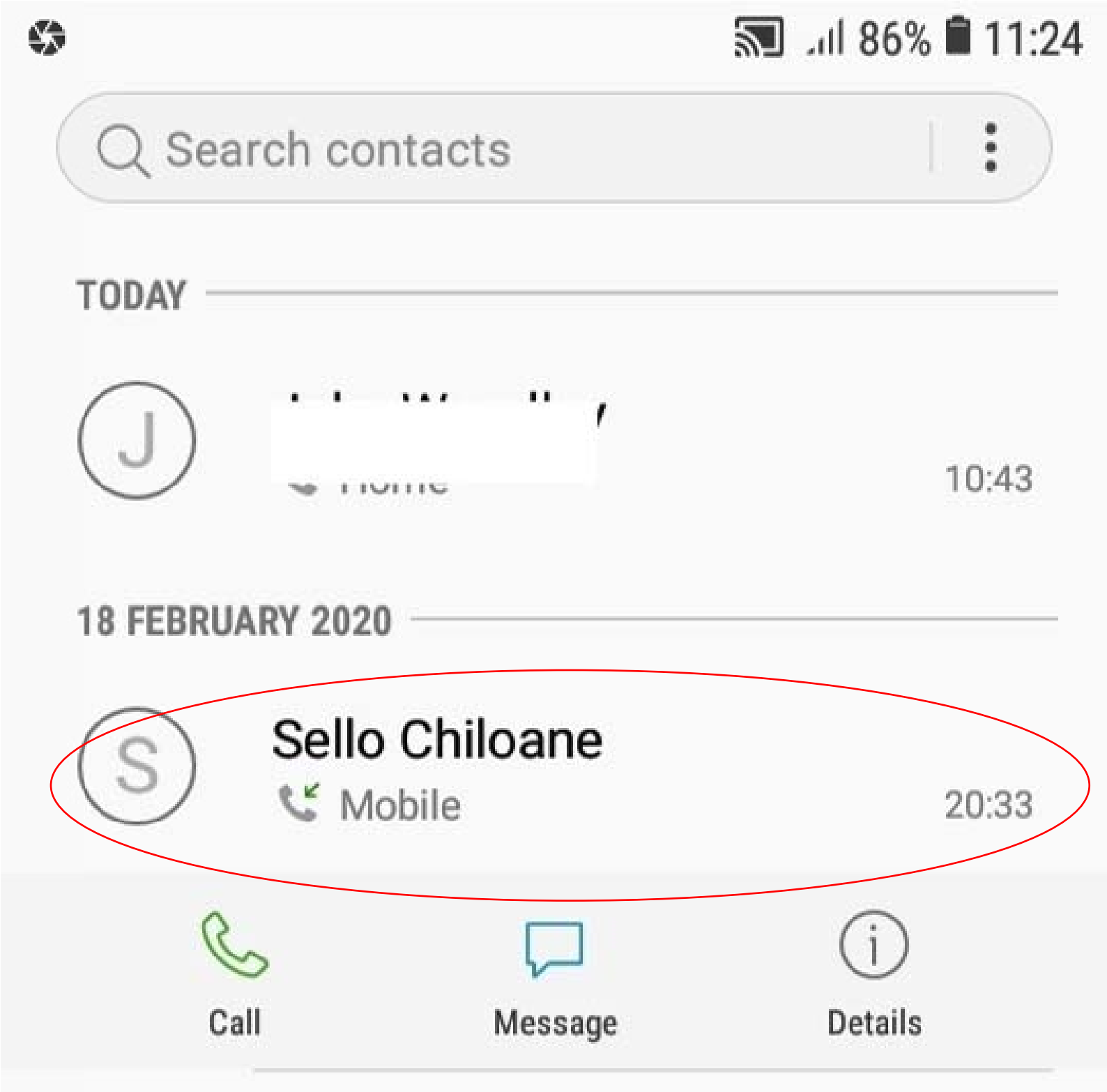
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J
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18 FEBRUARY 2020
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Sello Chiloane
Mobile
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Call
Message
Details

2292

R42

Gmail Anthony Brink <anthonybrink.sa@gmail.com>

Dropbox links to complaints against Mlambo JP and Waglay JP

5 messages

Anthony Brink <anthonybrink.sa@gmail.com> 18 February 2020 at 22:48
To: Sello Chiloane <Chiloane@concourt.org.za>

Dear Mr Chiloane
Thanks again for your call earlier this evening.
As discussed, here's a link to a Dropbox folder containing my eight complaints against Mlambo JP, his response, and my comments; and my complaint against Waglay JP, his response, and my comments:
https://www.dropbox.com/sh/byoncruhqen31nu/AAA-vWxJ1PagJpkOtxPUFh6Ea?dl=0
I had to move documents around a bit from folder to folder, and then a distraction delayed me, so I'm sorry it took me a bit longer to get back to you than expected.
I look forward to the due disposal of my complaints.
Yours sincerely
Anthony Brink

PS: Of possible interest to you, I've just created and posted this website: illegal-aid.co.za
I was about to go very public with my JSC complaints, but in light of your assurance that the ball is finally rolling I've removed the hyperlink to them.
My complaint to the Auditor-General will be signed and attested, and couriered tomorrow, and then posted on the site.

Anthony Brink <anthonybrink.sa@gmail.com> 19 February 2020 at 11:35
To: Sello Chiloane <Chiloane@concourt.org.za>

PS: I've put Rawlins's confirmatory affidavit in the Waglay JP folder as well.
Here's a direct link to it:
https://www.dropbox.com/s/1t8y1rabauep8xu/1.Confirmatory_affidavit.pdf?dl=0
[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 19 February 2020 at 11:38
To: Sello Chiloane <Chiloane@concourt.org.za>

PPS: It was put up with the original signed and attested complaint against Waglay JP, which the late Ms Bios told me had been mislaid.
[Quoted text hidden]

Sello Chiloane <Chiloane@concourt.org.za> 19 February 2020 at 11:42
To: Anthony Brink <anthonybrink.sa@gmail.com>

Thanks Sir

[Quoted text hidden]

Sello Chiloane <Chiloane@concourt.org.za> 19 February 2020 at 16:08
To: Anthony Brink <anthonybrink.sa@gmail.com>

Thanks Sir

From: Anthony Brink [mailto:anthonybrink.sa@gmail.com]
Sent: 19 February 2020 11:39 AM
To: Sello Chiloane <Chiloane@concourt.org.za>

[Quoted text hidden]

2293

[Quoted text hidden]

R42

36 Pearson Street
Eshowe 3815
KwaZulu-Natal
18 August 2020

Secretary Sello Chiloane
Judicial Service Commission
188 14th Road, Noordwyk, Midrand
By email: chiloane@concourt.org.za

Dear Mr Chiloane

GROSS MISCONDUCT COMPLAINTS AGAINST
MLAMBO JP AND WAGLAY JP

1. Six months ago today, on Tuesday 18 February 2020, you called me after-hours at 20h33, urgently requesting copies of my gross misconduct complaints against Mlambo JP and Waglay JP, filed and acknowledged in mid-2017.

2. Your call followed my letter to the Chief Justice six weeks earlier,[1] in which I protested the failure of the Judicial Conduct Committee ('JCC') of the Judicial Service Commission ('JSC') to have resolved my said complaints, then two-and-a-half years since I made them.

3. I made a record of your call by taking a screenshot of calls received on my cellphone that day, showing your name, number and the date and time you called. I'd saved your number after you called me in November 2017, so your name showed up when you called me this second time.

4. Concerning the delay in the prosecution of my complaints, you mentioned the illness, incapacity and death of former JSC secretary Lynette Bios, to which I responded that indeed she'd extraordinarily unprofessionally lost my original complaint against Waglay JP and had asked for a copy, which I'd provided.

[1] My letter, my complaints, the judges' responses, and my invited comments, are all now freely accessible online at illegal-aid.co.za/JSC.

5. The breakdown of her health seemed a plausible if unsatisfactory explanation for the breakdown of proper administration in the JSC's office and the delayed disposal of my complaints.

6. To my enquiry about where you were phoning from at such a strangely late hour, you answered that you were still in your office. Since this was four hours after your colleagues had gone home, I conveyed my concern for you that gathering scanned copies of my complaints, the responses they drew and my invited comments on them, and then uploading them all in PDF to a Dropbox folder for you – the latter step an unavoidably technically slow process – would take me another hour or two. You responded that it didn't matter, and that you'd wait for them, mentioning that you were preparing them for immediate consideration.

7. I inferred from this that after reading my letter the Chief Justice had ordered immediate action taken to finalize my disgracefully long-outstanding complaints.

8. During our conversation, I expressed my outrage at Ms Bios' reply to my enquiry about progress in the disposal of my complaints against Mlambo JP (I'd asked her this when she called to request a copy of my complaint against Waglay JP) that the JCC had resolved to deal with my eight capital complaints against him, two of which charged crimes, merely under section 17 of the Judicial Service Commission Act, governing the disposal of serious but non-impeachable judicial misconduct. You responded with the mollifying assurance that under this section a Tribunal could still be appointed to try my complaints against him.

9. When during our conversation I lamented the JSC's shocking unconstitutional failure to respond to my record requests under the Promotion of Access to Information Act ('PAIA'), made primarily to establish the identity of the judges who'd resolved to proceed against Mlambo JP only under section 17 and who were responsible for delaying the prosecution of my complaints, you responded that my requests had become practically redundant, in that my

complaints were now being given immediate attention – adding that if the JCC's eventual decisions didn't satisfy me, I could take them on review under the Promotion of Administrative Justice Act ('PAJA').

10. As undertaken, I provided you the same night with all the documents you'd requested, by emailing you at 22h48 a hyperlink to a Dropbox folder to which I'd uploaded them. You acknowledged receipt the follow day. Like the log of your call to me, I've obviously kept the record of these emails for future use if needs be.

11. Six months later I've heard nothing more.

12. The JCC's conduct makes a mockery of the 'Basic values and principles governing public administration' prescribed by section 195(1) of the Constitution, including that 'Transparency must be fostered by providing the public with timely, accessible and accurate information.' The unreasonableness of the delay in dealing with my complaints and keeping me in the dark about it is illustrated analogously by the rule in the Judicial Norms and Standards issued by the Chief Justice that judgments should ordinarily be delivered within three months of the hearing.

13. The JCC's resolution of my now three-year-old complaints has now become pressing for two reasons.

14. *First*, paragraphs 49–60 of my letter to the Chief Justice mentioned the severe retaliation I experienced on multiple fronts for complaining of Mlambo JP's gross misconduct as Board chairperson of Legal Aid South Africa ('LASA'), including his criminal misconduct on two counts.

15. Having failed at this before, LASA is having another go at getting me struck off the roll of advocates for impugning Mlambo JP's integrity in my labour litigation against it in the period 2011–14. (Neither the trial judge nor the appeal judge found any fault with my court papers that LASA is complaining about.)

16. As said in my letter to the Chief Justice, my complete answer to LASA's complaint against me to the Society of Advocates of KwaZulu-Natal in November

2015 (of which I chanced to learn only in April 2017) was to provide the Society with copies of my eight gross misconduct complaints against Mlambo JP made to the JCC in June-July 2017; and with that the matter ended.

17. Earlier this year, however, LASA revived the same complaint before the Legal Practice Council ('LPC') on the ludicrous basis that the Society didn't have jurisdiction to handle the matter. (It dealt with it before the LPC even came into office.)

18. Should I need to answer the revived complaint (and on account of *autrefoit acquit* I believe not), I will want to report to the LPC the JCC's decision of my gross misconduct complaints. The JCC's continued foot-dragging is making them look meritless, and they certainly aren't.

19. *Second*, the Auditor-General ('AG') enquired a month ago about progress in the disposal of my complaints to the JCC, and I was bound to report that five months after providing you with the copies you'd requested, I'd heard nothing more.

20. The AG's Investigation division is currently dealing with Part One of my complaint of criminal and other capital contraventions of the Public Finance Management Act by current and former top officers of LASA,[2] as well as twelve criminal charges made against former LASA CEO Vidhu Vedalankar.[3] (Contrary to its sainted public image, LASA became prodigiously corrupt during the tenure of Mlambo JP as its Board chairperson.)

21. Again, I'm concerned that the JCC's silence and apparent inactivity might be construed by the AG as an indication that my complaints against Mlambo JP

[2] Accessible online at illegal aid.co.za/AG. Near completion, Part Two of my complaint details wholesale procedural and ethical recruitment corruption at LASA in which Mlambo JP was centrally involved – a 'material irregularity' under section 1 of the Public Audit Act and therefore of direct concern to the Auditor-General.

[3] Accessible at illegal aid.co.za/NPA. Like my criminal charges against former CEO Vedalankar, criminal charges against Chief Legal Executive Patrick Hundermark, National Operations Executive Brian Nair, and Human Resources Amanda Clark will follow.

have been found meritless, because this will surely prejudice the handling and determination of my complaints to the AG.

22. The purpose of this letter therefore is to enquire as to (i) the reason the JCC hasn't decided my complaints three years since I filed them, and six months since I supplied copies of them, along with the accused judges' responses and my invited comments on them, and (ii) when I can expect action on them.

23. If I haven't heard from you by Tuesday next week, I'll conclude that the JCC will not be performing its statutory function in duly disposing of my complaints against Mlambo JP and Waglay JP without the stimulus of:

(i) adverse publicity in the Sunday Times, Sunday Independent, City Press, Business Day, Rapport, Daily Maverick online, and in the television programme Carte Blanche;

(ii) public agitation by such anti-corruption and similar public interest NGOs as Corruption Watch, Freedom Under Law, OUTA, SAIRR, CASAC, AfriForum, Accountability Now, and Judges Matter;

(iii) more criticism by the German, British, American, Dutch and Swiss governments – as in January 2019 about the rampant corruption in our country – now about the corruption in the top ranks of the South African judiciary, about which the French, Chinese, Russian and Indian governments are likely also to be interested;

(iv) a public complaint by Hlophe JP about the JCC's selective prosecution of him alone, while tacitly granting his colleagues Mlambo JP and Waglay JP impunity for their impeachable high crimes and misdemeanours, just as serious as, if not more serious than, those with which he's to be tried in October; and,

(v) enquiries from the President and Justice Minister as to why the JCC is giving the said judges a free pass.

24. Anticipating six silent months since you asked for copies of my complaints, and now more than three years since I filed the originals, that the JCC will continue conducting itself in the Mlambo JP and Waglay JP matters as a judicial mutual defence union rather than as a judicial disciplinary body, and expecting the need to spur the prosecution of my complaints by disseminating them to the above interested parties, I've just taken delivery of a special order of five reams (5000 folios duplex-printed) of light copy paper especially suitable for bulk printing and mailing with a view to distributing copies of my complaints, the judges' responses, and my comments on them, together with copies of my letter to the Chief Justice and this one to you.

25. If you consider that my recordal above of what you told me on 18 February is inaccurate on any score, please identify in what respect, because should it be necessary to take up your suggestion to sue the JSC under PAJA in the High Court at Pietermaritzburg for an order compelling it to decide my complaints, I'll be relying on the facts recounted in this letter, which will be annexed to my founding affidavit together with my preceding letter to the Chief Justice.

26. Finally, in telling me that my PAIA requests concerning my misconduct complaints had become redundant, you overlooked my unrelated request for records concerning Ms Noxolo Maduba's appointment to, and then odd resignation from, the Tribunal originally appointed to try the Constitutional Court's complaint against Hlophe JP. My information is that her appointment was grossly improper in the particularly disgraceful circumstances of which I've been apprised, involving grossly unethical abuse of power and influence, to Hlophe JP's considerable prejudice. You'll recall relating during your call to me in November 2017 that, as you remembered it, she'd resigned (about five years earlier) to avoid an 'unseemly scandal'. My unanswered PAIA request in March 2019 about this was directed at collecting evidence for use in a further gross misconduct complaint against Mlambo JP.

27. Please see to it that I'm furnished with these records[4] at last. You failure to do so will found the only reasonable conclusion to be drawn by any reader of this letter to whom it's been copied, namely that the JSC is suppressing these records to protect Mlambo JP from being held to account.

28. Kindly advise me (i) who the current chairperson of the JCC is, and (ii) who the judge is who's dealing with my complaints against Mlambo JP and Waglay JP.

29. I might have mentioned during your last call to me that I'm working virtually full-time on exposing the corruption that I've run into at LASA and in judiciary,[5] and that my determination in this project is absolute and implacable.

30. Be assured therefore that my complaints against Mlambo JP and Waglay JP are not going to die in someone's bottom drawer, and that to guarantee this I'm preparing to launch my complaints into the court of public opinion by way of the nuclear option mentioned above. So you would be well advised to take this communication seriously. Please discuss it with the Chief Justice and with the chairperson of the JCC.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com | 083 779 4174

[4] Records requested: (1) The terms of reference of the Tribunal appointed under section 16 of the said Act to investigate and report on the complaints to the Commission made against Hlophe JP. (2) Mlambo JP's nomination of attorney Noxolo Maduba for appointment to the said tribunal in 2012/2013. (*Note: Only the part of the record reflecting the identity of Mlambo JP as the person who nominated Maduba for appointment is required; the text of his commendation of her in the nomination, i.e. its contents, hit by section 12 of PAIA, may be redacted.*) (3) Maduba's letter of appointment to the said Tribunal in or about February 2013. (4) Hlophe JP's (and/or other) subsequent objection(s) to her appointment. (5) Maduba's response, if any, to the objection(s). (6) Maduba's letter of resignation from the Tribunal.

[5] See generally: illegal-aid.co.za.

R43

Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

Brink's gross misconduct complaints against Mlambo JP and Waglay JP: Notice of intentions

1 message

Anthony Brink <anthonybrink.sa@gmail.com> 18 August 2020 at 18:34
To: Sello Chiloane <Chiloane@concourt.org.za>

Sello Chiloane
Secretary: Judicial Service Commission

Dear Mr Chiloane
I attach an extraordinarily important letter for your attention please.
Yours sincerely
Anthony Brink

Chiloane_18_August_2020.pdf
105K

2302

36 Pearson Avenue
Eshowe 3815
KwaZulu-Natal
29 November 2020

The Honourable Deputy Chief Justice Raymond Zondo
Member of the Judicial Conduct Committee
Judicial Service Commission
c/o Commission of Enquiry into State Capture
Hillside House, 17 Empire Road
Parktown
Johannesburg 2193

And to cc list

Dear Judge Zondo

UNRESOLVED, EXCEPTIONALLY SERIOUS GROSS MISCONDUCT COMPLAINTS AGAINST MLAMBO JP AND WAGLAY JP

I write to you in your capacity as *de jur*e member of the Judicial Conduct Committee ('JCC') of the Judicial Service Commission ('JSC') under section 8(1)(b) of the Judicial Service Commission Act.

One year ago today, I wrote to Chief Justice Mogoeng Mogoeng in his capacity as JSC chairperson, protesting his JCC's failure to have determined my several gross misconduct complaints filed two-and-a-half years earlier in mid-2017 against Dunstan Mlambo, Judge President of the North and South Gauteng Division of the High Court, and Basheer Waglay, Judge President of the Labour- and Labour Appeal Courts. A copy of my letter to the Chief Justice is enclosed.

In response, JSC secretary Sello Chiloane telephoned me in February this year, urgently requesting copies of my complaints, the accused judges' responses, and my invited comments on them, and assuring me that they would be dealt with at last. I provided him these documents in PDF via Dropbox right after his call, and he acknowledged receipt.

Hearing no more from the JCC in the next six months, I wrote to Chiloane in August demanding action. A copy of my letter to him is enclosed. He didn't respond, and a further three silent months have passed.

It's now been three-and-a-half years since I filed my capital complaints against Mlambo JP and Waglay JP, and besides requiring them to answer them a year later (which they did, atrociously, and profoundly aggravating them), and then asking me for copies, the JCC has taken no further steps to resolve them – at least none that I've been told about.

A week ago on the 23rd, as you were ordering legal action against former President Jacob Zuma for walking out of your Commission of Enquiry into State Capture, you remarked very correctly that it was:

> a serious matter. It impacts on the integrity of the Commission, the rule of law and public accountability. ... The rule of law and public accountability are values fundamental to our constitutional order and our Constitution promises that all are equal before the law. This is a principle of our Constitution and of a society built upon the rule of law.

Summarised in my letter to Mogoeng CJ, my nine complaints to the JCC against the respondent judges are likewise an extraordinarily 'serious matter'. All but one are squarely founded on supporting documents. Two charge crimes. As said in my letter to the Chief Justice, the misconduct of which I complain dwarfs, or at least equals, anything of which Hlophe JP, head of the Western Cape Division of the High Court, stands accused.

The JCC's inaction in the matter contradicts everything you said about the 'rule of law and public accountability' being 'values fundamental to our constitutional order'.

Although indeed 'our Constitution promises that all are equal before the law', the JCC has failed to deliver on this most 'fundamental' 'principle of our

Constitution and of a society built upon the rule of law.' Contrariwise, it appears to be laughing it off.

Manifestly your JCC is not treating the two accused judge presidents as 'equal before the law', like the rest of us.

In sum, the JCC's shameful failure to prosecute my complaints negates these most basic principles of our constitutional democracy that you rightly emphasized when taking Zuma to task for holding himself above the law.

In my letter to JSC secretary Chiloane I raised the possibility of having to refer my complaints to the court of public opinion, both local and international, should the JCC continue sitting on its hands; and I identified several likely interested and concerned parties – my list of which I've since amplified very considerably in preparation for this baleful eventuality, should it be necessary.

I should report that both the media and Hlophe JP are already onto this scandal.

At a meeting with her here in Eshowe a month ago on 27 October, I gave Marianne Thamm, Deputy Editor of *The Daily Maverick* and one of our country's leading judicial-watching, corruption-exposing journalists, an in-depth briefing about this matter, during which I furnished her with copies of my letters to the Chief Justice and JSC secretary Chiloane.

Earlier that month, I wrote to Hlophe JP, alerting him 1) to the fact that the JCC was selectively prosecuting him; 2) to the JSC's repeated, shocking, illegal and unconstitutional suppression of records that I'd duly requested under the Promotion of Access to Information Act ('PAIA'), which I need, *inter alia*, to support a further gross misconduct complaint against Mlambo JP; and 3) to the JSC's shielding of Mlambo JP in this manner, apparently to protect him from being held to account for his further grossly unethical abuse of power, which had threatened Hlophe JP with extreme prejudice. Two days ago on the 27th, Hlophe JP telephoned to thank me for informing him about this, and confirmed first hand certain hearsay information stated in my letter to him, which I'd

received from a reliable, well placed source, pertaining to Mlambo JP's staggering further misconduct that I intend reporting.

I appreciate that you are hands-full with your all-important State Capture Commission, but my extraordinarily grave complaints against the respondent judges, duly made to the JCC on which you serve, can't go on collecting dust.

Any reasonable person must wonder why the JCC is not bringing Mlambo JP and Waglay JP to book for their capital misconduct, as it energetically goes about prosecuting Hlophe JP.

The gross unreasonableness of the JCC's delay in deciding my complaints is pointed up by the Norms and Standards for the Performance of Judicial Functions, issued by the Chief Justice in 2014. Unless a case is unusually complex or massive, a judge must 'strive to finalise' it 'as expeditiously as possible' within one year and must deliver any reserved judgment within three months. In the case of my complaints to the JCC, the papers have long all been in and the matters ripe for adjudication, but nothing's happening. As said, I lodged my complaints back in mid-2017, and they were answered (appallingly) the following year; yet contrary to JSC secretary Chiloane's assurance to me in February that they would finally be attended to, they've yet to be decided. The delay is outrageous.

If as the second most senior ranking member of the JCC you're seen to be giving a free pass to two fellow senior judges charged with the grossest impeachable misconduct, even as your State Capture Commission duly holds corrupt politicians, corrupt public servants, and other corrupt persons to account, it may well adversely 'impact on the integrity of the Commission' that you chair, or at least on public confidence in it. It will certainly impact on the integrity of the judiciary.

Besides the public's compelling interest in the JCC's determination of my complaints without further delay, I have a direct personal and professional interest in it of my own. As mentioned in my letter to the Chief Justice, Legal Aid South Africa ('LASA'), formerly chaired by Mlambo JP, is trying to

annihilate the witness against him by having me struck off the roll of advocates. My offence? Allegedly disgracefully unprofessionally scandalizing the court by complaining of Mlambo JP's misconduct in my papers in my labour litigation against LASA and then in my complaints to the JCC. In so doing, LASA – actually Chief Legal Executive Patrick Hundermark, who Mlambo JP has rewarded for his servility with an acting judicial appointment in the past – is employing a grotesquely perverse, cynical offence-as-defence strategy to turn the tables and depict me as the malfeasor in the matter, rather than the accused judges. (Think Zuma's spurious complaint to the JCC against you after you dismissed his recusal application.)

Mentioned in my letter to the Chief Justice, I'd assumed that LASA's complaint against me to the Society of Advocates of KwaZulu-Natal ('the Society') made in 2015 had been dismissed in 2017 after I submitted copies of my complaints against Mlambo JP as my complete answer to LASA's complaint against me, because after I did so I heard no more. But I've just learned in September from a document elicited from the Society with a PAIA request that its Litigation Committee had recommended that the Bar Council await the JCC's decision of my complaints against Mlambo JP and Waglay JP before deciding whether to act on LASA's complaint against me. The Legal Practice Council, which came into being in 2018, has inherited the Society's file in the matter, and its local provincial disciplinary officer Nadira Harripersad told me two days ago on the 27th, in response to my telephonic enquiry about this, that it's still open.

The Auditor-General's Investigations division – which is dealing with my documented complaints against several of LASA's top management executives regarding their massive ongoing contraventions of the Public Finance Management Act, numerous criminal offences committed under that Act and other laws, and a host of 'material irregularities' as defined by the Public Audit Act – is also concerned to know about progress in the JCC's disposal of my complaints to it, because its Senior Manager Kamesha Naidoo asked me about this in July.

Having already appealed to the Chief Justice a year ago – fruitlessly in the result – I now repeat my plea to you, as the second most senior member of the JCC, to see to the long overdue decision of my complaints.

I'm not prepared to wait any longer. The JCC's dereliction of its statutory responsibilities in the Mlambo JP and Waglay JP matters is scandalous.

I hope to have your reply by 31 December – failing which, after calling local and international attention as widely as I can to the JCC's failure to prosecute my complaints, I'll be applying to the High Court in the new year for a mandamus against the JSC, alternatively for relief under the Promotion of Administrative Justice Act – as indeed JSC secretary Chiloane himself suggested I seek if I was dissatisfied with the JCC's further handling of my complaints.

I conclude by recording that I'm sensitive to the enormous damage to the reputation of the South African judiciary that the prosecution of my complaints portends, and accordingly I reiterate my preference for a global, conciliatory settlement and resolution. But this is something for the JSC and the LASA Board to decide and work out. Otherwise the law must take its course, and I'm working full-time to make sure that it does.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

PS: I've addressed this letter to you for delivery at your physical address at the Commission on State Capture where you currently work, *first* to ensure you receive it as soon as possible; and *second* to prevent it from being intercepted and not reaching you. Although my letter couriered to the Chief Justice was addressed to him for his personal attention, I'm now wondering whether his

office staff ever placed it before him to read, seeing as there's been no conclusive follow-up in the year since I wrote to him.

Cc:
The Honourable Chief Justice Mogoeng Mogoeng, chairperson of the Judicial Service Commission;
The Honourable Judge President John Hlophe, Western Cape Division of the High Court;
Memme Sejosengwe, Secretary General, Office of the Chief Justice;
Jakes Jacobs, Chief Director, Office of the Secretary General, Office of the Chief Justice;
Nathi Mncube, Spokesperson, Office of the Chief Justice;
Sello Chiloane, Secretary of the Judicial Service Commission;
Adv Marissa Bezuidenhout, Head of Corporate Legal and Provisioning Services, Management Executive Committee, Auditor-General South Africa;
Adv Paul Pretorius SC, Evidence Leader, Commission on State Capture;
Marianne Thamm, Deputy Editor: *The Daily Maverick*.

This letter and the documents to which it refers are accessible in PDF online at illegal-aid.co.za.

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KZN
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PHONE/CELL NO. 083 779 4174
E-MAIL ADDRESS

TO (RECEIVER)

COMPANY/NAME Deputy Chief Justice
ADDRESS Raymond Zondo
Commission of Enquiry into State Capture
Hillside House
17 Empire Rd Parktown
POSTCODE Johannesburg 2193
CONTACT
PHONE/CELL NO.
E-MAIL ADDRESS
FAX

SENDER'S SIGNATURE

AK Bonke

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The Shortest Distance Between Two Points.

2310

36 Pearson Street
Eshowe, KwaZulu-Natal
29 November 2020

The Honourable Chief Justice Mogoeng Mogoeng,
Chairperson and Information Officer:
Judicial Service Commission
188 14th Road, Noordwyk
Midrand 1685

Dear Justice Mogoeng

I enclose a copy of my letter of even date to Deputy Chief Justice Zondo, along with copies of letter to you a year ago and to JSC secretary Chiloane in August.

The matter is monumentally important.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

36 Pearson Avenue
Eshowe 3815
KwaZulu-Natal
29 November 2020

Mr Jakes Jacobs
Chief Director, Office of the Secretary General, Office of the Chief Justice
Private Bag X10
Marshalltown 2017

Dear Mr Jacobs

I enclose a copy of my letter to Deputy Chief Justice Zondo of even date, along with copies of my letters to the Chief Justice a year ago and to JSC Secretary Chiloane in August.

The reason I've copied you in on this correspondence is because it is critical that the Chief Justice sees it. Although I've copied him separately, I need to be sure he gets it.

For the reason stated in the postscript to my letter to Zondo DCJ, I'm now wondering whether the Chief Justice ever received my preceding letter to him a year ago.

The subject of my correspondence is monumentally important.

I've written in similar terms to Ms Memme Sejosengwe, Secretary General: Office of the Chief Justice, and would be grateful if you'd liaise with her and confirm that the Chief Justice has personally received the letter copies that I've enclosed. (His copies mailed him separately are printed normally.)
Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

36 Pearson Avenue
Eshowe 3815
KwaZulu-Natal
29 November 2020

Mr Nathi Mncube
Spokesperson, Office of the Chief Justice
Private Bag X10
Marshalltown 2017

Dear Mr Mncube

I enclose a copy of my letter of even date to Deputy Chief Justice Raymond Zondo, along with copies of my letters to the Chief Justice a year ago and to JSC Secretary Sello Chiloane in August.

The reason I've copied you in on this correspondence is that it's critical that the Chief Justice sees it. Although I've copied him separately, I need to be sure he gets it. (The copies I've mailed him are printed normally.)

For the reason stated in the postscript to my letter to Zondo DCJ, I'm now wondering whether the Chief Justice ever received my preceding letter to him a year ago.

The subject of my correspondence is monumentally important. As you'll see from my letter to Zondo DCJ, both Hlophe JP and *Daily Maverick* Deputy Editor Marianne Thamm are now onto it.

Please enquire from the Chief Justice and confirm that he's personally received the letter copies that I've enclosed.

I've written in similar terms to Memme Sejosengwe, Secretary General: Office of the Chief Justice, and to Jakes Jacobs, her Chief Director, and would be grateful if you'd liaise with them about this. The Chief Justice will not be amused if he's kept in the dark and is the last to know if and when this thing very publicly blows up.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

36 Pearson Avenue
Eshowe 3815
KwaZulu-Natal
29 November 2020

Ms Memme Sejosengwe
Secretary General, Office of the Chief Justice
Private Bag X10
Marshalltown 2017

Dear Ms Sejosengwe

I enclose a copy of my letter to Deputy Chief Justice Zondo of even date, along with copies of my letters to the Chief Justice a year ago and to JSC Secretary Chiloane in August.

The reason I've copied you in on this correspondence is because it is critical that the Chief Justice sees it. Although I've copied him separately, I need to be sure he gets it.

For the reason stated in the postscript to my letter to Zondo DCJ, I'm now wondering whether the Chief Justice ever received my preceding letter to him a year ago.

The subject of my correspondence is monumentally important.

In the situation, please enquire from him and confirm that he's personally received the letter copies I've enclosed.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

36 Pearson Avenue
Eshowe, KZN
29 January 2021

The Honourable Deputy Chief Justice Raymond Zondo
Member of the Judicial Conduct Committee
Judicial Service Commission
c/o Commission of Enquiry into State Capture
Hillside House, 17 Empire Road
Parktown
Johannesburg 2193

And to cc list

Dear Judge Zondo

THE FAILURE OF YOUR JUDICIAL CONDUCT COMMITTEE TO DETERMINE LONG OUTSTANDING GROSS MISCONDUCT COMPLAINTS AGAINST MLAMBO JP AND WAGLAY JP

I regret the inconvenient timing of this letter in view of former President Zuma's all-important imminent second appearance before your Commission of Enquiry into State Capture ('Commission'), compounded by the fast approaching conclusion of its term, but I write about a matter of extraordinary importance, and unless it's attended to without further undue delay, the consequences promise to be dire.

On 30 November last year, intending the most rapid possible guaranteed delivery, I dispatched a letter addressed to you for delivery directly to your Commission's work address by the state-owned courier, Speed Services Couriers.

It never arrived. The Post Office's online parcel tracking system records only that my letter was received for despatch; but my telephonic enquiry made to the

courier's call centre established that it reached the Braamfontein Post Office five days later – where it remains, undelivered, despite my 'Front Door Delivery' entry on the waybill.

My subsequent attempts to reach the call centre by phone and then email to enquire how such stranded post might be released and forwarded have gone unanswered. Small surprise, because I read in the news two weeks ago that the South African Post Office is again 'on the brink of collapse'.

Hence my decision to send my November letter to you again, this time by ordinary post. To ensure you see it, however, I'll copy it to Judicial Service Commission ('JSC') Secretary Sello Chiloane by email with the request that he forward it to you, copying the Chief Justice in.

If you don't receive this letter and its enclosures by post, Post Office inefficiency will be the likely cause. If you don't receive it from Secretary Chiloane by email, and only get to read it later on when the scandal blows, he'll have to explain why he prevented your remedial intervention by keeping it from you. I say this considering the indications, mentioned just below, that my critically important preceding letter to JSC chairperson Mogoeng CJ in November 2019 in the same matter, promptly delivered by courier on 4 December according to the tracking report, was not passed on to him by his staff, despite my having marked it 'For Personal Attention' and 'Exceptionally Important'.

Mentioning other complaints, Mogoeng CJ was strangely silent about mine against Mlambo JP and Waglay JP at his presentation of his office's annual report in November 2020. And again he didn't mention them last month when remarking (according to the Independent Online on 11 December) that the Hlophe JP case:

> was one of three matters against judges that have taken long to be heard. One of these is against Judge Nkola Motata in Gauteng, who

> was convicted of drunk driving in 2009. “So, we should be happy as the South African public, though the matter took long. We should be pleased the Judicial Conduct Tribunal sat and judges testified and the Judge President testified. We are held accountable.” Justice Mogoeng said the public would have been worried if the matter had been swept under the carpet.

Besides the Hlophe JP case, Mogoeng CJ's mention of the relatively trivial Motata J one strongly suggests that the third unspecified ‘matter’ wasn't any of my several exceptionally serious complaints against Mlambo JP and Waglay JP that ‘that have taken long to be heard’, and indeed have yet ‘to be heard’, more than three-and-a-half years since I lodged them. It seems clear from this that Mogoeng CJ is unaware of them. And it's precisely because I'm neither ‘happy’ nor ‘pleased’ about the outrageous delay in the prosecution of my complaints that I've been writing both to him and to you since November 2019.

Enclosed are (a) my letter to you in November 2020; (b) my letter to Mogoeng CJ in November 2019 – answered by a night-time phone call from Secretary Chiloane in February 2020, urgently requesting copies of all my complaints, and assuring me of their prompt disposal at last; and (c) my letter to Chiloane six silent months later in August 2020, pressing for the decision of my complaints, which he ignored.

I've enclosed also a copy of the courier's waybill for my November letter to you. A messenger sent to the Braamfontein Post Office, quoting its reference number, will be able to retrieve the original.

At the time I couriered my November letter to you, I mailed hard copies by ordinary post to Mogoeng CJ, his office's Secretary General Memme Sejosengwe, Chief Director Jakes Jacobs, and Spokesman Nathi Mncube. For his general information, I also copied your Commission's Evidence Leader Paul

Pretorius SC. (Vouching this, I have a photograph of all the envelopes stacked on the Post Office teller's counter about to be stamped.)

Expecting that you'd have my November letter a couple of days after dispatch, I delayed emailing copies to most of the other cc addressees listed at the foot of it, namely Secretary Chiloane; Marianne Thamm, Deputy Editor: *The Daily Maverick* (mentioned in my November letter); and Adv Marissa Bezuidenhout, head of Corporate Legal and Provisioning Services at the Auditor-General South Africa ('AG') and a member of the Management Executive Committee. (After studying my extensive, documented, affirmed complaint about the financial corruption, maladministration and criminality at Legal Aid South Africa under Mlambo JP's tenure as chairperson – in which he was centrally involved – she referred it to the AG's Investigation division.)

The reason I delayed emailing them is because I thought it proper that as principal addressee you read my November letter first, and I intended emailing them once I'd seen from the post office's parcel tracking system that you'd received it. As it turned out, you never did.

I'll now email the rest of my November letter cc addressees. I've already emailed Hlophe JP for his direct interest stated in all three of my enclosed letters covered by this one: to Mogoeng CJ, to you, and to Secretary Chiloane.

I'll also copy this letter and its enclosures to a senior investigative and legal journalist working for a prime-time television news programme. Tipped by a concerned 'member of the legal community', she contacted me ten days ago on the 19th about 'the complaint[s] that you laid with the JSC against Judges Mlambo and Waglay [which] have been pending for an extended period of time' – remarking that it's 'very important to keep a close eye on the functioning of the judiciary, including the proper functioning of the disciplinary process.'

I provided her with the hyperlink to my complaints, to the accused judges' responses, and to my invited comments on them, all publicly accessible online, and she told me she's studying them.

The horrifying evidence given to your Commission earlier this week by Loyiso Jafta, acting Director General of the State Security Agency ('SSA'), that there's 'very strong circumstantial evidence' that around R22 million in cash was paid to bribe and corrupt the judiciary during the SSA's rogue operation 'Project Justice' – confirmed by your next witness 'Ms K' on the team that investigated the matter – will surely have been noted by governments abroad, especially those that took the unusual step of writing together to President Ramaphosa in January 2019 about the problem of rampant public sector corruption in our country.

As said in my November letter, I appreciate that the prosecution of my complaints against Mlambo JP and Waglay JP will massively (further) damage the reputation of our judiciary, both locally and internationally, but for the Judicial Conduct Committee, of which you and the Chief Justice are mandatory members, to practically cover up their extraordinarily serious misconduct by giving my complaints the 'File-13' treatment will certainly be far worse.

In paragraph 78 of its unanimous decision in your Commission's favour yesterday, the Constitutional Court reiterated the point you made after former President Zuma's illegal walk-out, quoted in my November letter: 'In our system, no one is above the law.' Which is to say, neither former State Presidents nor sitting Judge Presidents.

Since you didn't receive my November letter, I hereby extend the time limit for a response that mentioned in it to the end of February. Considering the pressure you're under to complete your State Capture Commission's work in the next few weeks, I'm amenable to a further extension, if requested.

If the Judicial Conduct Committee continues abnegating its crucially important disciplinary obligations by leaving my capital complaints against Mlambo JP and Waglay JP mouldering in the bottom drawer, contradicting Mogoeng CJ's unquestionably sincere assurance in December that 'We are held accountable', and should my complaints practically be 'swept under the carpet' (his reported words), I'll proceed as indicated in my November letter – first by going international in March, in the manner I mentioned, adding copies of this letter to the others; and then by applying to the High Court for an order compelling the JSC's determination of my disgracefully, indeed unlawfully long unresolved complaints.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

Cc:
The Honourable Chief Justice Mogoeng Mogoeng: Chairperson of the JSC;
Sello Chiloane: Secretary of the JSC;
The Honourable Justice John Hlophe JP: Head of the Western Cape High Court;
Adv Marissa Bezuidenhout: member of the Management Executive Committee and Head of Corporate Legal and Provisioning Services, Auditor-General SA;
Marianne Thamm, Deputy Editor: *The Daily Maverick*.

This letter and all documents to which it refers are accessible in PDF online at illegal-aid.co.za.

R46

Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

Correspondence for Zondo DCJ in re Brink's unresolved complaints against Mlambo JP and Waglay JP

1 message

Anthony Brink <anthonybrink.sa@gmail.com> 3 February 2021 at 22:51
To: Sello Chiloane <Chiloane@concourt.org.za>

Dear Mr Chiloane
Please forward the attached correspondence to Zondo DCJ.
Please copy it to Mogoeng CJ when you do.
My January 2021 letter to Zondo DCJ explains why he didn't receive my previous letter to him in November 2020, and why I'm emailing you.
Since you're mentioned in both my letters to Zondo DCJ, I suggest you read them.
You'll appreciate that this extraordinarily serious matter has become urgent.
Sincerely
Adv Anthony Brink

4 attachments

- **4.Zondo_DCJ__Jan_2021.pdf** 29K
- **2.Chiloane__Aug_2020.pdf** 170K
- **1.Mogoeng_CJ__Nov_2019.pdf** 320K
- **3.Zondo_DCJ__Nov_2020.pdf** 627K

2321

R47

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

188, 14th Road, Noordwyk, Midrand, 1685
Private Bag X10, Marshalltown, 2107
Tel: +27 10 493 2500 (Switchboard)
E-mail: info@ judiciary.org.za
www.judiciary.org.za

Adv. A Brink
36 Pearson Avenue
Eshowe 3815
KwaZulu-Natal
3815

Dear Adv. Brink

LETTERS TO CHIEF JUSTICE, MOGOENG MOGOENG AND DEPUTY CHIEF JUSTICE ZONDO

Your letter dated 29 November 2020 received on 11 February 2021 bears reference.

Kindly be advised that if you wish to write to the Honourable Chief Justice Mogoeng Mogoeng, in his capacity as the Head of the Judiciary, you must address your letters to Mr. Allister Slingers and/or Ms. Elizabeth Moloto. Their email addresses are slingers@concourt.org.za and moloto@concourt.org.za .

Letters for the attention of the Deputy Chief Justice Zondo must be emailed to Ms. Lethu Ntimane. Her address is Ntimane@concourt.org.za .

Any complaint about the conduct of Mr. Sello Chiloane must be addressed to Ms. M. Sejosengqwe using the same Marshalltown address or by emailing Mr. Desmond Moekoa at DMoekoa@judiciary.org.za .

I trust you will find the above in order,

Yours Sincerely,

Mr. Nathi Mncube
Spokes Person of the Judiciary of South Africa
Date: 17/2/2021

36 Pearson Avenue
Eshowe 3815
KwaZulu-Natal
25 February 2021

The Honourable Chief Justice Mogoeng Mogoeng
Chairperson: Judicial Service Commission
By email: slingers@concourt.org.za & moloto@concourt.org.za

Cc:
The Honourable Deputy Chief Justice Raymond Zondo
Member of the Judicial Service Commission
By email: ntimane@concourt.org.za

The Honourable Julius Malema MP
Member of the Judicial Service Commission
By email: slindokuhle.njapha@effonline.org & effsg2npa@gmail.com

The Honourable Cyril Ramaphosa
President of the Republic of South Africa
By email: presidentrsa@presidency.gov.za

And other interested parties.

Dear Justice Mogoeng

MY MEETING WITH FORMER PRESIDENT ZUMA TO BRIEF HIM ABOUT MY GROSS MISCONDUCT COMPLAINTS AGAINST MLAMBO JP AND THE JSC'S FAILURE TO PROSECUTE THEM

At around 9 o' clock on Monday night, 22 February 2021, I met former President Jacob Zuma in the upstairs study of his house at Nkandla, to brief him about my eight capital misconduct complaints against Dunstan Mlambo JP, filed with the Judicial Service Commission ('JSC') in mid-2017, and about the JSC's failure to

prosecute them in the three-and-a-half years since, despite my persistent pleas to you and to Deputy Chief Justice Zondo to see to it.

The reason the former President requested to see me was apparent from his repeated criticism of Mlambo JP in his media statement released a week earlier (online at bit.ly/3pNgKdG). An attorney friend had informed a junior ANC leader about my unresolved complaints to the JSC against Mlambo JP, and he'd got word to the former President about it.

At our meeting, I handed him an indexed bundle of hard copies of my letters to you in November 2019, to JSC secretary Chiloane in August 2020, and to Zondo DCJ in November 2020 and January 2021 – as well as Judiciary spokesperson Mncube's letter to me a week ago in which he acknowledged receipt of my first letter to Zondo DCJ in November 2020, covering a copy of my letter to you a year earlier.

The index to this correspondence is annexed. As appears from its endnote, all my letters, my complaints to the JSC, the accused judges' responses, and my invited comments on them, are accessible in PDF via the 'Judicial Service Commission' link on the front-page of my online document archive in this colossal corruption case: illegal-aid.co.za.

Since some of my letters incidentally criticised the former President, I told him bluntly, 'I haven't come here as your friend. Nor have I come as your enemy. But as they say up there in the Middle East, my enemy's enemy is my friend' – and he laughed appreciatively at my candour.

I walked him though the substance of my eight complaints against Mlambo JP, pointing up that two of them charged jailable crimes.

I mentioned how he'd suborned the most fantastic, poisonous perjury in an affidavit put up by his attorney on his instructions, totally fabricated out of thin air to wreck my credibility and blow me out of court in my application for leave to subpoena him for cross-examination on his repeated criminal lies told in his 'confidential report' signed and submitted to the National Assembly's Justice

Portfolio Committee to pervert its enquiry into (i) top-level recruitment corruption at Legal Aid SA ('LASA') in which he was centrally involved as Board chairperson, and (ii) LASA's repeated and persistent, illegal and unconstitutional refusals to comply with my PAIA requests duly made in an investigation of this corruption, in which obstruction he was complicit, as LASA's email records reveal.

I canvassed also my gross misconduct complaint filed against Waglay JP in mid-2017 for breaking his judicial oath and corruptly throwing a case LASA's way at its *written* behest, which the JSC has likewise neglected to prosecute. I mentioned that the unstamped, anonymous 'memorandum' slipped to Waglay JP, crudely disparaging me and importuning him to dismiss the case with lies about it – which note he disastrously left in the court file for me to discover very fortuitously some months later during an inspection of the file in search of other information in it – was photocopied for me by the registrar and certified present in the file by stamping an inventory of its contents after checking them item by item. I mentioned the indications (set out in my invited comments on Waglay JP's response to my complaint against him) that the likely author of this criminal 'memorandum' used to defeat the ends of justice was Mlambo JP – in other words that Mlambo JP had corruptly prevailed on his long-time judicial colleague Waglay JP to pervert the decision of the case in which he stood direly exposed.

I told him how to further protect Mlambo JP, both the JSC and LASA were illegally and unconstitutionally withholding records duly requested under PAIA to obstruct my access to documents needed for use in support of a further complaint against him regarding his especially unethical and scandalous role in fixing the appointment of a certain woman to the original tribunal constituted to try the Constitutional Court's complaint against Hlophe JP. I mentioned to the former President that Hlophe JP had recently telephoned me and confirmed the hearsay report I'd received about this from a reliable inside source, a former national management executive at LASA (sick to the gills with the corruption he'd encountered there).

The key point I emphasized to the former President was that as the Zondo Commission was coming after him and the JSC was coming after Hlophe JP, the JSC – of which both you and Zondo DCJ are obligatory members – is giving a free pass to two other judge presidents guilty of the most extreme impeachable documented misconduct.

At the end of our meeting, the former President was profuse in his thanks for my information about the Mlambo JP case and the JSC's failure to hold him to account. My parting suggestion was that he pass on my letters to you and Zondo DCJ to his lawyers, saying, 'They'll jump out of their chairs when they read this.'

On the very day of the meeting, President Cyril Ramaphosa used his weekly newsletter to rebuke his predecessor for charging 'without any evidence' that Mlambo JP and certain other judges had violated their judicial oaths; and he urged that 'Anyone who has evidence of any wrongdoing by any judge should make use of the avenues provided in our Constitution and in our law to ensure that appropriate action is taken.' (See bit.ly/3usuvSB.)

As I told the former President at our meeting, no 'appropriate action' had been 'taken' against Mlambo JP and Waglay JP, despite my presentation to the JSC of hard documentary 'evidence' of the most egregious imaginable 'wrongdoing' by them. I informed him that my eight complaints against Mlambo JP, substantiated by supporting documents, showed that he was guilty of far more than political bias in his judgments – as evinced by his ludicrously contradictory decisions against him (Zuma) in 2017 on the powers of the Public Protector and in favour of his successor in 2020. I advised him, as I'd advised you in my November 2019 letter, that my complaints against Mlambo JP and their supporting documents show unequivocally that he's an unconvicted criminal with no regard for the truth, for the law, and for the Constitution. And that Waglay JP had corruptly tossed a case, prematurely, before all the papers were in, at the secret *written* instance of my opponent, and almost certainly Mlambo JP himself. In other words, as President Ramaphosa put it very correctly, albeit suggesting the contrary, 'there are some within the judiciary

who are failing to uphold the values and principles with which they have been entrusted.'

Even though there are indeed 'clear processes established in law to deal with allegations of misconduct against members of the judiciary', as President Ramaphosa put it, what I found when proceeding to 'make use of the avenues provided in our Constitution and in our law to ensure that appropriate action is taken', by providing documentary 'evidence of any wrongdoing by any judge' in support of nine complaints about it, was that zero 'appropriate action [was] taken.'

That is, despite my due 'presentation of evidence to support these claims ['of misconduct' to] the relevant authorities', the JSC did nothing to hold the guilty judge presidents to account.

It seems to me that it's precisely the JSC's strange inaction that 'undermine[s] the judiciary and the important function that it performs in our democracy', because it shows that the JSC doesn't care if a judge president tells blatant vicious lies in an affidavit put up by his attorney on his instructions; repeatedly connives at and colludes in the illegal and unconstitutional suppression of duly requested public records in service of a corruption cover-up in which he's centrally involved, so as to obstruct its investigation and exposure; and tells multiple objectively demonstrable lies, with the same corrupt intention, in a 'confidential' report to the Justice Minister and to the Justice Portfolio Committee to pervert their separate, independently instituted enquiries into recruitment corruption and malicious non-compliance with PAIA at the public entity he chaired at the time – all of which illegality and unconstitutionality he's involved in. And the JSC doesn't care if another judge president betrays his judicial oath by corruptly throwing a case, after being anonymously importuned to do so *in writing* by a public entity chaired by his long-time colleague, Mlambo JP, and almost certainly by Mlambo JP himself.

Which is to say, your and President Ramaphosa's very nice assuring words about presenting clear evidence of judicial malfeasance to the JSC for appropriate disciplinary action *don't line up so well with the reality situation*.

The lesson for the public would seem to be: Don't bother complaining to the JSC about gross judicial misconduct, especially not by judge presidents, because as the Hlophe JP, Mlambo JP, and Waglay JP cases illustrate, over at the JSC some judge presidents are more equal than others.

The purpose of this letter is to alert you to the fact that former President Jacob Zuma is now fully apprised of the JSC's failure to discipline two utterly corrupt judge presidents, and that the JSC's unlawful and unconstitutional dereliction of its obligations looks certain to be ventilated by him and/or his lawyers – and sooner rather than later, considering his bitter criticism of Mlambo JP and Zondo DCJ in his mid-February media statement.

So this might be a good time for the JSC to start getting a move on.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

PS: When I got home after the meeting, I found an email from JSC secretary Chiloane covering affidavits by Mlambo JP and his former court secretary telling more brazen lies in a laughably feeble and dishonest attempt to refute the first of my eight complaints against him. I'll be dealing with Mlambo JP's aggravation of my first complaint in my comments thereon, invited in the email.

Encl: Index to JSC letter bundle.

RE: ADV BRINK'S GROSS MISCONDUCT COMPLAINTS TO THE JUDICIAL SERVICE COMMISSION AGAINST MLAMBO JP AND WAGLAY JP

Letters:

1. to Mogoeng CJ, chairperson of the Judicial Service Commission and of its Judicial Conduct Committee, 29 November 2019 – with proof of dispatch by courier on 2 December 2019 and of delivery on 4 December 2019 – unacknowledged

2. to Sello Chiloane, JSC secretary, 18 August 2020 – with proof of delivery by email – unacknowledged

3. to Zondo DCJ, member of the JSC and of its JCC, 29 November 2020 (enclosing a copy of letter to Mogoeng CJ) – with proof of despatch by courier on 30 November 2020 – receipt acknowledged on 17 February 2021 (see #5 below)

4. to Zondo DCJ, 29 January 2021, despatched by ordinary mail for speed, but copied by email to secretary Chiloane on 3 February 2021 with the request that he forward it to Zondo DCJ – unacknowledged.

5. from Judiciary Spokesperson Nathi Mncube, 17 February 2021, acknowledging receipt on 11 February 2021 of first letter to Zondo DCJ (#3 above) couriered on 30 November 2020

These letters and the gross misconduct complaints to which they refer (outlined in paragraphs 3ff of Brink's letter to Mogoeng CJ), plus the accused judges' responses and Brink's invited comments on them, can all be accessed via the 'Judicial Service Commission' link on the front page of illegal-aid.co.za.

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Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

Adv Brink's meeting with fmr President Zuma on Monday to discuss his unresolved misconduct complaints against Mlambo JP

1 message

Anthony Brink <anthonybrink.sa@gmail.com> 26 February 2021 at 00:01
To: slingers@concourt.org.za, moloto@concourt.org.za, ntimane@concourt.org.za, Sello Chiloane <Chiloane@concourt.org.za>, nmncube@judiciary.org.za, Knowledge Nkosi <knkosi@judiciary.org.za>

Dear Gentlemen and Mesdames
I attach a letter for the attention of Chief Justice Mogoeng and Deputy Chief Justice Zondo.
Its extraordinary importance is indicated by the heading of this email.
It's critically important that they read my letter before former President Jacob Zuma and/or his lawyers go public on the JSC's failure to prosecute my gross misconduct complaints against Mlambo JP and Waglay JP in the three-and-a-half years since I filed them.
Yours sincerely
Adv Anthony Brink

Mogoeng_CJ_25_February_2021.pdf
57K

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Gmail Anthony Brink <anthonybrink.sa@gmail.com>

Brink's February letter to Mogoeng CJ: Personal acknowledgment by the Presidency: Defective email address for Ms. Lethu Ntimane

10 messages

Anthony Brink <anthonybrink.sa@gmail.com> 5 March 2021 at 13:37
To: nmncube@judiciary.org.za
Cc: Knowledge Nkosi <KNkosi@judiciary.org.za>, Sello Chiloane <Chiloane@concourt.org.za>

Dear Mr Mncube

Your letter of 17 February 2021 advised me that 'Letters for the attention of Deputy Chief Justice Zondo must be emailed to Ms. Lethu Ntimane. Her address is Ntimane@concourt.org.za.'

But when I used that email address to copy Zondo DCJ my letter to Mogoeng CJ of 25 February 2021, my email bounced back.

It looks certain therefore that Zondo DCJ didn't receive his copy of my letter to Mogoeng CJ reporting my meeting with former President Jacob Zuma at his house at Nkandla three days earlier to brief him about the JSC's failure to prosecute my eight gross misconduct complaints against Mlambo JP.

And it's crucial that he reads it, because after first registering receipt of my letter with an automatically generated email, the Presidency subsequently emailed a personal acknowledgement, copied to several officers in that office. It seems clear from this that the Presidency has taken note of the important contents of my letter to Mogoeng CJ.

I've also received an acknowledgment of receipt for the copy I emailed JSC Member Hon Julius Malema MP, which I delivered by SMS containing a hyperlink to the letter online.

It's obviously vital therefore that as a cc addressee Zondo DCJ receives his copy of my February letter to Mogoeng CJ.

Please provide me with Ms Ntimane's correct email address to enable me to email it to him.

Alternatively, please forward my February letter to Zondo DCJ directly, and then confirm having done so. I've attached it again for your convenience.

Yours sincerely

ADV ANTHONY BRINK

Cc: Sello Chiloane: JSC Secretary

Knowledge Nkosi: PA to the Chief Director, Court Administration

Mogoeng_CJ_25_February_2021.pdf
57K

Nathi Mncube <NMncube@judiciary.org.za> 5 March 2021 at 16:33
To: Anthony Brink <anthonybrink.sa@gmail.com>, "ntimbane@concourt.org.za" <ntimbane@concourt.org.za>

[Quoted text hidden]

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Lethu Ntimbane <Ntimbane@concourt.org.za> 5 March 2021 at 16:38
To: Nathi Mncube <NMncube@judiciary.org.za>
Cc: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Mr Mncube

I trust you are well.

I acknowlede receipt of the attahed email and its contents.

I will await Adv. Brink's letter and bring it to the attention of the Deputy Chief Justice.

Kind Regards

Lethu Ntimbane

PA to the Deputy Chief Justice

Constitutional Court of South Africa

Tel: +27 (0) 11 359 7480

Email: ntimbane@concourt.org.za

Website: www.constitutionalcourt.org.za

From: Nathi Mncube [mailto:NMncube@judiciary.org.za]

Sent: 05 March 2021 04:34 PM
To: Anthony Brink <anthonybrink.sa@gmail.com>; Lethu Ntimbane <Ntimbane@concourt.org.za>
Subject: RE: Brink's February letter to Mogoeng CJ: Personal acknowledgment by the Presidency: Defective email address for Ms. Lethu Ntimane

[Quoted text hidden]

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Anthony Brink <anthonybrink.sa@gmail.com> 7 March 2021 at 23:19
To: Lethu Ntimbane <Ntimbane@concourt.org.za>
Cc: Nathi Mncube <NMncube@judiciary.org.za>

To: Ms Lethu Ntimbane, PA to Deputy Chief Justice Raymond Zondo

From: Adv Anthony Brink

Dear Ms Ntimbane

With reference to your email to Judiciary Spokesperson Nathi Mncube on Friday, which you kindly copied to me, I attach a copy of my recent letter to Chief Justice Mogoeng for the immediate attention of Deputy Chief Justice Zondo, a key cc addressee.

In its original PDF format (attached), the 7-page letter is ideal for printing and reading on paper. If on the other hand it's to be read on a portable device like a smart-phone or tablet, the alternative full-page webpage format that I've prepared will be more convenient. It's accessible at https://bit.ly/2ZTxky2.

I'd be grateful if you'd convey to Judge Zondo that:

(a) I remember him pleasantly from a case we did on opposing sides in the Pietermaritzburg High Court in the nineties when we were both younger men (we settled mid-way).

(b) Having watched much of the proceedings of his State Capture Commission on television, I hold him in the highest regard. I don't mean to add unnecessarily to his burdens as he finalises its work in the little time left to it, but the matter about which I've written is extremely and extraordinarily important, in that the capital gross misconduct of which I've complained, if publically ventilated, threatens immense damage to the reputation of the South African judiciary. To study the complaints is to see why.

(c) As mentioned in my letter, former President Jacob Zuma is now onto it, and may well raise the JSC's failure to prosecute it.

(d) After an automatic boilerplate acknowledgment, I thereafter received a personal one from the Presidency, copied to several officers in that office, suggesting that serious note has been taken of the contents of my February letter to the Chief Justice, of which President Ramaphosa was also a cc addressee. My copy to JSC Member Hon Julius Malema, likewise a cc addressee, has been personally acknowledged too.

(e) I repeat my yearning for a global conciliatory resolution (and a phone call by Mlambo JP to the current chairperson of Legal Aid SA could start the ball rolling in

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that direction), even as I appreciate that matters may have now gone too far for such a total settlement, as very desirable as it may be in the judiciary's interest.

(f) To put a hard point on it, as I regret I must, if the matter can't be resolved by conciliation, and the JSC fails to take concrete steps to prosecute my misconduct complaints by the end of this month, now well over three-and-a-half years since I lodged them, I reiterate my intentions set out in my letter to Judge Zondo in November 2020, acknowledged by Judiciary Spokesperson Mncube last month, namely to go international in the manner I described and then to sue to compel;

(g) I'm working full-time on this corruption case -- a decade-long struggle at vast and irrecoverable personal cost to me and those closest to me, and I'll not be quitting until I have justice;

(h) As mentioned in my attached letter to the Chief Justice last month, all my letters to him and to Deputy Chief Justice Zondo pressing for the JSC's action on my gross misconduct complaints are accessible at www.illegal-aid.co.za/JSC, as are my complaints, the accused judges' responses, and my invited comments on them.

Yours sincerely
Adv Anthony Brink
083 779 4174

Mogoeng_CJ_25_February_2021.pdf
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Lethu Ntimbane <Ntimbane@concourt.org.za> 8 March 2021 at 09:14
To: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Adv. Brink

I confirm receipt of the attached PDF letter, as per previous trailing emails.

I will bring it to the attention of the Deputy Chief Justice.

Kind Regards

Lethu Ntimbane

[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 8 March 2021 at 11:23
To: Lethu Ntimbane <Ntimbane@concourt.org.za>

Thanks so much Ms Ntimbane.
Will you share that email too?
Sincerely

Anthony Brink
[Quoted text hidden]

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Lethu Ntimbane <Ntimbane@concourt.org.za> 8 March 2021 at 11:55
To: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Adv Brink

You are most welcome.

For any emails for the attention of the DCJ, you can use the same email address that you are currently using.

[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 8 March 2021 at 12:04
To: Lethu Ntimbane <Ntimbane@concourt.org.za>

Thanks again Ms Ntimbane.
The email I was referring to, for Zondo DCJ to see, is of course the one I sent you last night covering my February letter to Mogoeng CJ fo Judge Zondo's attention.
Best regards
Anthony Brink
[Quoted text hidden]

Lethu Ntimbane <Ntimbane@concourt.org.za> 8 March 2021 at 12:06
To: Anthony Brink <anthonybrink.sa@gmail.com>

Dear Adv Brink

Yes, I have shared that too.

Noted, thank you.

[Quoted text hidden]

Anthony Brink <anthonybrink.sa@gmail.com> 8 March 2021 at 12:12
To: Lethu Ntimbane <Ntimbane@concourt.org.za>

First class!
AB
[Quoted text hidden]

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Gmail Anthony Brink <anthonybrink.sa@gmail.com>

My meeting with former President Zuma last Monday to discuss my gross misconduct complaints against Mlambo JP

4 messages

Anthony Brink <anthonybrink.sa@gmail.com> 26 February 2021 at 11:07
To: presidentrsa@presidency.gov.za

Dear President Ramaphosa
I attach for your information a copy of my letter to Chief Justice Mogoeng yesterday about the above.
You will readily appreciate the extraordinary gravity of the matter.
Yours sincerely
Adv Anthony Brink

Mogoeng_CJ_25_February_2021.pdf
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President RSA <PresidentRSA@presidency.gov.za> 26 February 2021 at 11:10
To: Anthony Brink <anthonybrink.sa@gmail.com>

We acknowledge with thanks, receipt of your correspondence addressed to the President of the Republic of South Africa, His Excellency, President Cyril Ramaphosa

Going forward, the Presidential Hotline (Email: President@presidency.gov.za) will respond to all Service Delivery related issues. The contact number for the Presidential Hotline is 17737.

All other matters referred to PresidentRSA@presidency.gov.za will receive the required attention and a response will be communicated soonest.

Thank you

http://www.thepresidency.gov.za/content/legal-disclaimers

Robert Ngobeni-Hlongwane <Robert@presidency.gov.za> 3 March 2021 at 07:35
To: "anthonybrink.sa@gmail.com" <anthonybrink.sa@gmail.com>
Cc: Nomusa Zondi <Nomusa@presidency.gov.za>, Makhosini Makhubele <Makhosini@presidency.gov.za>, Mike Louw <mike@presidency.gov.za>

Dear Adv Brink

Receipt of your correspondence addressed to the President of the Republic of South Africa, HE President Cyril Ramaphosa, is acknowledged with appreciation.

Kind regards

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Robert Hlongwane

Private Office of the President

West Wing, Room 65, Union Buildings

The Presidency

Tel: 012 300 5219

Website: www.thepresidency.gov.za

E-Mail: Robert@presidency.gov.za

[Quoted text hidden]

http://www.thepresidency.gov.za/content/legal-disclaimers

http://www.thepresidency.gov.za/content/legal-disclaimers

http://www.thepresidency.gov.za/content/legal-disclaimers

Anthony Brink <anthonybrink.sa@gmail.com> 3 March 2021 at 08:56
To: Robert Ngobeni-Hlongwane <Robert@presidency.gov.za>

Thank you, Mr Ngobeni-Hongwane.
Sincerely
Anthony Brink
[Quoted text hidden]

image001.jpg
9K

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

188, 14th Road, Noordwyk, Midrand, 1685
Private Bag X10, Marshalltown, 2107
Tel: +27 10 493 2500 (Switchboard)
E-mail: info@ judiciary.org.za
www.judiciary.org.za

JUDICIAL CONDUCT COMMITTEE

Enq: Ms Kutlwano Moretlwe
Tel: (010) 493 2652
Email: KMoretlwe@judiciary.org.za

22 February 2021

Adv A R Brink
1 Boast Street
Eshowe
KwaZulu-Natal
3815

E-mail: anthonybrink.sa@gmail.com

Dear Adv Brink

RE: COMPLAINTS LODGED BY ADV BRINK

[1] We refer to your complaint lodged against Judge President D Mlambo of the Gauteng Division of the High Court.

[2] We have been directed by Zondi JA, a member of the Judicial Conduct Committee to write to you as follows:

[3] Judge President Mlambo was requested to respond to the allegation in paragraph 9 of the affidavit deposed to by Mr Thembile Mtati, which is an annexure your first complaint, in which it was alleged that you arrived unannounced in Judge President Mlambo's chambers, a conduct to which the Judge President allegedly took strong exception. You vehemently denied this allegation in reply.

[4] Judge President Mlambo has responded to the allegations contained in para 9 of the affidavit by filing affidavits which are now brought to your attention. Copies of the affidavits received from Judge President Mlambo are enclosed herein for your ease of reference.

[5] You are hereby invited to comment on the attached affidavits, if you wish to do so. Should you elect to express any views on the affidavits, it would be appreciated if you could kindly do so by no later than 05 March 2021.

Yours sincerely,

Sello Chiloane
Secretary, Judicial Conduct Committee

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Gmail Anthony Brink <anthonybrink.sa@gmail.com>

Letter from JCC

2 messages

Sello Chiloane <Chiloane@concourt.org.za> 22 February 2021 at 15:49
To: Anthony Brink <anthonybrink.sa@gmail.com>
Cc: Kutlwano Moretlwe <KMoretlwe@judiciary.org.za>

Dear Sir

Kindly find attached herewith a letter and attachments for your consideration.

Kind regards

Sello

3 attachments

- **Letter to Adv Brink-Feb 2021- JP Mlambo Affidavits.pdf** 58K
- **JP AFFIDAVIT - Mr. Brink complaint - signed.pdf** 221K
- **TUMI AFFIDAVIT - Mr. Brink Complaint - signed.pdf** 231K

Anthony Brink <anthonybrink.sa@gmail.com> 25 February 2021 at 17:02
To: Sello Chiloane <Chiloane@concourt.org.za>

Got thanks Mr Chiloane.
Only opened and read now.
Been busy with a letter to Mogoeng CJ to report an important meeting I had on Monday night, that he sure will want to hear about.
I'll email it in a few hours, copying you in.
I'll be commenting on the affidavits you sent me soon.
Cheers
AB
[Quoted text hidden]

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AFFIDAVIT

I, the undersigned, DUNSTAN MLAMBO, do hereby make an oath and state that in 2012, my then Judges Secretary, Ms. Tumelo K. Motswasele, gave me documents she received from Mr. Brink who had come to my Johannesburg chambers to deliver them.

DEPONENT

SIGNED and SWORN TO before me, at PRETORIA on this 04 day of NOVEMBER 2020 by the Deponent who has acknowledged that she knows and understands the contents of this Affidavit and she has declared that she has no objection to taking the oath, and she regards the oath as binding on her conscience and she has uttered the following words: - "I swear that the contents of this Affidavit are true, so help me God."

COMMISSIONER OF OATHS

FULL NAMES: PAMELA ZANISA MBOWENI

ADDRESS: CNR Madiba & Kruger Street

CAPACITY: Registrar

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2020 -11- 04
P.F MBOWENI
REGISTRAR
GRIFFIER VAN DIE HOË HOF VAN
D-AFRIKA, GAUTENG AFDELING, PRETORIA

AFFIDAVIT

I, the undersigned, TUMELO KEIKANETSWE MOTSWASELE, with the ID NO. 8211210315086, do hereby make an oath and state that in 2012, I was employed as a Judges Secretary to Judge President D. Mlambo at the Gauteng Local Division of the High Court, Johannesburg. I confirm that in 2012, Mr. Brink delivered a formal complaint to the Office of the Judge President. I further confirm that I took receipt of such formal complaint and gave this formal complaint to Judge President D. Mlambo when he arrived in chambers.

Motswasele

DEPONENT

SIGNED and **SWORN TO** before me, at **Pretoria** on this **04** day of **NOVEMBER 2020**, by the Deponent who has acknowledged that she knows and understands the contents of this Affidavit and she has declared that she has no objection to taking the oath, and she regards the oath as binding on her conscience and she has uttered the following words: - "I swear that the contents of this Affidavit are true, so help me God."

COMMISSIONER OF OATHS

FULL NAMES: PAMELA ZANISA MBOWENI

ADDRESS: CNR Madiba & Paul Kruger Street

CAPACITY: Registrar

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2020 -11- 04
P.F MBOWENI
REGISTRAR
GRIFFIER VAN DIE HOË HOF VAN SUID-AFRIKA, GAUTENG AFDELING, PRETORIA

BRINK'S COMMENTS ON MLAMBO JP'S SECOND RESPONSE TO HIS FIRST GROSS MISCONDUCT COMPLAINT

I, Anthony Brink, affirm:

1. I am an advocate residing at 36 Pearson Avenue, Eshowe, KwaZulu-Natal, and the complainant under section 14 of the Judicial Service Commission Act 9 of 1994 in eight gross misconduct charges against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, and formerly chairperson of the Board of Directors of Legal Aid South Africa ('LASA'), hereinafter 'the respondent'.

2. In these comments on the respondent's second response to my First Complaint, I will show that he has compounded the crime with which I charged him, to wit, 'suborning perjury to defeat the ends of justice', by committing another crime, to wit, lying under oath in contravention of section 6 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963, to misdirect the Judicial Conduct Committee ('JCC') as to the true facts of the matter and thereby pervert its correct determination of my complaint.

3. By letter of 22 February 2021, emailed to me that day, JCC secretary Sello Chiloane conveyed JCC member Dumisani Zondi JA's invitation to comment on affidavits by the respondent and his former secretary made on 4 November 2020, copies of which Chiloane provided me. I annex these affidavits marked 'A' and 'B' respectively. Chiloane's letter is annexed marked 'C'. Paragraph 3 of the letter records that the JCC had requested the respondent to respond again to my First Complaint, and that he did so by submitting these affidavits.

4. I say 'respond again', because the respondent had already answered my First Complaint in paragraph 10 of his original combined response on 7 June 2018 to my eight complaints against him, the first of which (my First Complaint) was filed on 4 June 2017 and acknowledged by the Judicial Service Commission ('JSC') secretary two days later on the 6th. An excerpt containing the core paragraphs of my First Complaint is annexed marked 'D'. The material portion

of the respondent's original response containing his paragraph 10 is annexed marked 'E'.

5. The several lies the respondent told the JCC in his paragraph 10 are identified and refuted in my invited comments on the respondent's original response, so it's unnecessary to do so here again.

6. In his affidavit (annexure 'A'), the respondent alleged:

> in 2012, my then Judges Secretary, Ms. Tumelo K. Motswasele, gave me documents she received from Mr. Brink who had come to my Johannesburg chambers to deliver them.

7. In her affidavit (annexure 'B'), Ms Motswasele confirmed that in 2012 she'd worked as the respondent's secretary at his Johannesburg chambers and that:

> in 2012, Mr Brink delivered a formal complaint to the office of the Judge President. I further confirm that I took receipt of such formal complaint and gave this formal complaint to Judge President D. Mlambo when he arrived in chambers.

8. The allegation that I went to the respondent's chambers in 2012 to deliver a 'formal complaint' is novel in two respects: now the year I'm alleged to have gone there is stated, and my purpose in doing so is alleged. This additional information featured neither in paragraph 51 of the respondent's attorney's affidavit in 2012 giving rise to my First Complaint, nor in the respondent's first response in 2018. The unambiguous implication of the respondent's balder allegation made through his attorney in his answering affidavit about which I'd complained, was that while my labour claim was still pending I'd travelled up to his chambers and disgracefully unprofessionally and objectionably pitched up to remonstrate with him as chairperson of LASA in relation to my claim to my appointment. (He sure didn't suggest that I'd arrived to chat about the weather.) Now the story changes: that I went there to deliver some papers.

9. Contrary to the false allegation made by the respondent through his former secretary, I made no 'formal complaint' to the respondent in 2012, much less did

I (or anyone else on my behalf) personally deliver 'such formal complaint' to his chambers. The very different legal 'documents' that the respondent indeed got from me in 2012, but in a quite different manner, are described below.

10. The reason I'd never have wasted my time making any 'formal complaint' to the respondent in 2012, and never did so, is this. Two years earlier, in November 2010, I'd indeed written a finely detailed and substantiated 60-page 'formal complaint' to the respondent in his capacity as chairperson of LASA's Board, in which I craved and pleaded for his intervention in (a) the obviously corrupt, unauthorised, furtive, off-the-record, illegal cancellation of my recruitment to LASA's top professional post in KwaZulu-Natal, namely its Senior Litigator post at Pietermaritzburg following my due selection for it a year earlier by a panel of LASA's most senior lawyers in the region, falsely explained (I complained to him) eleven months later by then CEO Vidhu Vedalankar, under rising pressure to account, with the stupid blatant lie that LASA hadn't received the budget in 2010/11 to fill the post, and that it had been 'frozen' accordingly – flatly contradicted by LASA's own financial and other records that I later extracted very reluctantly from LASA under the Promotion of Access to Information Act 2 of 2000 ('PAIA'); and further flatly contradicted by totally different stupid blatant lies about 'recruitment challenges' preventing the filling of the post and about the alleged professional incompetence of LASA's six incumbent Senior Litigators as the reason for freezing it, which stupid blatant contradictory lies LASA National Operations Executive Brian Nair told in his 'Report to Board' in November 2011, leaked to me by a sympathetic LASA insider – also totally unsupported by LASA's records, as I established with PAIA requests and then litigation to compel LASA's compliance with them; and (b) LASA's repeated and persistent illegal and unconstitutional refusals to comply with PAIA requests for access to LASA records made in 2010 and 2011 in my investigation of this recruitment corruption – requiring repeated appeals to the PAIA Unit of the South African Human Rights Commission for its intervention to overcome (partially successfully) LASA's determined suppression of records I'd requested, exposing the lies told me about why my appointment had been cancelled.

11. When the respondent's palpably dishonest two-line dismissal of my very extensive and detailed 'formal complaint' to him in November 2010, imploring his remedial intervention, made it shockingly, horrifyingly, sickeningly clear to me that as a senior judge and as LASA Board chairperson ultimately responsible for ethical, legal and constitutional probity in the conduct of LASA's operations, he himself was party to this top-level corruption – and a record forced out of LASA by PAIA litigation in 2016 revealed he was *central* to it; see below – I escalated in February 2011 to the Justice Minister and to the Justice Portfolio Committee of the National Assembly my complaints about the recruitment corruption I'd run into at LASA and about its obstruction of my investigation of it and attempts to cover it up by illegally and unconstitutionally blocking my access to duly requested records. Both high authorities duly instituted separate and independent enquiries into these extraordinarily serious complaints about recruitment corruption and wilful PAIA delinquency at LASA, and required the respondent to answer them.

12. In June 2011, the Portfolio Committee chairperson furnished me with a copy of the respondent's report to him answering my said complaints, and the stunning profusion of lies it contained (as in the report to the Minister that I forced out of LASA with interlocutory discovery litigation two years later) brought home to me that not only was the respondent corrupt, he was moreover an abject criminal liar to whom there was absolutely no point whatsoever in appealing again to rectify the pervasive gross illegality at LASA that I'd encountered at national executive management level.

13. It would have been like reporting a stolen car at the local police station, only to learn that the station commander, pretending to look into his detectives' failure to investigate and solve the case on the clear evidence of the identity of the thief given them, actually headed the criminal syndicate behind the theft; and that in reports about it to the Police Minister and to Parliament, he'd lied his way out of their enquiries into it.

14. The respondent's 'confidential' report to the chairperson of the Portfolio Committee in June 2011 that successfully defrauded him and misled him to close

his enquiry (as he advised me), and the similar report to the Minister in March 2011 that achieved the same corrupt end, are the subject of my Sixth, Seventh and Eighth complaints against the respondent.

15. So after June 2011, it would obviously have been completely futile making any further 'formal complaint' to the respondent – the expression appearing three times in his former secretary's affidavit (annexure 'B').

16. By 2012, I had an action against LASA pending in the Durban Labour Court (LC D529/11), in which I sought an order appointing me to the top professional post for which the selection panel had in glowing terms unanimously recommended me.

17. Most unfortunately for me, I'd surmised on the evidence then available to me (key, crucial explanatory information having been illegally suppressed) that the reason for the illegal backroom abortion of my recruitment was unfair discrimination, and had sued on that wrong basis. I lost the case – *correctly*, as it turned out, because as I learned some years after the dismissal of my labour action from the full, uncensored selection panel's recommendation report that I finally crow-barred out of LASA in April 2016 by suing for it under PAIA (meritlessly opposed all the way to court until moments before argument when LASA surrendered), the obstacle to my appointment wasn't unfair discrimination, it was just everyday jobs-for-pals recruitment corruption, in that the respondent wanted a former judicial colleague of his appointed to the plum job instead of me, namely Mzochitwayo Ngcamu, a long-time acting judge of the Labour Court in which the respondent had also served and later headed – even though he'd been positively disqualified and rejected by the selection panel as a candidate for possible appointment to the Senior Litigator post for lack of right of appearance in the High Court and consequently zero litigation experience on his feet there. (My persistence in pursuing my appointment daunted LASA's top officers from appointing the respondent's crony to the post instead of me – unlike at Mahikeng where a *rejected* candidate was indeed appointed (I'm reliably informed) – but Ngcamu was quickly appointed to other posts in the organisation, whereas, in telling contradistinction, when a year later I was again

duly selected for a lighter post, I was then told, as before, that LASA had decided not to fill the post. And when I tested this claim with PAIA, I found, quite predictably, that no record of any such decision exists. Which is to say, under the respondent's reign as chairperson at LASA, the corruption of recruitment operations became routine.

18. I intended subpoenaing the respondent for cross-examination at the trial of my labour claim on the stupid blatant lies, including the criminal lies, he'd told the Minister and the Portfolio Committee in his 'Confidential Report Re: Adv Anthony Brink' to pervert their enquiries into my complaints of recruitment corruption and malicious non-compliance with PAIA at LASA, lies he'd told supremely confident that as a senior judge he'd be taken at his word and believed without a moment's doubt the veracity of what he told them – as indeed he was; the enquiries were closed precisely on the basis of his untruthfully false responses.

19. Naturally, the most important of his stupid blatant lies told to the Minister and to the Portfolio Committee that I wanted to cross-examine him about was his central lie that budgetary constraints prevented my appointment. In truth, as LASA's financial records show, the critical, *still today vacant* post, created by resolution of the Board back in November 2006 to provide high-level specialist litigation services to the poor, especially to protect and advance their constitutional socio-economic rights, has always been and remains budgeted by LASA and funded by the Treasury via the Third Party Funds division of the Justice Department upon the annual budget vote of the National Assembly. (In 2020, the Auditor-General's top corporate counsel, and a member of the national management executive committee, referred to the Investigations division LASA's deliberate, corruptly motivated, ongoing failure to fill the critical, budgeted and funded vacant post, a serious illegality under the Public Finance Management Act, noted by the Constitutional Court in January 2018 in *Zungu*. The matter is pending. The Investigations division has asked me about progress in the JCC's handling of my complaints.)

20. But because the respondent is a judge, section 25 of the Supreme Court Act required that I obtain the leave of court to get him into the witness stand; sworn in by the trial judge; and be questioned on his stupid blatant lies, including his criminal lies, that he'd told me, the Minister and the Portfolio Committee to discredit my valid complaints about recruitment corruption at LASA and, to cover it up and obstruct its investigation, its illegal and unconstitutional suppression of duly requested records, in which he'd colluded and connived. (My Second to Fifth Complaints to the JCC concern this.) So I brought an application for the grant of such leave, a material excerpt of which I annex marked 'F'.

21. Unlike the Uniform Rules, which require original court processes to be served the sheriff, the more relaxed rules of the Labour Court permitted me to serve my application on the respondent, *inter alia*, by telefax, provided that I verified this on affidavit and filed it at court.

22. So with a view to serving my application on the respondent in this handy manner, I telephoned the High Court at Johannesburg and asked to be put through to the respondent's secretary, explaining that I needed the number for the telefax machine in his chambers to get some papers to him. (I'd have first enquired and established that the respondent was working in Johannesburg and not Pretoria at the time.) As my service affidavit records, I was indeed put through to the respondent's helpful secretary, asked and recorded her name, and asked and recorded the respondent's telefax number that she gave me. Which telefax number I then used to serve my application on the respondent, as the transmission reports annexed to my service affidavit vouch. A copy of my service affidavit covering the successful telefax transmission reports is annexed marked 'G'.

23. There's no question that the respondent was successfully served with my application in this manner and that he indeed received it, because he promptly filed a notice of opposition – understandably not wanting to be cross-examined under oath with the tape recorder running for later transcription of what he said for referral to the National Director of Public Prosecutions, on the many stupid blatant lies he'd told, including those he'd told the Justice Portfolio Committee,

for which he was liable to be criminally convicted and jailed, after being impeached and sacked as a judge. The respondent's notice of opposition is annexed marked 'H'. A material except of his answering affidavit, made by his attorney on his instructions and on his behalf, is annexed to my First Complaint.

24. It's possible that in his fear and loathing of me, both alarmed and infuriated by my unexpected, stupendous temerity in going so unimaginably far as to seek leave to subpoena him, to force him out of his lofty chambers, down into a courtroom, to be cross-examined in open court, under oath, face-to-face, man-to-man, on level ground, on the record, on the stupid blatant lies he'd told me, the Minister, and the Portfolio Committee, and horrified by the fact that I was now closing in on him and threatening very dangerously to hold him to account and expose him to impeachment, dismissal and imprisonment, the respondent jumped to the panicked conclusion that I'd personally travelled all the way from my different home province right up to his very door at court to personally deliver my subpoena application – his professional death warrant, so to say – with a view to literally boxing him in at the Labour Court for a couple of days and forcing him to be grilled over the stupid blatant lies he'd told me, the Minister, and the Portfolio Committee, including his criminal lies, contradicted by LASA's records and further contradicted by the different lies his National Operations Executive had told him and the rest of the Board in his report to it in November 2011.

25. It may well be that in his frantic imagination, and not thinking straight, the respondent's nightmare morphed into his disturbed reality, namely that I'd come hunting for him in his chambers where he felt most safe, above the law, beyond accountability, and immune from justice. Certainly, as my several other complaints prove (and see further below), the respondent has repeatedly demonstrated that he's congenitally incapable of distinguishing fact from falsehood, truth from lies, and that he tells lies freely, even criminal lies, even to the highest authorities, without a qualm, invariably burnished with venom spat down at me, thinking this would enhance their credibility.

26. How and why the respondent could have thought I'd come to serve my application personally is otherwise beyond comprehension, more especially because the telefaxed application papers would have borne those sending telefax number, and date and time codes that even an office clerk with a Standard Six knows are automatically printed at the top of telefaxed pages coming out of a telefax machine receiving a telefaxed document from another telefax machine.

27. As I've said before, I've no idea at all where the Johannesburg High Court is, never having been there for any reason; and I'd hardly have travelled all the way there – involving unnecessary hassle and expense to me – to personally serve my subpoena application on the respondent or his secretary, as rule 4 of the rules of the Labour Court allow, seeing as the rule also permitted me the quick and simple alternative of just telefaxing my application to him and then filing at court an affidavit certifying that I'd done so. Which latter convenient option I chose, as the telefax transmission reports vouch.

28. So the respondent's claim in his affidavit that in 2012 his then secretary gave him 'documents she received from Mr. Brink' squares with the documented fact that on 31 October 2012 I'd telefaxed my subpoena application to his chambers, and that she gave it to him, as evinced by his opposition to the application. But everything else that the respondent told the JCC in his affidavit, under the oath to God that he took with his hand in the air before his own registrar, is a criminal lie. And not just a mistake, as I'll show.

29. The respondent's 'then Judges Secretary, Ms. Tumelo K. Motswasele' cannot have told him that I'd 'come to [his] Johannesburg chambers to deliver' 'the documents' (per the respondent's affidavit), because, as my service affidavit signed two days later records, I'd telephoned her in the morning of 31 October 2012, asking for his telefax number, and then used it to telefax the application papers to him in the afternoon of the same day. And having just spoken to me on the telephone and then having received the application papers from me via telefax a few hours later, the respondent's then secretary would hardly have handed them to the respondent 'when he arrived in chambers' with the false report that I'd physically 'come' there 'to deliver them' before he arrived.

Knowing I'd telefaxed the application, she had no reason to make such a false report, so there's no possibility at all that she said this.

30. Although in her affidavit, surely drafted for her by the respondent, his former secretary's affidavit strongly implies that I personally 'delivered' my application papers to the respondent's chambers – consistent with the respondent's express allegation of this in his own affidavit – and that she 'took receipt' of my papers, implying I handed them over to her there, her language is too ambiguous on its own terms to sustain a statutory perjury charge against her.

31. Still, it's perfectly clear that the respondent intended his then secretary's affidavit to corroborate his false one, namely that I 'had come to [his] Johannesburg chambers to deliver' 'the documents [she'd] received from Mr. Brink' – consistent with his false claim made in 2012, in his attorney's affidavit opposing my subpoena application, about my rocking up to his chambers unannounced, to which he took strong exception. Indeed, in her affidavit she twice uses the word 'confirm' – put in her mouth by the respondent, obviously.

32. That is, the respondent's purpose in getting his former secretary to make her confirmatory affidavit and then in submitting it to the JCC in tandem with his own was to fortify his allegation, made via his attorney in 2012, and then directly by him under oath in 2020, that I'd very improperly and unprofessionally gone up to his chambers while my labour case was on the go.

33. When right after being served with my subpoena application in 2012 the respondent soon afterwards made his false charge in his answering affidavit, deposed to by his attorney, that I'd disgracefully unprofessionally arrived at his chambers, he knew full well that the documents he'd received from his secretary were those very application papers, and not any 'formal complaint'. He knew from the citation heading my notice of application right before his worried eyes that he was the respondent in a new substantive application I'd brought against him (albeit that I used my same labour action case number), and not against LASA. And as long-time labour judge and head of the Labour and Labour Appeal Courts, before taking over as head of the Gauteng Division of the High Court, he

was full well aware that the Labour Court's rules allowed a litigant to himself serve court processes on the other party, personally or by delivering them to his workplace.

34. Rule 4(1) provides, 'A document ... may be served ... (a)(i) by handing a copy of the document to the person', or under subrule (a)(iii), 'by leaving a copy of the document at the place of employment with any person who is apparently at least 16 years old and apparently in authority.'

35. And, as said, he was the respondent cited as in my subpoena application who required to be served – and not LASA, which was representing itself in my labour litigation against it via its in-house corporate legal services attorneys, locally represented in Durban by the LASA Justice Centre there, and accepting all further processes in that litigation.

36. In other words, unless he unbelievably ignorantly didn't know the relatively informal rules of service of the Labour Court that he'd headed until recently, the respondent appreciated that there was nothing improper about my arriving at his chambers 'unannounced' to serve my application on him by leaving the papers with his secretary (had I done so, as he claims I did).

37. But the possibility that the respondent was ignorant of the provisions of rule 4 is excluded by the fact that he considered himself duly served, as shown by the fact that he proceeded to oppose my application and made no claim in his answering affidavit that he hadn't been properly served by me.

38. So the respondent's complaint in his answering affidavit in 2012 that I'd professionally disgracefully called in at his chambers unexpectedly – knowing, but not saying, that I'd just served my subpoena application on him quite properly under the Labour Court rules – was *mala fide* and malicious. That is, not only was his allegation false, the respondent's *motive* in making it was dishonest as well.

39. Given that in my First Complaint I'd 'vehemently denied' the respondent's false allegation, made via his attorney, that I'd 'arrived unannounced in Judge President Mlambo's chambers, a conduct to which the Judge President allegedly

took strong exception' (per Chiloane's letter, annexure 'C'), and moreover since on the respondent's own version he never saw me there, it obviously behoved him to make sure of his facts, before responding to my First Complaint again in 2020, now under oath, by enquiring of his then secretary and making absolutely sure: 'I thought Brink came to my chambers in 2012. Did he really?' Instead, hell-bent on portraying me as a contemptibly unreliable mendacious witness against him, and characteristically reckless of the truth and of the penalty for perjury, the respondent persisted with his false allegation against me, originally made indirectly via his attorney in 2012, and now directly under oath himself in 2020, for which allegation he had zero factual basis outside his frightened and hateful imagination, in which he was ruminating, as always, as to how best this bug buzzing around him could be crushed.

40. He then aggravated his crime by calling in his former secretary to make an affidavit corroborating his false charge against me.

41. In thus painting me as a brazen liar in making my First Complaint, and therefore an unreliable witness against him in making my Second to Eighth Complaints, respondent's transparent objective was to pervert the JCC's determination of them all and thereby escape accountability for his criminal and other gross misconduct.

42. The important thing is that the respondent's lie in 2012 about me about me barging into his chambers and greatly annoying him by doing so is not isolated. His penchant for playing fast and free with the facts, his criminal mendacity and malicious dishonesty, is clearly evinced by the gushing profusion of unstinting lies told to me in 2010 and 2011, to the Minister and to the Portfolio Committee in 2011, to the Labour Court via his attorney in 2012, to the JCC in his original response to my eight complaints in 2018, and again in his second response in 2020 to my First Complaint, now under oath on pain of imprisonment for perjury. In short, considered together, my documented complaints against him, and his first and second responses, yield a mountain of similar fact evidence of a criminal propensity to tell lies and to say whatever he thinks will impress his audience in the moment and get him out of trouble.

43. So in light of the respondent's new mention of 'documents' 'delivered' to him (my subpoena application), and his new mention of 2012 as the year in question, and the light this information shines on the matter, what might otherwise have been excused as a mere mix-up, a wrong impression formed by the respondent in his anxiety at the prospect of being called to court, can't be so simply discounted, because the lies he forcefully tells the JCC on oath in his affidavit about my going to his chambers, in the teeth of my truthful insistence to the contrary as an officer of court deposing under affirmation, are entirely consistent with his repeatedly demonstrated indifference to the truth in aggressively and dishonestly covering up his criminal and other wrongdoing both with lies and with poisonously prejudicial *ad hominem* attacks on me.

44. In the latter regard I'm referring *inter alia* to his first response in 2020, in which he wantonly and viciously defamed me as a 'racist' for matter-of-factly pointing out the similar minor grammatical imperfections – like those in his costs order that he read over national radio against former President Jacob Zuma following his failed review application against the Public Protector – matching those I noticed in the 'memorandum' that I'm satisfied he wrote and slipped to his long-time judicial colleague Basheer Waglay JP, his erstwhile Deputy Judge President and successor as head of the Labour and Labour Appeal Courts, that led to the corrupt, premature dismissal of my petition for leave to appeal the dismissal of my labour case (before I realised my main case had been correctly dismissed for the reason stated above) – without any record in or on the petition file that the other two appeal judges named in the order concurred. (Supported by a photocopy of the 'memorandum' made by the registrar's clerk, my complaint against Waglay JP for betraying his judicial oath, filed with the JCC in mid-2017, and answered evasively in 2018, is still pending.)

45. The respondent's natural habit of making claims entirely unmoored to the facts, if he thinks it will get him off the hook, has a precedent outside this case. According to a report by *City Press* on 12 May 2012, titled, 'I'm a new-generation judge', quoting his self-billing to the JSC at his interview for his current job, 'The only hiccup in his relatively smooth JSC interview was his six outstanding judgments. Mlambo called this a valid criticism, but said the "exuberance of

youth" had caused him to take on too great a caseload.' In truth, he was already in his fifties, not young at all, so this foolish excuse given the JSC for taking the money and not doing the work was patently false. (He'd likely cribbed the heart-warming expression from then Public Protector Thuli Madonsela's speech given six weeks earlier to the South African Women Lawyers Association on 30 March: '[I]n my youthful exuberance I asked her to save a group of young persons on death row ... I had not even obtained my first law degree'.)

46. In his book *'On Bullshit'* published by Princeton University Press in 2005, Professor of Analytical Philosophy Harry Frankfurt made the point (at page 61; paraphrased by Wikipedia) that 'bullshit is speech intended to persuade without regard for truth. The liar cares about the truth and attempts to hide it; the bullshitter doesn't care if what they say is true or false, but rather only cares whether their listener is persuaded.' (Evidently the respondent had no trouble persuading the JSC.) Explaining his motivation for writing the book, the author explained in an interview (online at bit.ly/3lEKhpo): 'Respect for the truth and a concern for the truth are among the foundations for civilisation. I was for a long time disturbed by the lack of respect for the truth that I observed ... bullshit is one of the deformities of these values.' (Especially in the judiciary.)

47. It's highly unconventional for a judge to make a sworn statement under oath, because his personal and professional ethics are universally assumed to be above question, and a judge's word is generally considered the gold standard for veracity. So the respondent's intention in taking this most unusual step in making and submitting his affidavit to the JCC was plainly to put the dispute as to my alleged visit to his chambers to rest and beyond any further doubt – in other words to establish as absolutely incontrovertible facts before the JCC that I'd indeed gone up to his chambers in Johannesburg in 2012, that I'd lied in denying that I'd done so, and that I'd made a false complaint under affirmation against him for protesting that he'd lied about this. And if I could lie so flagrantly in my First Complaint about never having gone to his chambers, my Second to Eighth Complaints were obviously unworthy of serious consideration. This is the respondent's transparent cunning here.

48. The respondent's clear purpose in telling his lie to the labour judge in 2012 about my uninvited, unannounced, disgracefully unprofessional arrival at his chambers was to create a potent negative personal and professional impression of me to severely prejudice the judge as he weighed my application for leave to subpoena the respondent for cross-examination. The lie he told to gun me down personally and professionally was clearly intended to increase his chances of getting my application dismissed, of staying out of the witness box, of evading being held to account, of defeating my main claim to my appointment, and of getting away with his criminal and other gross misconduct committed as Board chairperson of LASA.

49. As said in my First Complaint, the respondent's lie was so appalling, so depraved, that it put me off continuing with my subpoena application, because I judged it too dangerous to bring such a prolific, habitual, vicious liar into court, a Judge President who'd be riding on his friendly collegiality with the trial judge under whose administrative authority he'd previously served, and who'd naturally be disposed to believing him and disbelieving me.

50. The respondent's clear purpose in repeating to the JCC his lie, now directly on oath himself, is to wreck my credibility before the JCC completely. Through his attorney, deposing under oath on his instructions, he said I went to his chambers. Under affirmation in my First Complaint I said I didn't. With a reckless disregard for his legal obligation to tell the truth, he insists under oath himself that I did; and he puts up a confirmatory affidavit by his former secretary intended to clinch the issue against me. In this manner the respondent shows that in his dealing with the JCC, he's more interested in winning the argument against me than telling the truth.

51. In the premises, the respondent's sworn second response in November 2020 to my First Complaint against him, to misdirect the JCC as to the true facts of the matter and pervert its determination of my complaint, discloses his criminal contravention of section 6 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963, which section provides:

> Any person who, in an affidavit, affirmation, or solemn or attested declaration made before a person competent to administer an oath or affirmation or take the declaration in question, has made a false statement knowing it to be false, shall be guilty of an offence and liable upon conviction to the penalties prescribed by law for the offence of perjury.

52. And I wish the respondent prosecuted and punished accordingly, like any other criminal in our country, more especially since perjury is 'a very serious crime', per the court in *R v Samuels* 1930 CPD 67 at 71.

53. Wherefore I persist, *inter alia*, with my First Complaint.

54. Certain important peripheral matters are addressed in the Appendix hereto, annexure 'J'.

4 PML

Signed at Eshowe on 23 March 2021.

ANTHONY BRINK

4 PML

Signed before me at Eshowe on 23 March 2021 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.

PML 3172465-6 CSC Langa PM

COMMISSIONER OF OATHS

Name: Praise-God Mzamo Langa

Address: 73-79 main street Eshowe

Capacity: Constable

SOUTH AFRICAN POLICE SERVICE
SUPPORT SERVICE
FINANCIAL SERVICES
2021 -03- 24
ESHOWE
KWAZULU-NATAL

AFFIDAVIT

I, the undersigned, DUNSTAN MLAMBO, do hereby make an oath and state that in 2012, my then Judges Secretary, Ms. Tumelo K. Motswasele, gave me documents she received from Mr. Brink who had come to my Johannesburg chambers to deliver them.

DEPONENT

SIGNED and SWORN TO before me, at PRETORIA on this 04 day of NOVEMBER 2020 by the Deponent who has acknowledged that she knows and understands the contents of this Affidavit and she has declared that she has no objection to taking the oath, and she regards the oath as binding on her conscience and she has uttered the following words: - "I swear that the contents of this Affidavit are true, so help me God."

COMMISSIONER OF OATHS

FULL NAMES: PAMELA ZANISA MBOWENI

ADDRESS: c/o Madiba & Boshoff 1 Krueger Street

CAPACITY: Registrar

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2020 -11- 04
P.F MBOWENI
REGISTRAR
GRIFFIER VAN DIE HOË HOF VAN SUID-AFRIKA, GAUTENG AFDELING, PRETORIA

AFFIDAVIT

I, the undersigned, TUMELO KEIKANETSWE MOTSWASELE, with the ID NO. 8211210315086, do hereby make an oath and state that in 2012, I was employed as a Judges Secretary to Judge President D. Mlambo at the Gauteng Local Division of the High Court, Johannesburg. I confirm that in 2012, Mr. Brink delivered a formal complaint to the Office of the Judge President. I further confirm that I took receipt of such formal complaint and gave this formal complaint to Judge President D. Mlambo when he arrived in chambers.

Motswasele

DEPONENT

SIGNED and **SWORN TO** before me, at **Pretoria** on this **04** day of **NOVEMBER 2020**, by the Deponent who has acknowledged that she knows and understands the contents of this Affidavit and she has declared that she has no objection to taking the oath, and she regards the oath as binding on her conscience and she has uttered the following words: - "I swear that the contents of this Affidavit are true, so help me God."

COMMISSIONER OF OATHS

FULL NAMES: PAMELA ZANESA MBOWENI

ADDRESS: CNR Madiba & Paul Kruger Street

CAPACITY: Registrar

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2020 -11- 04
P.F MBOWENI
REGISTRAR
GRIFFIER VAN DIE HOË HOF VAN SUID-AFRIKA, GAUTENG AFDELING, PRETORIA

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

188, 14th Road, Noordwyk, Midrand, 1685
Private Bag X10, Marshalltown, 2107
Tel: +27 10 493 2500 (Switchboard)
E-mail: info@ judiciary.org.za
www.judiciary.org.za

JUDICIAL CONDUCT COMMITTEE

Enq: Ms Kutlwano Moretlwe
Tel: (010) 493 2652
Email: KMoretlwe@judiciary.org.za

22 February 2021

Adv A R Brink
1 Boast Street
Eshowe
KwaZulu-Natal
3815

E-mail: anthonybrink.sa@gmail.com

Dear Adv Brink

RE: COMPLAINTS LODGED BY ADV BRINK

[1] We refer to your complaint lodged against Judge President D Mlambo of the Gauteng Division of the High Court.

[2] We have been directed by Zondi JA, a member of the Judicial Conduct Committee to write to you as follows:

[3] Judge President Mlambo was requested to respond to the allegation in paragraph 9 of the affidavit deposed to by Mr Thembile Mtati, which is an annexure your first complaint, in which it was alleged that you arrived unannounced in Judge President Mlambo's chambers, a conduct to which the Judge President allegedly took strong exception. You vehemently denied this allegation in reply.

[4] Judge President Mlambo has responded to the allegations contained in para 9 of the affidavit by filing affidavits which are now brought to your attention. Copies of the affidavits received from Judge President Mlambo are enclosed herein for your ease of reference.

[5] You are hereby invited to comment on the attached affidavits, if you wish to do so. Should you elect to express any views on the affidavits, it would be appreciated if you could kindly do so by no later than 05 March 2021.

Yours sincerely,

Sello Chiloane
Secretary, Judicial Conduct Committee

FIRST 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, admitted to practice on 12 April 1983. I reside 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 brought 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. I charge the respondent with suborning perjury to defeat the ends of justice, an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act.

4. Although the gross misconduct to be described below was committed by the respondent in his capacity as LASA Board chairperson, and not as a judge, the Judicial Service Commission ('JSC') has jurisdiction to deal with this complaint by virtue of Articles 5 and 6 of the Code of Judicial Conduct and its Notes, which require judges 'always, and not only in the discharge of official duties, [to] act honourably and in a manner befitting judicial office ... in a manner that enhances public trust in, or respect for, the judiciary and the judicial system ... [to] avoid impropriety or the appearance of impropriety in all the judge's activities', and 'at all times, also in relation to extra-judicial conduct, [to] comply with the law of the land.'

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5. On 31 October 2012, I sued the respondent under section 25 of the Supreme Court Act 59 of 1959 for leave to subpoena him for cross-examination at the trial of my claim against LASA in the Durban Labour Court. The nature of the claim and my reason for wishing to cross-examine the respondent will be detailed later in this affidavit.

6. Redacted for relevance to this complaint and annexed hereto marked 'A' is a material excerpt of the 'RESPONDENT'S ANSWERING AFFIDAVIT' opposing my application, deposed to by LASA's lead in-house attorney, Corporate Services Executive Thembile Mtati.

7. Paragraph 4 records that the respondent 'duly authorised' Mtati to make his answering affidavit on his behalf, and that before he did so he'd had 'consultations' with him.

8. The affidavit was saturated with objectively demonstrable perjury, to be treated in separate complaints.

9. Paragraph 51 makes the following allegation:

> The most disturbing, reprehensible and brazen act of disrespect came recently when the Applicant left the KZN province and attended unannounced and without warning at the office of the Respondent in the South Gauteng High Court. The Respondent did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is represented the Applicant's conduct amounts to professional misconduct.

10. This allegation on oath was false in every particular.

11. In truth, I've no idea where the 'South Gauteng High Court' is, much less have I ever set foot in it, never having litigated there or gone there for any

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other reason, as any CCTV records will bear out; and the claim that I 'left the KZN province and attended unannounced and without warning at the office of the Respondent in the South Gauteng High Court' is pure perjury.

12. The allegation that the respondent 'did not take kindly to the Applicant's conduct' is further perjury to corruptly amplify and lend credibility to the first.

13. Compounded by the concluding third charge in the paragraph that 'In the face of litigation where Legal Aid SA is legally represented the Applicant's conduct amounts to professional misconduct', these two lies under oath were a criminal concoction calculated to defeat the ends of justice by corruptly prejudicing the Labour Court against me with poisonously inflammatory lying defamation falsely attacking my character and professional integrity.

14. This is precisely the especially wicked crime for which US President Richard Nixon's equally corrupt Special Counsel Charles Colson was disbarred and jailed; see annexed reports marked 'B'.

15. One of my reasons for not pursuing my application for leave to subpoena the respondent after reading this chilling, depraved perjury was my apprehension that it would be too dangerous to bring him to court, because he was evidently capable of saying absolutely anything, no matter how perversely false, confident that the trial judge – until quite recently the respondent's judicial colleague and superior as head of the Labour Court – would take him at his word without question as a senior judge.

16. As to the respondent's specific charge quoted above, I sharply perceived that in a contest in court between the respondent and me as to who was telling the truth and who was telling lies about this, no judge would disbelieve this detailed charge levelled by the just-appointed head of the biggest division of

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the High Court in the country, conveyed by his attorney on oath, against a bare denial proffered by a mere advocate.

17. Indeed, as paragraph 59.2 of the affidavit very correctly calculated with low criminal cunning: 'there is a well-founded presumption in law in favour of the Respondent' and that as 'a senior Judge of the High Court in South Africa ... enjoined by the Constitution of this country ... to uphold it in all his dealings and in his actions towards others', the respondent 'will always act as Judges do' – and not tell criminal lies, animated by fear and loathing as I was closing in (see below), to falsely discredit as an unprofessional lunatic an advocate threatening to call him to account in a law court like any other public servant summoned to the witness stand, to be sworn in and examined on oath under penalty of perjury before a judge experienced and skilled in telling truth from lies, about the illegal things he'd said and done.

18. Briefly stated here, the shocking background to the respondent's false charge against me on oath will make sense of his otherwise inexplicable impeachable misconduct.

19. I'll show that the respondent's false charge is consistent with his past modus operandi in attempting to discredit me with false personal and professional misconduct accusations to distract from the gravity of my complaints about the corruption and lawlessness at LASA that I'd run into – pertinently brought to his attention again and again in finely detailed petitions, but to which he'd turned a blind eye.

20. In November 2009, I was interviewed by a duly constituted selection panel of LASA's most senior lawyers in KwaZulu-Natal for its top legal professional position in the province, its Senior Litigator post at Pietermaritzburg, for which I'd applied and been shortlisted. (There's a twin post at Durban.)

again from 19 March 2012 to 16 June 2014 as a Civil Professional Assistant. Both these appointments were at Empangeni Local Office of Legal Aid SA. Mr. Ngcamu was thereafter appointed as a Labour Court Practitioner in Durban Local Office of Legal Aid SA from 17 June 2014 to 31 July 2017. In all these recruitment processes I had no role to play and the relevant officials of Legal Aid SA executed these appointments. As indicated in paragraph 8.1 above, the Senior Litigator recruitment process began long before Mr. Ngcamu joined Legal Aid SA and in particular, the process of recruitment was stalled before he joined the organisation. Whilst Mr. Ngcamu was apparently interviewed during the first round of interviews, it should be mentioned that I did not form part of such a panel. Furthermore, Mr. Ngcamu was not even recommended for the second round of Senior Litigator interviews during the Provincial selection process.

10. I deny that I conducted myself for "*subornation of perjury to defeat an application under section 25 of the Supreme Court Act for leave to subpoena me, so as to avoid being cross examined at the trial of Brink's labour action against Legal Aid SA (D529/11) on my gross misconduct, including crimes in false reporting and lying on multiple scores to the Justice Portfolio Committee*". Firstly, as mentioned in paragraph 8.7 above, Brink withdrew the subpoena against me and exonerated me and the CEO from any wrongdoing. Secondly, the report to the Justice Portfolio Committee confirmed that the reason for not proceeding with the second round of interviews was budget related which I still maintain.

11. I deny that I "*falsely reported and lied to the Minister of Justice and Constitutional Development (as he was then described) to pervert his enquiry into the CEO's repeated illegal and unconstitutional refusal to comply with PAIA, and thereby cover this up, with the object of covering up my own gross misconduct exposed by the illegally refused records*". The report to the Minister also explains the reasons why the second round of interviews was not proceeded with which related to budgetary constraints. In addition, I submit that there is nothing illegal and unconstitutional in all the refusals to records in accordance with PAIA. According to information at my disposal, all the records requested by Brink and as far as legally permissible in terms of the Act, were duly provided to him. To the extent that Legal Aid SA has refused to provide some records, I'm advised that such refusals are subject to determination by the Courts in various applications brought by Brink.

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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Case No: D529/11

In the matter between

ANTHONY ROBIN BRINK Applicant

and

DUNSTAN MLAMBO JP Respondent

In re the referral under the above case number in the matter between

ANTHONY ROBIN BRINK Applicant

and

LEGAL AID SOUTH AFRICA Respondent

NOTICE OF APPLICATION

TAKE NOTICE that the applicant intends applying to this court on a date and at a time fixed by the registrar for an order in the following terms:

1. The applicant is granted leave to subpoena the respondent to testify at the trial of his claim in this court under case number D529/11;

2. The respondent is ordered to pay the costs of this application, only if it is opposed.

TAKE NOTICE FURTHER that the annexed affidavit of the applicant Anthony Robin Brink will be used in support of the application.

TAKE NOTICE FURTHER that if the respondent intends opposing this application he is required to notify his intention to oppose within five days of receipt hereof, and to file his answering affidavit, if any, within fifteen days thereafter.

If no such notice of intention to oppose be given, the registrar is requested to set the matter down for hearing as an unopposed application.

Signed at Pietermaritzburg, this 31st day of October 2012

ANTHONY ROBIN BRINK

Adv Anthony Brink,
Applicant
25 Baker Road
Prestbury
Pietermaritzburg 3201
Telefax: 086 672 0776
Telephone: 033 344 2420
Cellphone: 083 779 4174

To:
The Registrar of the Labour Court of South Africa (Durban)
1st Floor, Liberty House
269 Anton Lembede Street
Durban

And to:
The Honourable Dunstan Mlambo,
Judge President of the Labour Court of South Africa
Labour Court, Johannesburg,
6th and 7th Floors, Arbour Square Building
c/o Juta & Melle Streets
Braamfontein
Johannesburg
Gauteng

Personal telefax: 086 602 0124

And to:
Legal Aid South Africa
(Ref: Mr Thembile Mtati)
c/o Durban Justice Centre
Suite 401
4th Floor, Salisbury House
330 Anton Lembede Street
Durban
(Ref: Mr Thulani Sithole)

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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Case No: D529/11

In the matter between

ANTHONY ROBIN BRINK — Applicant

and

DUNSTAN MLAMBO JP — Respondent

In re the referral under the above case number in the matter between

ANTHONY ROBIN BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

APPLICANT'S FOUNDING AFFIDAVIT

I, Anthony Robin Brink, solemnly affirm:

1. I am an adult male, 53, an advocate of the High Court of South Africa, residing at 25 Baker Road, Prestbury, Pietermaritzburg, KwaZulu-Natal, and I am the applicant.

2. The respondent is Dunstan Mlambo, Judge President of this court, whose chambers are at the Labour Court, Johannesburg, 6th and 7th Floors Arbour Square Building, corner of Juta and Melle Streets, Braamfontein, Johannesburg, Gauteng.

3. At all material times, the respondent has been chairperson of Legal Aid South Africa ('LASA'), a statutory body established by the Legal Aid Act 22 of 1969, and it's in this capacity that he's cited in this application. For brevity, and to avoid confusion with the principle respondent in the case sometimes mentioned herein as 'the Respondent', I'll

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refer to the respondent by his surname. LASA's Board of Directors will be referred to as 'the Board'. To keep this interlocutory application light, I haven't annexed pleadings and affidavits to which I refer, which are in the court file, nor documents I refer to that are in the indexed trial document bundle or its addendum also at court (I've been updating LASA with new paginated pages bundles with refreshed indices) many of which documents are in Mlambo's possession – my three petitions to him and the Board; his correspondence to me; and his 'Confidential ... Report ... Re: Adv Anthony Brink' to Parliament.

4. For the reasons set out below, I require Mlambo's viva voce evidence and his production of documents in his possession or under his control at the trial of my claim against LASA pending in this court under case number D529/11.

5. My claim is for a declaratory order that in violation of my fundamental rights LASA unfairly discriminated against me on political or racial grounds in aborting my recruitment off the record to a top-rank professional post for which I was duly selected and recommended by a professional selection panel in November 2009; an order instating me to the position; damages; and other relief.

6. Mlambo's evidence on oath at the trial of my claim, assayed against the documentary record in the case, including his communications with me, with the Minister of Justice and Constitutional Development, and with the chairperson of the Parliamentary Portfolio Committee on Justice and Constitutional Development will be relevant to determining the extent of his complicity, collusion, or connivance in the violation of my fundamental rights to equality and to information guaranteed by sections 9 and 32 of the Constitution by certain of LASA's national management executives, and in the escalating cover-up that followed – culminating in Mlambo's successful perversion of a Ministerial enquiry into these issues by way of a 'Confidential ... Report ... Re: Advocate Anthony Brink', replete with outright lies, distortion and deceptively false implications, and his equally successful perversion of a separate enquiry into the same issues by the chairperson of the Portfolio Committee by dint of an 'updated' version of this 'Report' some months later. This will be treated below.

7. Mlambo's evidence will also be relevant to determining the extent to which he's been responsible for the unlawful corruption of LASA's recruitment processes – processes

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ordinarily governed and precisely regulated by the Board's Policies and Procedures on Recruitment, Induction, Probation and Relocation and by its Approval Framework. That as a non-executive director of LASA, Mlambo has unlawfully comported himself as a management executive and has interfered and intruded himself in recruitment processes and recruitment decisions concerning the appointment of Senior Litigators is already a matter of record, as I'll show.

8. In due compliance with the requirements of section 25 of the Supreme Court Act 59 of 1959, I've requested Mlambo's leave as Judge President to subpoena him as a judge of this court, but he hasn't responded. Copies of my request mailed to him in February 2012 and proof of post are annexed marked 'A' and 'B'. (In the interests of concision I've omitted from these papers the 'Statement of Facts Beyond Issue' that I enclosed with my letter to Mlambo. Annexure 'C' mentioned below sums them up.)

9. I've brought this application several months later for two principal reasons. First, as this court will readily apprehend I've been loathe to sue Mlambo as one of our country's most senior judges, and the president of the very court in which I'm constrained to seek justice in my case. And second, I've been hoping the case might settle having regard not only to the documented facts glaringly inconsistent with and destructive of the budgetary cover-story advanced to me for not finalizing my appointment in late 2009 (and I've just recently chanced to discover that two years later in November 2011 the Board was told a completely different story, mentioned below), but in view also of the fact that the defence of my claim to my appointment and other relief has not been authorised by the CEO as required by section 10.2.3 (b) of the Board's Approval Framework for claims of the instant scale (between R500 000 and R5 million), and, it seems certain, it has never been reported to the Board for its approval, as the same section requires.

10. That is, the unauthorized, unapproved defence of my claim is being unlawfully conducted under the counter and off the books. (I've brought an application to strike it out accordingly; it's still to be set down by the registrar. I've also reported the matter to the Public Service Commission.)

11. This affidavit is divided into two sections. The first sketches the background facts of the matter giving rise to my claim and to this application – all facts beyond issue, having

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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Case No: D529/11

In the matter between

ANTHONY ROBIN BRINK — Applicant

and

DUNSTAN MLAMBO JP — Respondent

In re the referral under the above case number in the matter between

ANTHONY ROBIN BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

APPLICANT'S SERVICE AFFIDAVIT

I, Anthony Robin Brink, solemnly affirm:

1. I am the applicant.
2. As contemplated by rule 4 (1) (a) (iv), I effected service of the application papers on the respondent by telefax.
3. This affidavit provides the particulars required by rule 4 (2) (b) to prove service in this manner.
4. On Tuesday morning, 31 October 2012, I telephoned the respondent's secretary Ms Dumi Motswasele for his personal telefax number, and after enquiring about it she furnished it to me: 086 602 0124.

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5. In the early afternoon of the same day I telefaxed the notice of motion and the founding affidavit with its annexures to the respondent's telefax number given me, in two batches of 18 and 17 pages each.

6. I annex the two successful telefax transmission reports recording that the whole of the transmission was completed in two parts, marked 'A' and 'B'.

Dated at Pietermaritzburg, this 2nd day of November 2012.

ANTHONY ROBIN BRINK

Signed before me at Pietermaritzburg on this 2nd day of November 2012 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he solemnly affirms its contents to be true to the best of his knowledge and belief.

7137329-2
Princess Cst
COMMISSIONER OF OATHS

Name: Ntsikelelo Princess

Address: 106 Zwartkop Rd

Capacity: Constable

SAPS
2012 -11- 02
PIETERMARITZBURG
KWAZULU-NATAL

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HP LaserJet *M1522nf MFP*

Fax Confirmation Report

HP LASERJET FAX

31-Oct-2012 14:09

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2044	31/10/2012	13:53:21	Send	0866020124	15:45	18	OK

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Case No: D529/11

In the matter between

ANTHONY ROBIN BRINK — Applicant

and

DUNSTAN MLAMBO JP — Respondent

In re the referral under the above case number in the matter between

ANTHONY ROBIN BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

NOTICE OF APPLICATION

TAKE NOTICE that the applicant intends applying to this court on a date and at a time fixed by the registrar for an order in the following terms:

1. The applicant is granted leave to subpoena the respondent to testify at the trial of his claim in this court under case number D529/11;
2. The respondent is ordered to pay the costs of this application, only if it is opposed

TAKE NOTICE FURTHER that the annexed affidavit of the applicant Anthony Robin Brink will be used in support of the application

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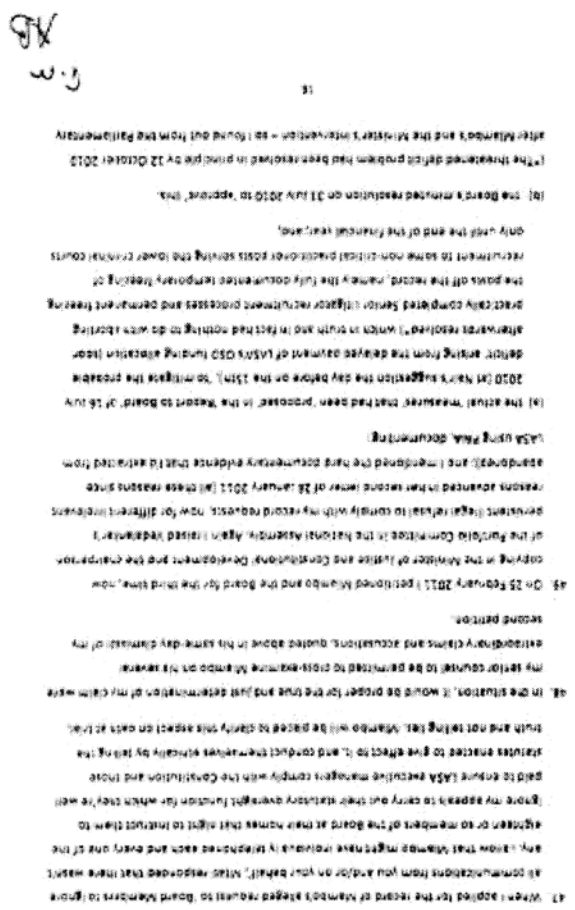
HP LaserJet *M1522nf MFP*

Fax Confirmation Report

HP LASERJET FAX

31-Oct-2012 14:27

Job	Date	Time	Type	Identification	Duration	Pages	Result
2045	31/10/2012	14:10:09	Send	0866020124	16:52	17	OK



2378

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between:

ANTHONY ROBIN BRINK APPLICANT

And

DUNSTAN MLAMBO JP RESPONDENT

In re the referral under the above case number in the matter between

ANTHONY ROBIN BRINK APPLICANT

And

LEGAL AID SOUTH AFRICA RESPONDENT

NOTICE OF OPPOSITION

TO : THE REGISTRAR
LABOUR COURT DURBAN

AND TO : ADV. ANTHONY BRINK
APPLICANT
25 BAKER ROAD
PRESTBURY
PIETERMARITZBURG
3201
TELEFAX : 086 672 0776
TELEPHONE: 033 344 2420
CELLPHONE: 083 779 4174

AND TO : THE HONOURABLE DUNSTAN MLAMBO
JUDGE PRESIDENT OF THE LABOUR COURT OF SOUTH AFRICA
LABOUR COURT, JOHANNESBURG
6TH AND 7TH FLOORS, ARBOUR SQUARE BUILDING
C/O JUTA & MELLE STREETS
BRAAMFONTEIN
JOHANNESBURG
GAUTENG
PERSONAL TELEFAX : 086 602 0124

SIRS

KINDLY TAKE NOTICE that it is the Respondent's intention to oppose the Applicant's application.

KINDLY TAKE NOTICE FURTHER that the Respondent appoints the address of his attorneys mentioned below for the services of all documents and processes in these proceedings.

DATED at DURBAN this 27 day of NOVEMBER 2012

RESPONDENT'S ATTORNEY

LEGAL AID SOUTH AFRICA
REF: MR. THEMBILE MTATI
C/O DURBAN JUSTICE CENTRE
4TH FLOOR, SUITE 401
SALISBURY HOUSE
330 SMITH STREET
DURBAN
P O BOX 4397 DURBAN 4000
DOCEX 214 DURBAN
TELEPHONE : 3043290 – 3040100
TELEFAX : 3043564 – 3040471
REF: T SITHOLE

APPENDIX

I assume that Zondi JA (and any other JCC member(s) dealing with my gross misconduct complaints) has read my letters to Mogoeng CJ, Zondo DCJ, and JCC secretary Chiloane written in the period November 2019 to February 2021, protesting the JCC's failure to prosecute the complaints and the JSC's failure to comply with my PAIA requests. If not, these important letters are accessible at illegal-aid.co.za/JSC.

In sum, after I wrote to Mogoeng CJ in November 2019, complaining *inter alia* about the JCC's inaction and shocking decision, alleged to me on the telephone by former secretary Bios, that my complaints against the respondent were to be dealt with merely under 17 of the Judicial Service Commission Act governing the disposal of serious but not impeachable misconduct complaints, secretary Chiloane responded in February 2020 with an urgent request for copies of my complaints, the judges' responses and my comments on them, and assured me that they were being attended to at last.

Having heard nothing more from the JCC in the next six months, I wrote to Chiloane in August 2020, but got no reply. Three months after that, I wrote to Zondo DCJ in November. I had trouble getting my letter delivered by the Post Office's courier service, so I wrote to him again in January 2021 enclosing copies of my earlier correspondence. The following month in February, I wrote to Mogoeng CJ again, to report my meeting with former President Jacob Zuma at his request for a briefing on my complaints against the respondent and on the JCC's failure to prosecute them, which he'd learned about.

However, the date on which the respondent and his former secretary made their affidavits addressed in my second response, namely 4 November 2020 – some weeks before my first letter to Zondo DCJ at the end of that month – tells me that contrary to my wrong impression that my complaints weren't being prosecuted (my impression arising from the JCC's failure to keep me informed, and its failure until 17 February 2020 even to acknowledge my further

correspondence), the JCC was indeed onto the case, and had required the respondent to more directly answer my First Complaint against him.

Upon my return home after meeting former President Zuma on 22 February 2021, I found the said affidavits emailed to me by Chiloane. Three days later on the 25th, after completing my letter to Mogoeng CJ to report the meeting – a priority – I opened the attachments and read the affidavits and Chiloane's covering letter, and realised that the JCC was actually onto my complaints against the respondent.

The resolution of my complaints against the respondent and against Waglay JP, has become pressingly urgent for me for several reasons. The respondent and Patrick Hundermark, Chief Legal Executive of Legal Aid SA ('LASA'), have practically destroyed my legal career, put me out of work, and wiped me out financially. Detailed in the 'Retaliation' section of my letter to the Chief Justice in November 2019, they got me dismissed as an acting magistrate in late 2016 and blacklisted from any further acting or permanent appointments, despite the need, I'm told, for my services up here in Zululand.

Moreover, the respondent and Hundermark are trying to get me struck off the roll of advocates for impeaching the respondent's integrity in my labour and subsequent PAIA litigation (as indeed I do in my several gross misconduct complaints against him to the JCC). LASA (actually Hundermark on the respondent's behalf) is currently pressing the Legal Practice Council ('LPC') to decide their complaint against me (signed by then Legal Executive Thembile Mtati), originally made to the Society of Advocates of KwaZulu-Natal ('the Society') in November 2015. After several zig-zagging resolutions (obtained by me via PAIA), the Society ultimately decided in 2018 to await the JCC's decision of my complaints against the respondent before deciding whether or not to apply for my strike-off as sought by the respondent and Hundermark. In November 2018 the LPC took over the Society's disciplinary jurisdiction, and in February 2020 resolved to investigate the complaint against me *de novo*. The LPC's ultimate decision is likely to follow the JCC's, so it's critical that my complaints before it be prosecuted without further undue delay.

Meanwhile I'm unable to rejoin the Society and resume legal practice from my professional base in Pietermaritzburg. With my professional reputation shattered by the pending complaint and under such an ignominious cloud, it's not feasible to practise independently either. So taking the respondent on has put me in professional and financial limbo, and I'm obviously highly motivated and impatient to end this mess as quickly as I possibly can.

Furthermore, I urgently need to vindicate my professional reputation among the newer judges on the KwaZulu-Natal bench, appointed from outside the ranks of my legal colleagues at the Pietermaritzburg Bar who know me and what sort of guy I am. The reason is that I have four PAIA cases pending in that court, and in my appearances there in recent years I've experienced the sort of chilly reception and palpable prejudice that I've never encountered before. And if my PAIA cases are to be tried properly, I need to wash off the muck that the respondent and Hundermark have dumped on me, and in a hurry.

It's really very disgraceful of the JSC to fail to respond to my PAIA requests in the manner of a corrupt public entity with something to hide or someone to protect, so I'd be obliged if Zondi JA (and/or any other member of the JCC handling my complaints against the respondent) instructs that they be responded to at last. As I've repeatedly said in my correspondence, I've another particularly appalling gross misconduct complaint to make against the respondent, brightly illuminating his personal moral and professional ethical character, and to support it I need certain records in the JSC's possession that I've duly requested. I'd like this addressed immediately please.

A comprehensive complaint regarding the respondent's wholesale procedural and ethical corruption of recruitment operations at LASA while he was *non-executive* Board chairman is substantially complete and will be submitted in a month or two; it remains only to assemble the bundle of supporting records, which, being stored in multiple computer folders and boxes of printed papers accumulated over a decade, is a considerable task.

I might mention that I've twelve documented criminal charges pending against former LASA CEO Vedalankar, concerning her role in covering up, including before Parliament, the recruitment corruption with which my complaints against the respondent are largely concerned. These charges are accessible in PDF at illegal-aid.co.za/AG. Criminal complaints inter alia against Hundermark and LASA National Operations Executive Brian Nair and Human Resources Executive Amanda Clark will follow. As said in my comments on the respondent's second response to my First Complaint, the Auditor-General's Investigation division is onto the multiple contraventions of the Public Finance Management Act committed in the recruitment corruption described in my complaints to the JCC, which I reported to the Auditor-General last year.

In his first response to my eight complaints against him, the respondent didn't pick up, even less correct, my mistake about this, but I've repeatedly claimed he was head of the Labour Court in the six-and-a-half year period that my rival applicant for the Pietermaritzburg Senior Litigator post was repeatedly appointed as an acting labour judge, before the interviews for the said post were held in November 2009; in other words, that the respondent got him appointed. In fact they were just judicial colleagues in the Labour Court, and the respondent was only appointed head of it in early 2010. My mistake is partly the JSC's fault: under PAIA I duly requested the record of the respondent's appointment to establish its exact date, not being able to find it anywhere on the internet at the time, and the JSC failed to respond. I knew the respondent was head of those courts, but my assumption about for how long was wrong, and I only discovered this quite recently.

Finally, although it may well be too late for this, I reiterate my own preference for a global settlement and resolution of all claims and complaints; but for as long as I'm kept out in the cold, all my time and energy will naturally continue to be applied to ensuring that the corruption I've encountered at LASA is brought to book and that the corrupt public officers responsible for it are nailed.

My second letter to Zondo DCJ in January 2021 extended my deadline, set in my preceding letter, for going international with my complaints, to the end of March. Since this is in a week's time, I extend it again to the end of April.

So unless a global settlement is reached, if by the end of April I have no written information that the JCC will be putting the respondent and Waglay JP on trial before tribunals, like Hlophe JP was, I'll be calling international diplomatic attention to the high-level corruption of the South African judiciary in the manner described in my letters to Zondo DCJ.

Should the JCC need more time, I'm amenable if asked.

AB

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Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

Dropbox link to Brink's comments on Mlambo JP's second response to his First Complaint

1 message

Anthony Brink <anthonybrink.sa@gmail.com> 24 March 2021 at 16:18
To: Sello Chiloane <Chiloane@concourt.org.za>

Dear Mr Chiloane
I've placed my affirmed comments with supporting records in a Dropbox folder for you to download here:
https://bit.ly/3lTlo9J
The long link is below.
I emailed my comments as an attachment at 3.30 pm, but got an automatic 'Message too large' email bounce notice.
Please ensure that Zondi JA (and any other judge handling my complaints) gets the document pronto.
Particularly in light of my closing paragraphs in the Appendix, annexure 'J'.
The hard-copy original will follow by courier.
Please acknowledge receipt.
Yours sincerely
Anthony Brink

https://www.dropbox.com/s/hokp1byxp9mxx5q/Brink%27s_comments_on_Mlambo_JP%27s_second_response_to_his_First_Complaint.pdf?dl=0

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Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

Herewith, Brink's comments on Mlambo JP's second response to his First Complaint

2 messages

Anthony Brink <anthonybrink.sa@gmail.com> 24 March 2021 at 15:30
To: Sello Chiloane <Chiloane@concourt.org.za>

Dear Mr Chiloane
My affirmed comments with supporting records are attached.
Please ensure that Zondi JA (and any other judge handling my complaints) gets the document pronto.
Particularly in light of my closing paragraphs in the Appendix, annexure 'J'.
The hard-copy original will follow by courier.
Yours sincerely
Anthony Brink

Brink's_comments_on_Mlambo_JP's_second_response_to_his_First_Complaint.pdf
22573K

Mail Delivery Subsystem <mailer-daemon@googlemail.com> 24 March 2021 at 15:31
To: anthonybrink.sa@gmail.com

Message too large

Your message couldn't be delivered to **Chiloane@concourt.org.za** because it exceeds the size limit. Try reducing the message size and then resending it.

The response from the remote server was:

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552 5.3.4 Message size exceeds fixed maximum message size
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Final-Recipient: rfc822; Chiloane@concourt.org.za
Action: failed
Status: 5.3.4
Remote-MTA: dns; mail.concourt.org.za. (197.245.194.178, the server for the domain concourt.org.za.)
Diagnostic-Code: smtp; 552 5.3.4 Message size exceeds fixed maximum message size
Last-Attempt-Date: Wed, 24 Mar 2021 06:31:24 -0700 (PDT)

---------- Forwarded message ----------
From: Anthony Brink <anthonybrink.sa@gmail.com>
To: Sello Chiloane <Chiloane@concourt.org.za>
Cc:
Bcc:
Date: Wed, 24 Mar 2021 15:30:33 +0200

Subject: Herewith, Brink's comments on Mlambo JP's second response to his First Complaint
----- Message truncated -----

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GEREGISTREERDE BRIEF

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Full tracking and tracing/Volledige volg en spoor

Addressed to/Geadresseer aan

Sello Chiloane
Secretary: Judicial Conduct Committee
188 14th Road Noordwyk
Midrand 1685 Postcode Postkode

The value of the contents of this letter is as indicated and compensation is not payable for a letter received unconditionally. Compensation is limited to R100.00. No compensation is payable without documentary proof. Optional insurance up to R2 000.00 is available and applies to domestic registered letters only.-

Die waarde van die inhoud van hierdie brief is soos aangedui en vergoeding sal nie betaal word vir 'n brief wat sonder voorbehoud ontvang word nie. Vergoeding is beperk tot R100.00. Geen vergoeding is sonder dokumentêre bewys betaalbaar nie. Opsionele versekering tot R2 000.00 is beskikbaar en is slegs op binnelandse geregistreerde briewe van toepassing.

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Datumstempel

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Criminal complaint no. 1: Vedalankar

In two volumes:

Vol. 1: Affirmed criminal complaint

Vol. 2: Supporting documents

TWELVE CRIMINAL CHARGES AGAINST VIDHU VEDALANKAR, FORMER CEO OF LEGAL AID SA

VOLUME 1

Criminal complaint no. 1: Vedalankar

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Vol. 1: Affirmed criminal complaint

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TWELVE CRIMINAL CHARGES AGAINST VIDHU VEDALANKAR, FORMER CEO OF LEGAL AID SA

VOLUME 1

CRIMINAL COMPLAINT

AGAINST

VIDHU VEDALANKAR, FORMER CEO OF LEGAL AID SOUTH AFRICA

I, Anthony Brink, affirm:

1. I am an adult male, 61, an advocate of the High Court of South Africa admitted to practice on 12 April 1983, and a former prosecutor and magistrate of the District and Regional Courts. My professional background includes several years as a full-time civil trial magistrate and civil litigation as an advocate in the Supreme Court of Appeal and Constitutional Court. I reside at 36 Pearson Street, Eshowe 3815, KwaZulu-Natal. My cellphone number is 083 779 4174 and my email address is anthonybrink.sa@gmail.com.

2. The accused is Vidhu Vedalankar, formerly Chief Executive Officer ('CEO') of Legal Aid South Africa ('LASA'). Her contact particulars are unknown to me now that she's retired, but they can likely be obtained from LASA's national office at 29 De Beer Street, Braamfontein, Johannesburg. The office telephone number of her successor, CEO Mantiti Kola, is 011 877 2000.

3. The facts set out herein will show that on the various occasions mentioned, Vedalankar contravened the following statutory provisions, thereby committing the several serious statutory crimes they proscribe, on each count of which she's liable to be jailed:

- section 9 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963, in lying in an affidavit sworn to be true before a commissioner of oaths;

- section 17(2)(d) and (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, in repeatedly lying, deceptively withholding critically relevant information, and falsely reporting on multiple occasions to the National Assembly's Portfolio Committee on Justice and Correctional Services (as it's now called; hereafter 'the Portfolio Committee');

- section 55(1) read with section 86(2) of the Public Finance Management Act 1 of 1999 ('PFMA'), in failing as delegated accounting officer to 'keep full and

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proper records of the financial affairs of the public entity', per the language of section 55(1) of that Act; and,

- section 55(2) read with section 86(2) of the PFMA, in wilfully misrepresenting LASA's 'state of affairs' in its 'annual report' for 2011/12 and 'its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned', per the language of section 55(2) of that Act.

4. The facts giving rise to these criminal charges against Vedalankar, referenced to supporting documents annexed hereto, are set out, in logical rather than strict chronological order, in the following paragraphs:

COUNT		PAGES	PARA'S
	Background	5–10	5–20
1	Lying in an affidavit on 5 April 2011, in criminal contravention of section 9 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963.	10–30	21–106
2	Failing as delegated accounting officer to 'keep full and proper records of the financial affairs of the public entity' on or about 31 July 2010, in criminal contravention of section 55(1) read with section 86(2) of the Public Finance Management Act 1 of 1999.	30–39	107–45
3	Producing a false document to the Portfolio Committee with intent to deceive it on 17 August 2010, in criminal contravention of section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.	39–42	146–55

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4	Wilfully furnishing the Portfolio Committee with information, or making a statement before it, which is false or misleading on 12 October 2010, in criminal contravention of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.	42–8	156–79
5	Wilfully furnishing the Portfolio Committee with information, or making a statement before it, which is false or misleading on 31 March 2011, in criminal contravention of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.	48–53	180–99
6	Producing a false document to the Portfolio Committee with intent to deceive it on 31 March 2011, in criminal contravention of section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.	53–5	200–9
7	Producing a false document to the Portfolio Committee with intent to deceive it on 31 March 2011, in criminal contravention of section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.	55–7	210–15
8	Wilfully furnishing the Portfolio Committee with information, or making a statement before it, which is false or misleading on 11 October 2011, in criminal contravention of	57–60	216–27

AB S.P.Z

	section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.		
9	Wilfully misrepresenting LASA's 'state of affairs ... its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned' in her CEO report included in LASA's annual report for 2011/12, in criminal contravention of section 55(2) read with section 86(2) of the Public Finance Management Act 1 of 1999.	60–4	228–42
10	Producing a false document to the Portfolio Committee with intent to deceive it on 9 October 2012, in criminal contravention of section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.	*ditto*	*ditto*
11	Wilfully furnishing the Portfolio Committee with information, or making a statement before it, which is false or misleading on 9 October 2012, in criminal contravention of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.	64–74	243–82
12	Wilfully furnishing the Portfolio Committee with information, or making a statement before it, which is false or misleading on 9 October 2012, in criminal contravention of section 17(2)(e) of the Powers, Privileges and	75–82	283–312

AB SP 3

	Immunities of Parliament and Provincial Legislatures Act 4 of 2004.		

BACKGROUND

5. On 12 November 2009, a duly constituted selection panel of LASA's top lawyers in KwaZulu-Natal interviewed four shortlisted candidates for its two most senior legal professional posts in the province, its long vacant Senior Litigator posts at Pietermaritzburg and Durban. The recruitment processes for the simultaneously advertised posts were conducted in parallel.

6. The posts had been created by resolution of LASA's Board in November 2006 for the delivery of constitutional and other complex specialist litigation services to the indigent in the High Court, Supreme Court of Appeal, and Constitutional Court.

7. One of the interviewed applicants was a former long-time judicial colleague of LASA's Board chairperson at the time, Dunstan Mlambo JP (appointed head of the Labour and Labour Appeal Courts in 2010, and thereafter head of the North and South Gauteng Division of the High Court in 2013). Over a period of about six years prior to the interviews, the two had served together on the Labour Court bench – the said interviewed candidate repeatedly appointed as an acting judge of that court, as well as of the KwaZulu-Natal Division of the High Court. In April 2007, however, the Judicial Service Commission ('JSC') had rejected his application for a permanent appointment on account of his failure to have disclosed to the then Judge President of the said Division his two convictions by the Law Society regarding the irregular conduct of his practice as an attorney, and the fact that it had instituted legal proceedings against him (*per* News24 report, 'Past misconduct haunts judge', 14 April 2007).

8. Notwithstanding his many years of legal professional experience, even as an acting judge of the Labour- and High Courts, the selection panel duly disqualified and rejected his application for appointment as a Senior Litigator for the reason that he lacked right of appearance in the High Court as an attorney

and accordingly had no litigation experience on his feet there, and for this reason didn't meet the basic qualifying criteria for the post.

9. The selection panel duly recommended me for the Pietermaritzburg post for which I'd applied; and duly recommended the High Court Unit Manager at LASA's Durban Justice Centre for promotion to the Durban one.

10. After my successful interview in November 2009, the recruitment process went strangely silently dead; my enquiries of Human Resources Executive Amanda Clark five months later in April 2010 were repulsed with shockingly hostile, transparently dishonest stonewalling; and my repeated requests for access to LASA's public records under section 18 of the Promotion of Access to Information Act 2 of 2000 ('PAIA'), duly made in my investigation of the obvious irregularity in the peculiar halting of the recruitment process, were persistently furtively refused on obviously spurious, shifting, even fraudulent grounds, all ultimately abandoned under South African Human Rights Commission ('SAHRC') pressure and later at the point of multiple legal processes brought to disgorge the persistently withheld records that I'd duly requested. (LASA's repeatedly illegal and unconstitutional suppression of requested records is closely detailed in a Special Report to the PAIA Unit of the SAHRC that I filed in late 2016, accessible online at illegal-aid.co.za/PAIA.

11. Multiple dishonestly false, radically divergent, contradictory, and mutually exclusive and destructive justifications were eventually advanced by LASA's top officers over time for the abortion of my recruitment, some of which form the subject of this criminal complaint.

12. Repeatedly requested since August 2010, but repeatedly illegally and unconstitutionally refused, I eventually in April 2016 succeeded in clawing out of LASA, by suing for it under section 78 of PAIA, the selection panel's full, unredacted recommendation report delivered to National Operations Executive Brian Nair on 26 November 2009. My claim to this critical document was indefensibly opposed all the way to court, at which point, moments before argument, LASA totally capitulated, abandoned all its defences, and agreed to

surrender it, along with all other requested documents I'd sued for, and to certify under section 23 any specified documents that didn't exist.

13. The selection panel's full recommendation report, which LASA's national executives had been so strangely reluctant to let me see, revealed at last the said rejected candidate's professional connection with Board chairperson Mlambo JP, and finally made sense of: (i) the peculiar, unauthorised, unrecorded back-room gerrymandering of the qualifying criteria for the post by doubling the High Court experience requirement – but only for the readvertised KwaZulu-Natal posts (for the reason mentioned above, Mlambo JP's colleague still didn't meet them); (ii) LASA's oddly irregular failure to inform Mlambo JP's colleague that his application for the post had been unsuccessful, as required by section 1.5.1 of LASA's 'Policies and Procedures on Recruitment, Induction, Probation and Relocation' ('Recruitment code'); (iii) the odd fact that, unlike the three other interviewed candidates, Mlambo JP's colleague wasn't also told by letter in August 2010 that the KwaZulu-Natal Senior Litigator recruitment process had been cancelled; and (iv) the fact that he was soon afterwards appointed other posts in LASA, the last of which was at the Durban Justice Centre, likely in anticipation of being slipped into the Senior Litigator post after he'd obtained right of appearance and litigated a case or two in the High Court to get the necessary experience for the post.

14. LASA's national office was clumsily candid about its expectation that if kept waiting in the dark long enough, I'd lose interest in pursuing my appointment to the post and abandon my application for it. Quoted below, in April 2010 HRE Clark actually proposed I withdraw my candidacy, after backhandedly confirming I'd been selected and recommended; and in mid-2013 at the trial of my miscarried labour claim (explained just below), I was actually asked why I hadn't concluded from the long silence after my interview that I'd been unsuccessful and walked away.

15. Unfortunately for me the long-suppressed, crucially informative record of the selection panel's Senior Litigator candidate recommendations, with its summaries of each applicant's professional experience – including that of my

rival contender for the post – came to light five years too late. Deliberately kept unaware of Mlambo JP's special relationship with his unsuccessful colleague on the shortlist, I wrongly surmised covert unfair discrimination as the reason I wasn't appointed to the post, and sued in the Labour Court for my instatement on that mistaken ground. And in the result my fundamentally misconceived claim was correctly dismissed.

16. It bears mentioning here that besides Vedalankar's lying on oath and her repeated, routine lying and dishonestly false reporting to the Portfolio Committee detailed herein, among other her crimes, the extraordinary criminal depravity in LASA's top ranks extends even to the perversion of judicial proceedings. My complaint pending before the JSC's Judicial Conduct Committee ('JCC') against Labour- and Labour Appeal Courts head Basheer Waglay JP – Mlambo JP's successor, and former long-time deputy – details how he was slipped a poisonously prejudicial 'memorandum' by some obviously well connected, highly motivated top LASA officer to improperly influence his decision of my petition for leave to appeal the dismissal of my labour claim (before I discovered years later that the actual impediment to my appointment was not unfair discrimination but everyday recruitment corruption in the form of cronyism). Supported by a copy of this 'memorandum' inadvertently left in and later found in the court file, my complaint to the JSC's JCC regarding this brazen act of defeating the ends of justice by the obviously well connected top LASA officer, highly motivated to torpedo my appeal behind the scenes, is accessible online at illegal-aid.co.za/JSC.

17. For the purpose of this criminal complaint, though, it's unnecessary to show that top-level recruitment corruption and its cover-up was the true reason why the Senior Litigator recruitments for Pietermaritzburg and Durban, and later Mthatha, were aborted and why the budgeted and funded vacant posts were left unfilled (still are, illegally; see below). In other words, it's nnnecessary for present purposes to show that the reason Vedalankar (i) made no record of the final backroom abortion of the posts and of the decision to keep them unfilled; (ii) lied on affidavit about it; and (iii) repeatedly lied and falsely reported to the

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Portfolio Committee, as charged herein, was to cover recruitment corruption and the repeated illegal and unconstitutional rejections of my PAIA requests made to investigate it – just that she lied (some lies radically contradictory). In a word, *why* the said three Senior Litigator appointments were cancelled – top-level recruitment corruption and its cover-up – is a not a police matter.

18. Not material to this complaint either is Mlambo JP's role in the criminal cover-up – the subject of eight gross misconduct complaints against him currently pending before the JCC, two of which charge such crimes as suborning perjury and falsely reporting to the Portfolio Committee to pervert a parliamentary enquiry. My complaints, his response and my invited comments on it, as well as a record of the Chief Justice's office's urgent, after-hours request in February 2020 for copies, prompted by my letter to him at the end of last year, are all accessible at illegal-aid.co.za/JSC.

19. The illegal, off-the-record abortion of the recruitments, and the illegal deliberate failure since 2006 – for about fourteen years now – to fill LASA's three remaining vacant Senior Litigator posts and to duly apply the budgeted, approved, voted, transferred and received salary funding for them by employing suitable staff to fill them, was and continues year after year to be *ipso facto* illegal under section 53(4) of the PFMA, as the Constitutional Court confirmed in paragraphs 8 and 9 of *Sibongile Zungu v Premier of the Province of KwaZulu-Natal and Others* [2018] ZACC 1 (22 January 2018), quite irrespective of the several completely different, radically contradictory lies told over time about why the substantially complete recruitments were aborted and the budgeted and funded posts frozen. These contraventions of the PFMA and other material irregularities within the contemplation of sections 1 and 5(1A) of the Public Audit Act 25 of 2004 – illegal but not criminal – are currently being investigated by the Auditor-General's Investigation unit, to which it was referred by his corporate counsel after advising that she'd duly 'studied' it to report on it to the Auditor-General. A copy of my complaint about this is accessible online at illegal-aid.co.za/AG.

SP Z 2400

20. For relevance to the charges, all ellipses in statutory provisions quoted herein are mine. My inverted commas signify direct quotation only, not irony, scepticism or derision. Where for concision I've put up material excerpts of supporting documents, I can supply most of the complete documents if required, failing which LASA will have them. For quick and easy reference, I've marked up material passages in the annexed supporting documents. For the same reason, I've continued the serial page-numbering of this affidavit (pages 1–82) on the annexures (pages 83–433), which, due to their multitude (75), I've numbered rather than allocated letters in the usual convention. For easy copying and electronic transmission, a scanned copy of this criminal complaint and its annexures will be made available online at illegal-aid.co.za/NPA.

COUNT 1: LYING IN AN AFFIDAVIT

21. Section 9 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963 provides:

> Any person who, in an affidavit, affirmation or solemn or attested declaration made before a person competent to administer an oath or affirmation to take the declaration in question, has made a false statement knowing it to be false, shall be guilty of an offence and liable upon conviction to the penalties prescribed by law for the offence of perjury.

22. In *R v Samuels* 1930 CPD 67 at 71, the High Court emphasized that 'perjury is a very serious crime'.

23. On 5 April 2011, Vedalankar deposed to an affidavit before a commissioner of oaths in which she confirmed to be true all allegations pertaining to her made by LASA deputy information officer Nair in his affidavit made under section 23 of PAIA, certifying that certain records I'd requested under section 18 of that Act don't exist.

24. Copies of Nair's and Vedalankar's affidavits are annexed, marked '1' and '2' respectively.

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25. Essaying into matters beyond the specific information requirements of section 23 of PAIA, Nair's affidavit included bold allegations under oath that were clearly calculated to finally put me off my investigation of the true reason my recruitment had been cancelled.

26. Nair's and Vedalankar's affidavits were delivered to me together. A further confirmatory affidavit by HRE Clark was delivered at the same time, but I've not put it up because it's immaterial to this complaint and will be the subject of a separate criminal complaint against her.

27. Nair's affidavit is dated 8 April 2011, three days after Vedalankar's, which suggests she confirmed the contents of Nair's draft affidavit before it was signed. There's no question, however, that in making her affidavit Vedalankar meant to confirm under oath the allegations she'd made in her earlier correspondence with me, to which Nair pertinently referred in his affidavit.

28. In his paragraphs 8–12, Nair describes a system he'd devised in terms of which an applicant recommended by a selection panel for a Senior Litigator post would be subject to a second interview by *inter alia* LASA's Board chairperson. Consistent with this double-decker interview system he'd improvised, the selection panel that interviewed me framed its recommendation of me as a 'Recommendation for next round of interviews'. Having regard to LASA's internal regulations precisely governing selection and approval procedure for shortlisted applicants for advertised vacant posts, namely its Recruitment code and its Approval Framework, Nair's second round interview scheme, at odds with both these regulations, was obviously illegal in flouting one of the Constitution's 'Founding Provisions', namely 'the rule of law' stipulated in section 1(c). Although this illegality is irrelevant to this complaint, the *de facto* existence of Nair's unauthorised second interview scheme is relevant to setting the factual backdrop to his centrally material allegations in his paragraph 13, which in her confirmatory affidavit Vedalankar corroborated under penalty of perjury as the perfect truth.

29. In his paragraph 13, Nair alleged:

> The second round of interviews was not proceeded with and as such, no candidate or persons were considered for the second round. The decision that led us not to proceed with the second round was fully explained to Mr. Brink in the letters by the Chief Executive Officer dated 18 October 2010 and 28 January 2011.

30. Now indeed 'The second round of interviews was not proceeded with and as such, no candidate or persons were considered for the second round.' And the reason for this is that my 'recruitment was aborted immediately after the first round of interviews' – so Nair himself confirmed on oath, corroborating this very true statement by then Legal Executive Thembile Mtati. Material excerpts of Mtati's affidavit (see paragraphs 13.4 and 107) and Nair's confirmatory affidavit are annexed marked '3' and '4' respectively.

31. Evidently the wrong name came up as the selected and recommend candidate for the Pietermaritzburg post, i.e. mine, not the Board chairperson's friend's, because on learning this, Nair strangely gave 'instructions ... telephonically' that the CVs of all the interviewed candidates be sent up to him including those of the 'two persons ... eliminated early in the selection process and not recommended for the second round of interviews'.

32. A material excerpt of an affidavit by Mtati mentioning Nair's 'instructions ... done telephonically' to send him all four CVs (see Part 2, document 11, paragraph 27) is annexed marked '5'. Nair's mention of it in his evidence in my labour case is recorded in the transcript (page 349, lines 20–1), a material excerpt of which is annexed marked '6'. LASA's truthful pleading about the selection panel's rejection of the two unsuccessful candidates for the KwaZulu-Natal Senior Litigator posts appears in its answer to my pre-trial conference agenda (see paragraph 34.2), material excerpts of which are annexed marked '7'.

33. Consistent with the peculiar redundancy in Nair's letter (my added italics for emphasis) – 'no candidate *or persons* were considered for the second round' – he later gave the game away in my labour action when testifying that in deciding

AB S.P. Z 2403

who to appoint, LASA wasn't limited to considering the candidate recommended by the selection panel; he and his colleagues (the so-called second round interview panel) were free to consider *any* shortlisted and interviewed applicants for appointment, including a person rejected by the selection panel: 'all four were interviewed ... their CVs were sent to me. Because in deciding who will be in [the] interview for the second round, we look at all four again and not only the person that the first round panellist[s] interviewed or recommended'; the second round panel 'is free to make the decision it wants to make and to interview whoever it wants to interview'; 'we do not only interview the recommended candidates'; 'the panel does not confine itself to only the person that is recommended. The panel, as in the past, [*sic*: has in the past] requested to see other candidates who were interviewed'. (Annexure '6', original pages 349, 350, and 408–10.)

34. As said, immediately after my recommendation, the Pietermaritzburg and Durban Senior Litigator recruitment processes were stopped – but only those; other Senior Litigator recruitments continued.

35. LASA has nine Senior Litigator posts in its staff establishment, based at Pretoria, Port Elizabeth, Cape Town, Johannesburg, Bloemfontein, Mahikeng, Durban, Pietermaritzburg, and Kimberley (transferred to Mthatha, then back; see below). These nine centres are identified in the original advertisement for the posts, annexed marked '8'. Showing the same, LASA's Senior Litigator personnel statistics in March 2012 are annexed marked '9'.

36. The candidates recommended by selection panels for the Senior Litigator posts at Johannesburg, Pretoria, Cape Town and Port Elizabeth were approved on 5 December 2008, and the posts filled. The record of these four candidates' approval is annexed marked '10'.

37. This left five of LASA's nine Senior Litigator posts unfilled: at Bloemfontein, Mahikeng, Kimberley, Durban and Pietermaritzburg.

38. LASA's budget for 2010/11 dated 'February 2010' shows that five Senior Litigator posts were still vacant in that month. A material excerpt of this budget

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is annexed marked '11'. This means that by February 2010, in addition to the Pietermaritzburg and Durban posts, the Bloemfontein, Mahikeng and Kimberley posts still hadn't been filled.

39. Sometime in the period March to June 2010, several months after my recommendation and then the 'immediate' abortion of my recruitment in November 2009 (as Mtati and Nair revealed on oath), appointments were made to the Bloemfontein and Mahikeng Senior Litigator posts. The June 2010 Senior Litigator recruitment statistics show the Mahikeng and Bloemfontein posts had been filled by that month. These statistics are annexed marked '12'.

40. And in March 2010, four oddly silent months after my successful interview, LASA's Legal Services Technical Committee ('LSTC') chaired by Nair resolved to abolish the Kimberley Senior Litigator post and create a new such post at Mthatha, and directed the Regional Operations Executive to 'immediately commence recruitment' for it; and it was immediately advertised in April, and interviewed for in May, following which a suitable candidate for it was selected and recommended.

41. The LSTC's resolution to create the Mthatha post (see section 4.1.7); the advertisement for it; and the selection panel's candidate recommendation for it are annexed marked '13' '14', and '15' respectively.

42. To obstruct my corruption investigation, to maintain the cover-up, and to protect his delinquent colleagues and himself from being taken to law and held to account, LASA Chief Legal Executive Patrick Hundermark is illegally and unconstitutionally blocking my duly made request for access to the records of the Bloemfontein and Mahikeng Senior Litigator appointments, to prevent me ascertaining the exact dates on which these appointments were made in the period March to June 2010 (fundamentally inconsistent with and destructive of the lying cover-story I was told; see below). And also because Hundermark knows, as I do directly from the chairperson of the selection panel that interviewed for the Mahikeng post, that the selection panel's recommended candidate was illegally passed over and a rejected candidate illegally appointed

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instead. The appointee to the Bloemfontein post wasn't the recommended candidate either, because the record (annexure '10') shows that the candidate identified by the selection panel wasn't approved by the so-called second round interview panel. Again, a different person was appointed instead.

43. The filling of the Mahikeng and Bloemfontein posts in the period March to June 2010 and the brisk recruitment for the Mthatha post in the period March to May 2010 show unequivocally that nothing lawful hindered the finalisation of my appointment pursuant to my successful interview in November 2009.

44. In her affidavit, Vedalankar stated:

> ...
>
> 2. The facts which are herein so confirmed are to my knowledge true and correct save where the converse so appears and is so expressly stated.
>
> 3. I have read the affidavit of Mr Brian Nair and agree with and confirm the contents insofar as they apply to me.

45. In sum, Vedalankar confirmed, on pain of being jailed for lying under oath, that, as Nair's affidavit put it, the 'second round was not proceeded with' after my recommendation for the Pietermaritzburg Senior Litigator post for the reason stated in her letters to me 'dated 18 October 2010 and 28 January 2011'.

46. It was in those two letters, Vedalankar swore, that the abortion of my recruitment was 'fully explained' and the reason for the 'decision' could be found.

47. Copies of Vedalankar's October 2010 and January 2011 letters are annexed marked '16 and '17' respectively.

48. Paragraph 6.7 of Vedalankar's October 2010 letter indeed 'fully explained' the abortion of my recruitment (discussed below, it was the first of her different, radically contradictory lying explanations):

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> 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.

49. Nearly all these allegations are demonstrably false. Where one of them had been partly true earlier in the year, albeit irrelevant to the cancellation of my recruitment (unauthorised and unrecorded; see below), it was no longer true when Vedalankar wrote to me, and was in any event no basis for not finalising my appointment as she pretended. Sandwiched between all her other outright lies, Vedalankar's once partly but no longer true allegation – in the context substantially false, and anyway irrelevant – that some 'anticipated funding' (for salary increases, not for salaries for budgeted posts) had not been received (yet), will be dealt with below.

50. Read as a whole, Vedalankar audacious, smooth, mellifluous, and convincing-sounding explanation to me, confirmed under oath in April 2011 as true, was calculated to induce me to understand that LASA couldn't afford to employ me in the post for which I'd been recommended because it hadn't received the salary budget it was expecting for this and therefore didn't have the funds to do so.

51. This financial insufficiency explanation was a blatant lie; and indeed, dealt with below, Vedalankar would later diametrically contradict it by telling the Portfolio Committee totally different, fundamentally inconsistent new lies.

52. In a cogent pointer to the provenance of this false financial insufficiency story, Hundermark persisted with it in affidavits of his own – even after

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Vedalankar and Nair had abandoned it and made up and told new stories (dealt with below).

53. The following facts unequivocally show Vedalankar's initial financial insufficiency explanation for the abortion of my recruitment, which she confirmed on affidavit in April 2011, to have been dishonestly false.

Ad: '*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.*'

54. In truth and in fact, the global 'recession' of 2008 had zero bearing on how much funding the National Assembly allocated LASA and what the Treasury paid it 'for the 2010/11 financial year'. Quite the opposite, LASA's funding *increased* in 2010/11 over the year before, from R848.4 million to R991.9 million, as appears from 'The Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Constitutional Development on the performance of the Department of Justice and Constitutional Development for the 2009/10 financial year, dated 26 October 2010'. I annex the first (identifying) and tenth (relevant) pages of the report, marked '18'. (The said Department, now called the Department of Justice and Correctional Services, will hereafter be referred to as 'the Department', and its responsible minister as 'the Minister'.)

55. Vedalankar's dishonestly irrelevant reference to 'the recession' aptly introduced the rest of her lies, all spun and woven with impressive criminal imagination, ingenuity and intelligence in the characteristically mendacious easy patter of the confident, practised, habitual liar – cunningly working in plenty of false detail to sound convincing, to conceal the truth, and to lend credence to her fake financial explanation given me for why I was not appointed to the top legal professional post for which I'd been duly selected and recommended, instead of my rival applicant for the position, Board chairperson Mlambo JP's long-time judicial colleague.

56. Vedalankar's mention of 'anticipated funding [that] did not materialise' fraudulently implied to me that LASA's budget application for 2010/11, and for

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Senior Litigator salaries in particular (i) drawn by LASA under section 53(1) of the PFMA; (ii) submitted to and approved by the Minister on the advice of the Department's accounting officer under section 53(2); and (iii) voted by the National Assembly, was not fully paid by the Treasury via the Department's Third Party Funds division, and that LASA didn't receive all of it.

57. Contrary to Vedalankar's lie to me about this, LASA received its entire operating budget, including its salary budget for all nine of its Senior Litigator posts, six filled and three vacant. Like all its other recruitment statistics do, those for December 2010, for instance, show all nine posts budgeted for, six of them filled, three of them vacant. These statistics are annexed marked '19'.

58. (They also show that by December, the Mthatha post (the second Senior Litigator post created for the Eastern Cape region) had disappeared from LASA's books and that Kimberley (the second Senior Litigator post for the Western Cape and Northern Cape region) was back on them, and was reported as budgeted and vacant – whereas the June 2010 statistics (annexure '12') shows the new Mthatha post budgeted and vacant, with the Kimberley post gone.)

59. This is why nowhere in any report by LASA to the Portfolio Committee during or for 2010/11; nowhere in any minute of any appearance before, and presentation to, the Portfolio Committee by Vedalankar or other LASA officer in April and October 2010; nowhere in the records of any meetings of LASA's Legal Services Technical Committee and/or Board in 2010 – nowhere in any of these was it ever alleged and recorded that LASA hadn't received all its expected baseline operating budget for 2010/11. Even less was there any complaint, mention or suggestion in any of these records that LASA lacked the funds to fill its remaining three budgeted and funded, long-vacant, critical Senior Litigator posts.

60. It's common cause that these positions at the apex of LASA's legal professional ranks are 'critical', in that LASA has both described and admitted them as such in its legal pleadings. Material excerpts from its original response to my labour claim (see paragraph 48.9) is annexed marked '20'. An excerpt from

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my pre-trial agenda stating facts for admission before trial (see facts 58 and 59) is annexed marked '21', and an excerpt from LASA's answer to it admitting these facts (see paragraph 52.1), is annexed marked '22'.

61. Far from claiming that LASA lacked the budget to fill its remaining one third vacant Senior Litigator posts, Vedalankar twice alleged to the Portfolio Committee in her CEO report for 2011/12 that LASA had employed Senior Litigators as a key achievement in fulfilling and completing its Strategic Plan 2009–12; and in its 'Report on Completion of Strategic Plan 2009–12' presented at the same meeting, LASA alleged this a third time. (This will be dealt with below.) There was nothing said in these reports about LASA not being able to fill one third of its Senior Litigator positions because the budget for their salaries hadn't been provided. And the reason for this is that in truth and in fact it *was* provided, and Vedalankar's claim to me to the contrary, confirmed on oath, was a lie.

62. The only 'anticipated funding that did not materialise' *for a while* in 2010 – but only to the extent that, like the year before, it wasn't received at the same time as LASA's budgeted, approved and allocated baseline funding – was additional funding to pay salary increases for legal professionals under phase 1 of the OSD scheme to financially incentivise the retention of lawyers in the public service. Vedalankar raised this in her letter to the Director-General of the Department on 18 March 2010 and again on 13 April 2010. Her letters are annexures '17-V3' and '17-V4' respectively.

63. Given that LASA had commenced implementing phase 1 of the OSD scheme in expectation of this funding, which it had started receiving the year before, and was accordingly paying increased salaries under the scheme, the non-inclusion of OSD phase 1 funding in LASA's baseline budget indeed threatened to drive LASA into deficit. LASA executive management's Report to Board of July 2010 (annexure '17-V10- Annexure 1') records, however, (in paragraph 1.3) that the Minister assured the Board chairperson that this extra OSD funding would be provided for in the national mid-term budget. And indeed it was; and it was

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transferred to LASA a couple of months later, well before the end of the financial year.

64. Inclusion of this extra OSD provision in the mid-term budget in October 2010 is reflected in then Finance Minister Pravin Gordhan's 'Medium Term Budget Policy Statement 2010' of 27 October 2010, issued by the Treasury. Material excerpts are annexed marked '23'.

65. In its report, 'Adjusted Estimates of National Expenditure 2010', issued in October 2010, the Treasury confirmed: 'An additional R96 million is allocated for phase 2 of the occupation specific dispensation for legally qualified professionals at Legal Aid South Africa.' That is, the Treasury allocated OSD funding for phase 2 of the scheme as well. Material excerpts of this document are annexed marked '24'.

66. On 15 December 2010 LASA received R89 435 000 to cover both its outstanding OSD phase 1 funding as well as funding to implement OSD phase 2. The Department's payment voucher reflecting this is annexed marked '25'.

67. Far from not having received sufficient funding from the Treasury via the Department (i) to employ me in the Pietermaritzburg Senior Litigator post; (ii) to promote LASA's Durban High Court Unit Manager to the Durban post (entailing a slight increase in salary expenditure, from one pay grade to the next); and (iii) to transfer the incumbent Mahikeng Senior Litigator to the Mthatha post for which he'd applied to get closer to his home at Bizana (entailing no increase in salary expenditure), in truth and in fact LASA had all the salary funding it needed.

68. In fact, more than it needed. In 2010/11, the year in which Vedalankar claimed to me (but not to the Portfolio Committee; see below) that LASA couldn't afford to fill its three remaining critical Senior Litigator posts, LASA reported a substantial surplus from operations of R10.8 million, which, added to interest and other income, such as from the sale of assets, gave LASA a total surplus of R31.7 million. The 2010/11 surplus raised LASA's accumulated surplus to R194

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million. A material excerpt of LASA's annual report for 2010/11, giving these figures, is annexed marked '26'.

69. Some of this unspent surplus comprised LASA's salary budget received but unlawfully not spent on filling the three remaining vacant budgeted and funded Senior Litigator posts with the candidates recommended for them, i.e. illegal unauthorised expenditure.

70. Nowhere in its annual report for 2010/11 did LASA claim or suggest that the separate, later payment of OSD phase 1 funding affected LASA's financial ability to employ Senior Litigators for its remaining long vacant posts, or indeed to employ staff in any other posts. In fact, the transient uncertainty over OSD funding for 2010/11 was so considered insignificant that it didn't even merit a passing mention in the annual report. Quite the contrary, as already said, in her CEO report for 2011/12, Vedalankar twice falsely claimed that Senior Litigators had been employed in successful completion of a key component of LASA's Strategic Plan 2009–12, and LASA's Report on Completion of the Strategic Plan repeated this false claim a third time – whereas in truth and in fact, one third of LASA's critical top-level Senior Litigator posts remained vacant. (This is dealt with below.)

71. Contrary to Vedalankar's lie to me about this, LASA's 'baseline funding' wasn't 'cut' by any 'significant amount' or at all; instead it increased, as mentioned above. This is why there was no complaint, no suggestion at all in LASA's said annual report or at LASA's presentation of it that 'anticipated funding ... did not materialise', and that this had 'had the effect of cutting our baseline funding by a significant amount', preventing LASA from filling its three remaining vacant Senior Litigator posts with the suitably qualified and experienced candidates selected and recommended for them.

72. Moreover, by the time Vedalankar wrote to me on 18 October 2010, LASA's OSD phase 1 funding had been securely settled in the national mid-term budget and was on its way – as Vedalankar had just informed the Portfolio Committee

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at her presentation on the 12th a week earlier. 'So we don't have any problem areas that I would like to report on.' (I deal with this below.)

73. To tell me then, as Vedalankar did, that 'anticipated funding ... did not materialise' – deceptively concealing from me that this extra funding (for salary increases, not basic salary budget) had been provided for in the mid-term budget and therefore was about to 'materialise' – was grossly dishonest.

74. Discussed below, Vedalankar compounded this dishonesty in her January 2011 letter, and then falsely confirmed it in her April 2011 affidavit, then changed the story completely before the Portfolio Committee.

Ad: *'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.'*

75. Contrary to Vedalankar's lie to me about this, it was never accepted that LASA's staff establishment needed to be reduced in 2010/11 for lack of budget to fill its vacant posts or for any other reason, and it never was. Quite the opposite, LASA's 'staff establishment' massively *increased* 'in the 2010/11 financial year'. In the 2010/11 first quarter alone, right after Vedalankar's letters to the Director-General enquiring about LASA's OSD funding, the number of budgeted establishment posts increased by a massive 3.3%.

76. 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 at LASA spiked in the first quarter April to June 2010 at 2.3% (1147 to 1173). In the same period, 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 was greater than the increase of 3.1% (2281 to 2352) for the whole of 2009/10.

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77. Drawn from LASA's records, and admitted before the trial of my labour claim, a table of these collected figures is annexed marked '27'.

78. On 14 April 2010, Vedalankar, Nair and Board chairperson Mlambo JP appeared before the Portfolio Committee to present LASA's Budget for 2010/11 and Strategic Plan 2009–12. The minute of the meeting is annexed marked '28'. Although by the date of this meeting Vedalankar had twice written to the Director-General to raise the issue of OSD funding (annexures '17-V3' and '17-V4'), the minute shows that at no point did Vedalankar, Nair or Mlambo JP say or suggest that LASA wouldn't be able to fulfil its Strategic Plan 2009–12 by employing Senior Litigators in its remaining vacant posts, because it hadn't received the funds it had budgeted for this. Five months after the successful Pietermaritzburg and Durban Senior Litigator interviews on 12 November 2009, nowhere did Vedalankar, Nair, or Mlambo JP claim to the Portfolio Committee that LASA couldn't afford to appoint the recommended candidates. Instead, Vedalankar professed to be concerned 'to ensure there was delivery of quality legal services', implying that such 'quality legal services' (especially Constitutional and other complex litigation services) were indeed being delivered.

79. And the reason Vedalankar and the others didn't claim this to the Portfolio Committee (that LASA couldn't afford to fill its three remaining vacant Senior Litigator posts) as she would falsely claim to me a few months later in October 2010 (annexure '16'), is because it wasn't true. Indeed, with respect to Senior Litigator recruitment, LASA's records mentioned above show that as at February 2010 the Bloemfontein and Mahikeng posts were still vacant, and had afterwards been filled by June 2010, while the Pietermaritzburg and Durban Senior Litigator recruitments, substantially complete by November 2009, had strangely stalled – silently in my case, whereas 'in April/May' the candidate for the Durban post was told (as LASA later formally admitted) that the recruitment had been cancelled, no reason given him; so he told me on the telephone, saying he assumed the reason to have been 'internal restructuring' (incorrect; there wasn't any). And whereas my recruitment had been blocked, and with it the

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promotion of the internal candidate for the Durban post, the Mthatha Senior Litigator process proceeded apace, with the decision to create the post taken in March 2010, advertisement of it in April, and a selection and recommendation made in May.

80. It was only on 15 July 2010 – after mid-year, not 'early this year' as Vedalankar dishonestly alleged to me – that 'management' began 'to identify positions which could be frozen'; and these 'positions which could be frozen' were some non-critical, entry-level, bottom-rung, vacant public defender posts serving the district and regional criminal courts, and, if necessary, some even lower para-legal and administrative posts.

81. LASA's own records show categorically that the 'positions which could be frozen' until the OSD issue had been resolved, which 'management' began in mid-July 2010 'to identify', didn't include critical positions such as Senior Litigator posts.

82. Nair's proposal to his fellow executives on the Management Executive Committee in July 2010 to halt recruitment to these lower criminal court posts – to spur the Department into seeing to LASA's OSD funding, as he later frankly testified – is annexure '17-V5'. The Management Executive Committee's 'Report to Board' on 16 July 2010 (annexure '17-V10-Annexure 1') reflects their agreement with Nair's proposal – but as a temporary expedient only, as paragraphs 2.2.(a) and 4.II show.

83. Crucially, paragraph 2.2(b) of the 'Report to Board' distinguished 'critical' posts from the non-critical public defender posts to be frozen, and noted the need to 'prioritise critical positions' for recruitment.

84. The Board's resolution to adopt this proposal, including 'to prioritise critical positions' for filling, is annexure '17-V10'.

85. So contrary to Vedalankar's lies to me about this, falsely confirmed on oath in April 2011, these records show that executive management never proposed and the Board never approved, the indefinite, and in the result permanent

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freezing of recruitment to LASA's three remaining vacant, budgeted and funded, critical Senior Litigator posts, for which suitable candidates had already been selected and recommended. (Indeed, this would have been illegal under section 53(4) the PFMA.)

86. On 28 January 2011, Vedalankar wrote me her second letter (annexure '17') following my second appeal to the PAIA Unit of the South African Human Rights Commission ('SAHRC') for its support under section 83(3) of PAIA in getting her to comply with my PAIA request of August 2010, which in her October 2010 letter she'd now expressly totally refused. (I'd made my first appeal to the SAHRC by telephone in September 2010 after she illegally ignored my August request, deemed a tacit refusal by section 27 of PAIA.)

87. In her January 2011 letter, contemptuous of the public information transparency provisions of the Constitution, viz. section 32(1)(a) of the Bill of Rights, and of her obligations as information officer imposed by PAIA, Vedalankar yet again refused, now on new, different grounds, to comply with my August records request probing the circumstances in which my recruitment had been aborted.

88. Vedalankar likewise totally refused my second request made in December 2010, with which I was testing the allegations she'd made in her October 2010 letter, on the manifestly false basis that it merely 'repeat[ed]' my first request in August 2010.

89. Vedalankar's persistent illegal and unconstitutional refusals of my August and December requests were ultimately reversed under further SAHRC and subsequent litigation pressure. In April 2011, a section 23 affidavit (annexure '1') was provided, and in the course of later litigation, records originally requested under PAIA but repeatedly refused were ultimately surrendered. I recount this in my 'Special Report' to the SAHRC, online at illegal-aid.co.za/PAIA.

90. For her own purposes – not to grant me access to the documents I'd requested; on the contrary, she even rejected and returned my mandatory request fee prescribed by section 22 of PAIA (see her final paragraph) –

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Vedalankar annexed twelve documents to her January letter, claimed to support the allegations made in its paragraph 9.

91. In her January letter, Vedalankar persisted with and embellished the false budgetary explanation she'd fed me in her October 2010 letter, asserting in her paragraph 7: 'the explanation furnished by me to you on 18 October 2010 remains valid and will be added to and clarified where possible where possible as indicated below.' And in her paragraph 8: 'I provide you with further information and reasons that led to the freezing of the Senior Litigator posts at Durban, Pietermaritzburg and Mthatha, in addition to the reasons furnished to you on 18 October 2010.' And in her paragraph 38: 'the cost-cutting measures including but not limited to the Senior Litigator posts.' And in her paragraph 39: 'I, and the Legal Aid SA under my watch, have never sought to make any decisions regarding the Senior Litigator posts in any ground other than the budget constraints which you have rejected.' LASA's own records refute this as a blatant lie. And indeed, both Vedalankar and Nair would later on completely change this 'budget constraints' 'ground' for not appointing me, and at the same time, to create a nice cover-story, not promoting the Durban candidate and not transferring the Mthatha candidate (dealt with below).

92. Vedalankar's January 2011 letter is a stew of objectively contradicted lies; omissions of critical financial information contradicting them; assertions of seemingly relevant but actually irrelevant facts; deceptive half-truths and red-herrings; dishonest reliance on seemingly relevant but actually irrelevant documents claimed to support her contentions, but which didn't, and which even contradicted them; legally ignorant misconceptions and false legal assertions – all of which speaks to the abysmal professional incompetence; the singularly low mental intelligence; the dull incomprehension of first principles of public finance and constitutional information law; and the profound personal amorality of its author, displaying a total lack of ethical principle and a wholly unscrupulous contempt for the truth, for the law, and for the Constitution and its values, and generally egregious personal and professional corruption in going about garrulously elaborating and padding with more lies the fake poverty excuse fed

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me in October 2010 for the criminally illegal, unrecorded, backroom abortion of my appointment, and, in the cover-up, the abortion of two other appointments to similar critical posts.

93. Which false excuse pleaded by Vedalankar in her October 2010 letter – repeated in her January 2011 letter, and falsely confirmed in her April 2011 affidavit – Vedalankar dropped, substituted, and radically contradicted two years later in October 2012 by telling the Portfolio Committee totally different, contradictory, mutually exclusive and destructive new lies (dealt with below).

94. For the purposes of this criminal complaint, namely that on 5 April 2011 Vedalankar falsely confirmed her dishonestly false budgetary insufficiency explanation for the abortion of my recruitment, advanced in her October 2010 and January 2011 letters to me, I'll deal here only with the principle lies told in her January letter, and not with the myriad subsidiary lies it contains. (For instance, as elsewhere in her letter, virtually every statement in her extensive paragraph 9 is demonstrably false.)

95. In her paragraph 27, Vedalankar stated; 'Obviously by November 2010, after the Memorandum by the COO, it was evident that there would be no funding coming from the DoJ.' In truth and in fact, contrary to Vedalankar's shameless lie to me about this to maintain her fraudulent pretence that LASA hadn't received sufficient budget from the Department to employ me, LASA had just six weeks earlier on 15 December 2010 received R89 453 000 million from the Department, *inter alia*, to fund salary increases under phase 1 and 2 of the OSD scheme. That is, the Department's payment voucher (annexure '25') shows 'funding ... from the DoJ' had indeed 'com[e]'.

96. The 'Memorandum by the COO' (annexure '17-V6', second and third pages) soliciting proposals for belt-tightening measures was internally emailed by COO Makokoane on 30 September 2010 (annexure '17-V6', first page), two months *after* Vedalankar's and Nair's illegal, off-the-record decision to finally cancel the three substantially complete recruitments to LASA's budgeted and funded Pietermaritzburg, Durban and Mthatha Senior Litigator posts.

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97. Having regard to the month that Makokoane circulated his 'Memorandum' – September 2010 – and the month Vedalankar alleged in her October 2010 letter that she and Nair aborted my recruitment, and two others – July 2010 – 'the Memorandum by the COO' was obviously completely irrelevant, yet Vedalankar dishonestly wove it into her financial paucity lie to pump it up.

98. Moreover, although the 'Memorandum by the COO' suggested the 'freezing of all vacant posts' as one of the possible cost-cutting measures to reduce public expenditure at the request of Cabinet on 18 August 2010, and also because LASA hadn't yet received its OSD allocation for salary increases, events quickly overtook it in the opposite direction.

99. Just days after the 'Memorandum by the COO' in September 2010, LASA's OSD funding allocation was included and secured in the national mid-term budget, as Vedalankar told the Portfolio Committee on 12 October 2010 (annexure '17-V8'), and the Treasury documents referenced above confirm (annexures '23' and '24').

100. With this development, rather than 'the freezing of all vacant posts', exactly the opposite happened. The brake was lifted on the Board-approved freeze on 30 July 2010 on recruitment to some of LASA's vacant, non-critical, lower criminal court public defender posts, and in the third quarter October to December 2010, legal staff recruitment sharply increased and peaked for the year at 2.5%, from 1193 to 1223 (see annexure '27'). But the three substantially complete recruitments for the Pietermaritzburg, Durban and Mthatha Senior Litigator posts remained on permanent ice.

101. Such is the extraordinary deceitfulness and dishonesty of Vedalankar's January 2011 letter, perfectly typical of the culture of brazen mendacity that I've encountered in my engagement with LASA's national executives and other top officers over the past decade – one of whom tried putting the SAHRC off from assisting me access LASA's records, illegally and unconstitutionally denied me, by telling it the lie that whereas 'one candidate got the Durban post' I'd 'somehow gotten the impression he [I] had gotten the Pietermaritzburg post. ...

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Adv Brink received a latter not explaining why he was rejected.' As if my 'impression' from HRE Clark's email (annexure '17-V12') that I'd been selected and recommended (later confirmed by the recommendation report: annexure '17-V7') was wrong, and that actually I'd been 'rejected' – falsely implying I was just wasting everyone's time. Turned up with a broadly framed PAIA request addressed to it, the SAHRC's telephone note of this false information given it is annexed marked '29'.

102. The juxtaposition and unambiguous logical flow of Vedalankar's sentences – '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.' – was clearly contrived to generate the impression that Senior Litigator posts had been 'identif[ied]' 'early this year' as 'positions which could be frozen', and that 'the NOE and CEO took the decision' later on to freeze these 'identif[ied]' posts accordingly.

103. But LASA's own records show that Senior Litigator posts were never 'identif[ied]' for freezing 'early this year' or at any other time. They also show that besides the two KwaZulu-Natal Senior Litigator recruitments, which were halted when I was recommended instead of Mlambo JP's long-time judicial colleague, other Senior Litigator recruitment continued. Mentioned and vouched above, the Bloemfontein and Mahikeng posts were filled, and the Mthatha post was energetically recruited for.

104. The truth of it is that my recruitment was 'immediately' aborted and the Pietermaritzburg and Durban posts frozen when Nair discovered that I'd been selected and recommended, and that Mlambo JP's former judicial colleague had been unexpectedly disqualified and rejected. Indeed, quoted above, he said as much under oath.

105. There's no question that the Pietermaritzburg, Durban and Mthatha Senior Litigator have been frozen *de facto*, and that they've been kept vacant for many years. (Irrelevant to this criminal complaint, the illegality of this under the

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PFMA is currently being investigated by the Auditor-General). As LASA's records show, however, the rest of Vedalankar's statement is dishonestly false.

106. In the premises, Vedalankar 'made a false statement knowing it to be false' 'in an affidavit' on 5 April 2011 'made before a person competent to administer an oath' and thus criminally contravened section 9 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963 for which she is 'liable upon conviction to the penalties prescribed by law for the offence of perjury', namely imprisonment.

COUNT 2: FAILING TO KEEP RECORDS OF LASA'S FINANCIAL AFFAIRS

107. Under section 1 of the PFMA, '"accounting authority" means a body or person mentioned in section 49'.

108. Section 49 provides:

> (1) Every public entity must have an authority which must be accountable for the purposes of this Act.
> (2) If the public entity–
> (a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity[.]

Accordingly, LASA's accounting authority is its Board.

109. It bears emphasizing that section 50(1)(b) of the PFMA requires that:

> The accounting authority for a public entity must act with fidelity, honesty and integrity and in the best interests of the public entity in managing the financial affairs of the public entity.

110. Section 56(1)(a) provides:

> The accounting authority for a public entity may ... in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity[.]

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111. Note 30 of the Approval Framework records that on 24 November 2007 the Board duly 'delegate[d] to the Chief Executive Officer all the powers entrusted or delegated to the accounting authority in terms of the Act'. A material excerpt from the Approval Framework is annexed marked '30'.

112. Section 55(1)(a) of the PFMA prescribes:

> The accounting authority for a public entity ... must keep full and proper records of the financial affairs of the public entity.

113. Section 86(2) of the PFMA provides:

> An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.

114. On 15 July 2010, eight months after my successful interview back on 12 November 2009 for LASA's Senior Litigator post at Pietermaritzburg, I wrote to Vedalankar enquiring about the extraordinary delay in approving my appointment.

115. HRE Clark had backhandedly confirmed that I'd been selected and recommended by insolently suggesting in a deliberately opaque email on 30 April 2010 in response to my repeated enquiries five strangely silent months after my interview, that I abandon my application for the post: '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.' (Annexure '17-V12'.)

116. It was clear from this that I'd beaten out my rival applicants; that I'd been selected from these other shortlisted and interviewed candidates; and that I'd been recommended as the most suitable candidate for the post, because had the selection panel rejected me and chosen someone else, I wouldn't have had any live application to 'withdraw'. Even as Clark dishonestly implied my interview had been unsuccessful: 'Applying for a job is done at the applicant's own risk. Being called to an interview is not a guarantee of being appointed to the

position.' (*En passant*: The only so-called 'inside information from [my] brother' (per Clark's unpleasant accusation in her email, projecting her and her colleagues' corruption onto me) that I'd 'obtain[ed]' – *before my interview* – was the open fact that the candidate recommended after the previous interviews for the post in 2008 hadn't been approved.)

117. On 3 August 2010, Nair answered my letter to Vedalankar in July, alleging that:

> the recruitment process to finalise the appointments for all vacant Senior Litigator posts were put on hold due to various reasons. I can now confirm that we will not be proceeding with the filling of any of these posts.

A copy of Nair's letter is annexed marked '31'.

118. Nair thus unambiguously implied that after suitable candidates had been selected and recommended for the posts, duly authorised officers at LASA had duly decided, first to suspend and then to later finally abort the approval and appointment process for the selected and recommended candidates; to cancel the substantially complete recruitment processes for the posts; and to leave 'all vacant' Senior Litigator posts unfilled.

119. Had Nair's allegations been true, records of such major operational and financial decisions would obviously have existed, for as Cachalia JA pointed out pungently a couple of months later in November 2010 during the Presidency's argument in the Supreme Court of Appeal ('SCA') opposing the *Mail & Guardian*'s PAIA claim for access to the Zimbabwe 2008 national election report commissioned by the President:

> Surely there's ... a note, there's a minute. Government does not operate like a glorified spaza shop ... In the absence of any paper trail must we just accept that [public officers] are people of standing and they will never mislead, just like [US Secretary of State] Colin Powell never misled the Security Council?'

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[*In lying that Iraq had weapons of mass destruction to justify the American invasion.*]

Annexed marked '32' is a copy of the news report recording the SCA's lamentable observation that in the real world sometimes public officers also tell lies.

120. Consistently with the record-keeping requirements of section 55(1) of the PFMA (since 'Government does not operate like a glorified spaza shop'), section 12 of LASA's Code of Ethics and Conduct requires:

> Accurate and reliable records of many kinds are necessary to meet the LEGAL AID BOARD's legal and financial obligations and to manage the affairs of the LEGAL AID BOARD. The LEGAL AID BOARD's books and records should reflect all business transactions ... and the employees responsible for accounting and record-keeping functions are expected to be diligent in enforcing proper practices. [*The 'Legal Aid Board' is LASA's former name.*]

A material excerpt from this Code is annexed marked '33'.

121. On the other hand, had Nair lied to me in his letter (as I'd correctly surmised), and in truth and in fact no competent, authorised person or committee at LASA had duly taken such major business decisions (as I'd correctly surmised) then obviously no records of such alleged decisions would have existed.

122. And if indeed no such records existed (as I'd correctly surmised), then if I specified them in a records request made under section 18 of PAIA, section 23 would require LASA's information officer to certify it. This is because section 23(1) provides:

> 23 Records that cannot be found or do not exist
>
> (1) If–
>
> (a) all reasonable steps have been taken to find a record requested; and

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

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

(ii) does not exist,

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

123. With this provision in mind, I tested the truth of Nair's allegations to me with a PAIA request delivered on 30 August 2010 for access, *inter alia*, to:

> 13. All records, including but not limited to email, reports and notes, pertaining to the decision to 'put on hold ... the recruitment process to finalize the appointments for all vacant Senior Litigator posts' (– per Nair's letter to Brink).
>
> 14. All records, including but not limited to email, reports and notes, pertaining to the decision to finally abort the 'recruitment process' and not 'be proceeding with the filling of any of these posts' (– per Nair's letter to Brink).

Material excerpts of my request are annexed marked '34'.

124. As CEO, Vedalankar was LASA's information officer *ex officio* under the definition of 'information officer' in section 1 of PAIA.

125. To obstruct my investigation and exposure of Nair's lies to me, and to hinder my discovery of the corrupt reason for the cancellation of the Pietermaritzburg Senior Litigator post recruitment, and with it the Durban post simultaneously advertised and recruited for, and some months later the Mthatha post (which corrupt reason I was only able to discover in April 2016 via determinedly prosecuted PAIA litigation, indefensibly opposed all the way to court before LASA's complete capitulation), Vedalankar ignored my request for these records,

thus tacitly refusing me sight of them under the deeming provisions of section 27 of the Act.

126. Since her refusal to allow me access to LASA's public records – or more to the point her refusal to certify that indeed they didn't exist – violated my fundamental right to public body information guaranteed by section 32(1)(a) of the Constitution, I telephoned the PAIA Unit of the South African Human Rights Commission ('SAHRC'), asking it to exercise its powers under section 83(3) of PAIA to '(c) ... assist any person wishing to exercise a right contemplated in this Act' and '(d) recommend to a public or private body that the body make such changes in the manner in which it administers this Act as the Commission considers advisable'. Indeed, the SAHRC intervened and got Hundermark's undertaking that my request would be responded to.

127. On 18 October 2010, Vedalankar now responded to my records request by expressly refusing to comply with it (annexure '16').

128. Immaterial to this criminal complaint, Vedalankar's several spurious, indeed fraudulent, grounds advanced for totally refusing me the requested records, later substituted with other spurious grounds for refusing them, also later abandoned, and her refusal to certify that the above specified records didn't exist, are canvassed in my 'Special Report' to the SAHRC in November 2016, accessible online at illegal-aid.co.za/PAIA.

129. In paragraphs 6.7 and 7.3 of her October letter refusing my PAIA request, Vedalankar alleged the following:

> In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.
>
> ...
>
> The NOE and CEO took the decision that all senior litigator posts that were vacant would be frozen. Therefore, the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.

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130. It's beyond issue that indeed 'the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen' *de facto*, in that these budgeted and funded, critical, top-echelon legal professional posts indeed remain unfilled and vacant a decade after suitable candidates were selected and recommended for them in November 2009 and May 2010. (As mentioned above, LASA's recruitment statistics no longer reflect Mthatha as vacant, but the original Kimberley post instead.)

131. Completely different, radically contradictory false versions have been advanced by Vedalankar and by different LASA officers to different authorities at different times, about *when* and *why* the posts were 'frozen', some of which different, contradictory lies are indicted in this complaint. Where other LASA officers have told them on oath or to the Portfolio Committee, their lies will be the subject of separate criminal complaints against them to follow.

132. Having regard to the relevant provisions of (i) LASA's Approval Framework, (ii) LASA's Legal Aid Guide, (iii) the PFMA; and (iv) the Constitutional Court's judgment in *Zungu* on 22 January 2018, the gross illegality of Vedalankar's and Nair's 'decision' to freeze the posts, among other the facts and circumstances aggravating Vedalankar's criminal contravention of the PFMA, is dealt with below.

133. When in October 2010 Vedalankar now expressly refused my August PAIA request, I turned again to the SAHRC to assist me obtain her lawful compliance with it, and, as mentioned shortly below, it came in again.

134. Correctly surmising that she'd lied to me, I tested the veracity of Vedalankar's allegations in her October letter quoted above with a second PAIA request on 15 December 2010, *inter alia* for:

> 10. The resolution passed by "management" ... in relation to the claim: "In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen."
> [*my ellipsis for relevance*]

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Material excerpts from my request is annexed marked '35'.

135. On 28 January 2011, Vedalankar totally refused my second PAIA request as well, on the untruthfully false basis that it merely 'repeated' the first. (As said, she gave me certain documents, not to meet my request, but for her own purposes, namely 'To demonstrate' her various contentions.) Her refusal is annexure '17'.

136. Eventually, under further SAHRC pressure – I'd again pleaded for its support – to lawfully and properly comply with my PAIA requests of August and December 2010, Vedalankar delegated Nair to respond to them, as well as to my third PAIA request made in March 2011, and to this end designated him deputy information officer under section 17 of PAIA (annexure '1-BN1').

137. In compliance with section 23 of PAIA in regard to the non-existent records I'd specified, Nair truthfully confirmed on oath on 8 April 2011 (annexure '1', paragraph 14), as he was forced to do, that:

> no written record exists of the decision taken in July 2010 by the NOE in consultation with the CEO and HRE to freeze the senior litigator post.
> [*The 'post' in question, being at Pietermaritzburg, for which I'd applied and been selected and recommended.*]

138. Albeit perjuriously reiterating Vedalankar's false budgetary insufficiency excuse and adding new lies of his own (to be dealt with in a separate criminal complaint against him), Nair truthfully confirmed again (in his paragraph 15) that the said records I'd requested don't exist:

> [T]he uncertain funding difficulty resulted in a decision being taken by Legal Aid South Africa executives to delay and eventually freeze the recruitment of certain positions including the vacant senior litigator positions. For the sake of completeness, I further mention that no written record of this decision exists.

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139. In her confirmatory affidavit (annexure '2'), Vedalankar certified on oath that the contents of Nair's affidavit as far as she was involved were true. That is, Vedalankar confirmed on oath that no record exists of her and Nair's decision to freeze the three vacant Senior Litigator posts, including the Pietermaritzburg post for which I'd been duly chosen, as claimed in her October 2010 and January 2011 letters to me (annexures '16' and '17').

140. In short – and this is the nut of it – on her own sworn version Vedalankar made and kept no record of her decision taken with Nair to finally abort the finalisation of the Pietermaritzburg, Durban and Mthatha Senior Litigator appointments, and to permanently freeze recruitment to the three vacant, critical, budgeted and funded, specialist legal professional posts at the top of LASA's staff establishment.

141. I say *finally abort*, because it's evident from Vedalankar's email to Nair on 29 July 2010 (annexure '1-BN3'), sent after reading my letter to her that month, in which I was enquiring about the peculiar delay in my appointment, that she had no idea at that point about the corrupt silent unrecorded cancellation of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments by Nair, even as the Mahikeng and Bloemfontein ones had proceeded. In plain speech, near the end of July 2010, eight months after Nair's 'immediate' abortion of my recruitment in November 2009, she wasn't yet in the loop; she hadn't yet been told.

142. As LASA's duly delegated accounting officer at the time (in July 2010, having been delegated in November 2007, per Note 30 of the Approval Framework (annexure '30')), Vedalankar's final abortion of the said Senior Litigator recruitment processes and her permanent freezing of the posts without making any record of these major operational and financial decisions contravened section 55(1) of the PFMA, a serious crime under section 86 for which she's liable to be jailed for five years – more especially in light of the particular aggravating circumstances in the case that distinguish it from a mere technical failure to comply with the record-keeping requirements of the PFMA, non-compliance with which, unlike many other forms of serious financial

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misconduct contemplated by the Act justifying dismissal, is additionally sanctioned by criminal penalties.

143. The reasons Vedalankar made and kept no record of her decisions taken with Nair to abort the substantially complete Pietermaritzburg, Durban and later the Mthatha Senior Litigator recruitments, and to freeze these critical, budgeted and funded, top-level legal professional posts, were that her and Nair's decisions to do so (i) were corruptly motivated; (ii) were illegal for manifold reasons; (iii) defied the express wishes of both the Justice Minister and of the Portfolio Committee; and (iv) obstructed critical legal service delivery in KwaZulu-Natal and in the Eastern Cape to the massive prejudice of the indigent in those provinces, deprived of access to specialist legal professional services to protect and vindicate their 'Constitutional rights and socio-economic rights', as LASA's current Strategic Plan 2015–20 puts it, and thereby 'give content to the Constitution through impact litigation' and 'develop jurisprudence on social justice matters'.

144. I canvass these aggravating circumstances extensively in Part One of my affirmed complaint to the Auditor-General, and request that it be read as part of this criminal complaint in aggravation of this count. For optimal clarity and legibility, I annex the final draft before signature, marked '36'. As said, a scanned copy of the signed and attested document that I delivered, currently under investigation, is accessible online at illegal-aid.co.za/AG.

145. In the premises, in failing as LASA's delegated accounting officer 'to keep full and proper records of the financial affairs of the public entity' Vedalankar criminally contravened section 55(1) of the PFMA, read with the penalty provisions of section 86(2), for which she's liable to be jailed for five years.

COUNT 3: FALSE REPORTING TO THE PORTFOLIO COMMITTEE

146. Section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 provides:

> 2 A person who –

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...

(d) with intent to deceive a House or committee, produces to the House or committee any false, untrue, fabricated or falsified document; ...

...

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.

147. On 17 August 2010, Vedalankar signed her CEO report for 2009/10, a copy of which is annexed marked '37'.

148. Just two weeks earlier 'in July 2010 after the Board meeting', as LASA pleaded for the true information of the judge in my labour case (annexure '22', paragraph 33.2), which meeting was held on the 31st as the minute reflects (annexure '17-V10'), Vedalankar and Nair had on the last day of July 2010 finally cancelled the substantially complete Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments for which suitable candidates had been selected and recommended, and had decided to leave the three critical posts unfilled, as stated her October 2010 letter (annexure '16', paragraphs 6.7 and 7.4–5): (1) without the authority to do so under the Approval Framework and therefore *ultra vires* and illegally; (2) off the record and therefore criminally illegally under section 55(1)(a) of the PFMA; (3) illegally under section 55(3) and (4) of the PFMA, as the Constitutional Court later pointed up in the *Zungu* case in January 2018; (4) illegally deviating from the Board's Strategic Plan 2009–12 for LASA without Board approval, as required by the section 1.1 of the Approval Framework, and obstructing its implementation; (5) contrary to the express wishes of the Minister (annexures '17-V8' and '17-V10-Annexure 1'); (6) contrary to the repeatedly expressed wishes of the Portfolio Committee (annexure '36', paragraph 41); and (7) contrary to the express resolution of the Board that day, 31 July 2010 (annexure '17-V10'), passed at the instance and recommendation of the management executive committee – including Vedalankar and Nair – recorded in their Report to Board (annexure '17-V10-

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Annexure 1') to prioritise recruitment to LASA's critical posts, such as Senior Litigator posts, while temporarily freezing recruitment to some lower criminal court public defender posts until the issue over the payment of OSD phase 1 funding had been resolved (canvassed in the said Report to Board).

149. Having committed these multiple gross illegalities, some criminal under the PFMA, later falsely justified to me in her 18 October 2010 letter on financial grounds (later abandoned and substituted with other false justifications; see below), Vedalankar obviously didn't tell the Portfolio Committee about any of this criminal recruitment corruption in which she'd now made herself directly complicit. Not only did she sign her October letter, she also emailed it to me herself – copying in Board chairperson Mlambo JP. A copy of her covering email is annexed marked '38'.

150. On the contrary, more than keeping silent about this criminal recruitment corruption, Vedalankar positively claimed in her CEO report: '2009/2010 is the first year of our 2009–12 Strategic Plan period. ... Overall we are on target to make the strategic shift that we mapped for this period.'

151. And whereas she'd shortly afterwards lie to me in her October letter that LASA was too skint to fill its Senior Litigator posts – for lack of OSD phase 1 funding, as she'd falsely elaborate in her January 2011 letter – the only mention of OSD funding in her CEO report was in relation to OSD phase 2, and even then the biggest problem it caused was just the sadness it caused LASA's lawyers: 'The non-implementation of Phase 2 of the Occupation Specific Dispensation for our legal professionals due to lack of funds continues to impact negatively on staff morale.' Nothing about the delayed payment of OSD phase 1 preventing LASA from filling its three remaining vacant budgeted and funded Senior Litigator posts

152. Vedalankar's claim, 'We have operated an economic budget with more than 99% of our budget being spent thus ensuring maximum delivery to our clients' similarly deliberately misled the Portfolio Committee to believe that LASA was duly spending its legal professional salary budget in compliance with section

55(3) and (4) of the PFMA, whereas in truth and in fact she and Nair had acted illegally to prevent 'our budget being spent' on three Senior Litigator salaries 'thus' seriously obstructing 'maximum delivery to our clients.'

153. In this manner, Vedalankar deliberately misinformed the Portfolio Committee about LASA's progress in the first year of its implementation of the Strategic Plan 2009–12. Nothing prevented her and Nair's co-approval under section 8.2.2(b) of the Approval Framework of my and the Durban candidate's appointments before the end of the financial year on 31 March 2010, following our unanimous recommendations by the selection panel in November 2009.

154. Vedalankar's corrupt object in misinforming the Portfolio Committee in her report of 15 August 2010 was to conceal her and Nair's final illegal derailment six weeks earlier of a key component of LASA's Strategic Plan 2009–12 – later emphasized as such in her CEO report for 2011/12 (see below) – namely the employment of Senior Litigators for 'working on complex matters in the higher courts.'

155. In the premises, Vedalankar criminally contravened section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

COUNT 4: LYING TO THE PORTFOLIO COMMITTEE

156. Section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 provides:

> 2 A person who –
>
> ...
>
> (e) whether or not during examination under section 15, wilfully furnishes a House or committee with information, or makes a statement before it, 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.

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157. On 12 October 2010, six days before she dishonestly falsely claimed to me in her letter on the 18th that LASA hadn't received sufficient budget to fill its Senior Litigator posts at Pietermaritzburg, Durban and Mthatha and therefore couldn't afford to hire me, and that the three posts had consequently been frozen, Vedalankar appeared before the Portfolio Committee to present LASA's annual report for 2009/10 and its first quarter report for 2010/11.

158. As usual, the Portfolio Committee had called the meeting with Vedalankar and other LASA representatives in the exercise of its oversight responsibility over LASA imposed by section 55(2)(b)(ii) of the Constitution to ensure that LASA's operations were being duly conducted in compliance with all applicable laws.

159. The Parliamentary Monitoring Group ('PMG') made an audio recording of the meeting and posted it online, and I promptly transcribed Vedalankar's presentation. My transcript is annexed marked '39'.

160. The original hyperlink (pmg.org.za/node/23447) that I used to access the recording is no longer live, but the accuracy of my transcript isn't in dispute, because in her January 2011 letter Vedalankar herself relied on my transcript of what she said, duly describing it as 'Extract of audio recording of my presentation to Portfolio Committee on Justice on 12 October 2010' and annexing a copy (annexure '17-V8').

161. The transcript records that the Portfolio Committee directed Vedalankar to provide a general overview of LASA's affairs, rather than talk to the particulars of its annual report for the financial year 2009/10 ending 31 March 2010, and its first quarter report for the three-month period ending 30 June 2010; and, material to this criminal complaint, the transcript reflects that Vedalankar provided the Portfolio Committee with information pertaining to subsequent financial and related developments.

162. Vedalankar informed the Portfolio Committee that:

> in terms of the overall performance that we are on track on all

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components of our Business Plan and we are confident that we will deliver this Business Plan in this financial year also. So we don't have any problem areas that we would like to report on.

163. Vedalankar didn't tell the Portfolio Committee, as she told me a week later, that LASA lacked the budget to 'deliver' on one of the major 'components of our Business Plan', namely to appoint nine Senior Litigators at various seats of the High Court, of which six such posts had been filled, and to fill the remaining three vacant posts with the candidates selected and recommended for them.

164. Vedalankar's claim to the Portfolio Committee that 'in terms of the overall performance ... we are on track on all components of our Business Plan and we are confident that we will deliver this Business Plan in this financial year also' was dishonestly false. Quite the contrary, filling LASA's Senior Litigator posts wasn't on track at all, nor was service delivery under the Business Plan going to take place, because according to her letter to me a week later on 18 October (annexure '16'), she and Nair had frozen recruitment to a third of the posts – indefinitely, per her paragraph 7.5: 'Should we decide to unfreeze these positions in the future, the positions will be duly advertised and you will be at liberty to submit your application for any of the positions.'

165. Considered especially with her next very true allegation 'So we don't have any problem areas that we would like to report on' – inasmuch as no lawful impediment prevented LASA's implementation of its budgeted and financed Business Plan, in conformity with its Strategic Plan 2009–12 to hire Senior Litigators – Vedalankar's false allegation that 'in terms of the overall performance ... we are on track on all components of our Business Plan and we are confident that we will deliver this Business Plan in this financial year also', deceptively conveyed to the Portfolio Committee and misled it to understand that LASA was duly creating posts and filling them in accordance (i) with its approved, transferred and received budget, (ii) with its Business Plan, and (iii) with its Strategic Plan, and that a major component of the Strategic Plan, later repeatedly highlighted by Vedalankar as such, namely to employ Senior

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Litigators, was being duly implemented, when in truth and in fact it wasn't 'on track' because it had been criminally obstructed and derailed.

166. These allegations that Vedalankar made to the Portfolio Committee deceptively concealed from it the fact that three substantially complete Senior Litigator recruitments had been illegally cancelled off the record – by her and Nair in July 2010, according to her letter of 18 October 2010 – to the tremendous prejudice of the poor (i) in KwaZulu-Natal, completely denied complex constitutional and other specialist litigation services for nearly five years at that stage since the creation of the Pietermaritzburg and Durban Senior Litigator posts in November 2006, and (ii) in the Eastern Cape, denied a second Senior Litigator at Mthatha to share the Port Elizabeth Senior Litigator's huge burden of having to service all four distant High Courts in that geographically vast province (per the Regional Operations Executive's cogent motivation for the post to be created).

167. In truth and in fact, dishonestly concealed by Vedalankar from the Portfolio Committee, there were indeed very serious 'problems areas' to 'report on', namely her and Nair's unauthorised, off-the-record and therefore criminally illegal abortion of three substantially finalised critical Senior Litigator recruitments, and their unauthorised, off-the-record, criminally illegal freezing of the posts, illegally deviating from LASA's Strategic- and Business Plans to appoint Senior Litigators to handle specialist constitutional and other complex litigation for the indigent, and obstructing service delivery in this regard.

168. Had Vedalankar told the Portfolio Committee, as she would tell me a week later on 18 October, that in July 2010 she and Nair had cancelled three Senior Litigator appointments because LASA lacked the funds to complete a key component of its Strategic Plan 2009–12, namely the employment of nine Senior Litigators at seats of major High Court divisions around the country to render the just-mentioned high-level litigation services to the poor, the Portfolio Committee would certainly have intervened to remedy this.

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169. The reason Vedalankar didn't tell the Portfolio Committee – as she was about to tell me a week later – that in July 2010 she and Nair had finally cancelled my and two other Senior Litigator appointments because LASA couldn't afford to hire us, is that her justification of this to me, confirmed under oath in April 2011, was an outright lie. (The silent thought in Vedalankar's mind would have been: 'we would like' not 'to report on' those gross illegalities, because they'll get us dismissed and jailed.)

170. Vedalankar's further reason for deceptively not telling the Portfolio Committee about her and Nair's backroom abortion of the recruitments and decision to freeze the three posts is that it was illegal on its own terms. LASA's Approval Framework gave Vedalankar and Nair no so such power to materially deviate from the Strategic Plan without Board approval (required by section 1.1), and more importantly their unrecorded decision was both illegal and criminal under sections 53(4) and 55(1)(a) of the PFMA respectively.

171. Aggravating Vedalankar's criminal deception of the Portfolio Committee is her true report made later in her address (i) that 'the Minister' had expressly stated 'he didn't want' any posts frozen pending provision made for, and transfer of, LASA's OSD funding allocation, and that meanwhile 'we needed to continue with the business'; and (ii) that provision for this extra funding for salary increases had just been included in the national mid-term budget: 'it was in the mid-term adjustment', as she put it, in 'the mid-term adjustment budget'.

172. That is, over and above being unauthorised, unrecorded, unlawful on multiple scores, as well as criminally illegal, Vedalankar's and Nair's off-the-record decision to cancel the three Senior Litigator appointments in question and to freeze recruitment to the budgeted and funded vacant posts defied the Minister's express wishes that no posts at LASA be frozen, and that LASA should 'continue with the business' of implementing its Business Plan pending allocation and receipt of OSD funding for legal staff salary increases.

173. In the context of the rest of her address, Vedalankar's mention of the Minister's wishes will have created the clear false impression in the minds of the

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Portfolio Committee's members, as it was deceitfully contrived to do, that no vacant posts at LASA had been frozen, even though doing so had been considered, and LASA was going about the business of filling them in accordance with its Business- and Strategic Plans.

174. What aggravates Vedalankar's deception of the Portfolio Committee further is that, as she well knew and explicitly told it, provision for OSD funding 'was in the mid-term adjustment' after 'the Minister ... had assisted', so there was zero financial reason of any shape or form for her and Nair to justify not concluding the appointments of the three Senior Litigator candidates selected and recommended for LASA's critical, budgeted and funded Pietermaritzburg, Durban and Mthatha posts. The fact of this secured funding provision was all the more reason for Vedalankar to have deceived the Portfolio Committee by not mentioning her and Nair's abortion of the three remaining critical Senior Litigator appointments and their freezing of the posts.

175. The full minute of the 12 October 2010 meeting is annexed marked '40'. It reveals that neither Vedalankar nor any other LASA officer claimed (as was about to be claimed to me) that LASA had had to abort three substantially complete Senior Litigator recruitments and freeze the three vacant posts for lack of salary funding to fill them. On the contrary, the minute records that the Portfolio Committee was falsely told that LASA 'had managed to achieve its targets', and that 'LASA had no problem with regards to recruiting lawyers' and that 'civil matters were expected to grow, as there was now added capacity.' Where other LASA officers told these lies to the Portfolio Committee, Vedalankar didn't correct them; instead, she tacitly associated herself with them and with their criminal deception of the Portfolio Committee.

176. Vedalankar herself 'listed under the challenges that would be undertaken by the organisation' the fact that 'LASA was still struggling with the load where civil matters were concerned.' Deceptively dishonestly, she obviously didn't volunteer to the Portfolio Committee that one of the reasons for this is that two-and-a-half months earlier, at the end of July, she and Nair had illegally aborted

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the recruitment of three Senior Litigators to alleviate 'the load where civil matters are concerned'.

177. Vedalankar's deception of the Portfolio Committee with her false information and omission of critically material information, also her complicity in other LASA officers' misinformation, was clearly calculated to defeat its constitutional oversight function and evade being held to account for her unlawful and criminal contraventions of sections 53(4) and 55(1)(a) of the PFMA in aborting, off the record, without authority under the Approval Framework, against the wishes of the Minister and of the Portfolio Committee, three substantially complete Senior Litigator recruitments and freezing recruitment to the three remaining critical budgeted and funded posts, thereby unlawfully obstructing and preventing the implementation of the Board's Strategic Plan presented to the Portfolio Committee on 14 April 2010 (annexure '28'), and obstructing and preventing critical specialist litigation service delivery to the poor in KwaZulu-Natal and in the Eastern Cape.

178. Considered as a whole, Vedalankar's address to the Portfolio Committee on 12 October 2010, calculated to frustrate and defeat the Portfolio Committee's constitutional oversight function over LASA, as it did, was 'false and misleading' within the contemplation of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.

179. In the premises, Vedalankar criminally contravened the said section, for which 'false and misleading' information, she's liable to be jailed for two years.

COUNT 5: WILFULLY MISLEADING THE PORTFOLIO COMMITTEE

180. On 31 March 2011, Vedalankar appeared with other LASA officers before the Portfolio Committee for the 'Legal Aid presentation: Strategic plans, Annual Performance Plan and budget 2011/12'. The minute of the meeting is annexed marked '41'.

181. Early in 2011 (I didn't record and don't recall the exact date), I'd telephoned Portfolio Committee member Hon John Jeffery MP (now Justice Deputy

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Minister; hereafter 'Jeffery') – having obtained his cellphone number from his son, a close friend of my own two sons, all of whom had grown up together in Pietermaritzburg and then in Cape Town – and complained about the obviously irregular abortion of my recruitment; the obvious lies Vedalankar and Nair had told me about it; their repeated and persistent illegal and unconstitutional refusals of my PAIA requests made to investigate the lies they'd told me as they strained to keep the lid on the corruption I'd run into.

182. In short, at the time of the meeting on 31 March 2011, Jeffery was alive to the fact that three Senior Litigator appointments had been irregularly cancelled and the posts irregularly frozen.

183. In her address:

> Ms Vidhu Vedalankar, Chief Executive Officer, LASA, noted that the Annual Performance Plan (APP) also referred to as the Business Plan, expanded on the strategies. ... This document ... established the links between the objectives and the programmes. ... She said that LASA wanted to increase its civil matters by 10% from the previous year. She conceded that targets for civil work had not been achieved in the past ... LASA sought to increase the capacity of its legal practitioners through training.

184. Portfolio Committee member 'Mr S Swart (ACDP) noted that LASA had a high standard. He though that the "impact legislation" [*sic*: litigation] in civil matters was commendable.'

185. 'Ms Rebecca Hlabatau, Chief Financial Officer, LASA ... noted that over the past seven years, LASA had spent around 99% of its budget, and the as-yet-unaudited figures for the financial year ended 31 March 2011 indicated it would spend about 99.6%. LASA had nine years of unqualified audit reports, with unqualified reports with no matters of emphasis for the past five years.'

186. 'Mr Jeffery enquired about the vacancy rate, generally, and at professional assistant level.' Crucially, by 'the vacancy rate ... at professional assistant level',

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Jeffery was referring very specifically to the irregular vacancy rate in regard to LASA's Senior Litigator posts, about which I'd complained directly to him on the telephone. As its own records show, LASA itself refers to Senior Litigators as 'PAs' (Professional Assistants). Annexed marked '42' is a material excerpt from LASA's 'Additional MTEF Allocation for FY07/08 – Budget Proposals'. Under the heading 'Strengthening Senior Litigation Capacity', the last page makes provision for a 'National Total' of '9' 'PAs', i.e. nine Senior Litigators.

187. Responding to Jeffery's question about 'the vacancy rate, generally, and at professional assistant [a.k.a. Senior Litigator] level':

> Ms Vedalankar replied that in 2010/11, LASA had set a target of 96% of all posts filled, although it had then held back on filling some of the vacancies because of the uncertainty of obtaining OSD funding in Phase 1, which if not recovered, would have put the LASA into deficit. OSD was now settled in the baseline figures, and she thanked the Committee for its support in this regard. LASA now had 96% of all posts filled.

188. The unambiguous burden of Vedalankar's answer to Jeffery's question was that after delaying recruitment to some posts – including Senior Litigator posts, to which Jeffery had pertinently referred by LASA's other name for them, Professional Assistants – because of the OSD phase 1 uncertainty, now resolved, normal recruitment had resumed and LASA had now filled 96% of all its posts with the salary budget provided for them, in fulfilment of its original recruitment target for the financial year – including its erstwhile vacant Senior Litigator posts, the filling of a third of which LASA had delayed during the OSD phase 1 funding uncertainty, but now that it was over it had now filled.

189. Dishonestly contrived to pervert Jeffery's enquiry as the Professional Assistant/Senior Litigator recruitment rate with which he stated he was specifically concerned – after I'd alerted him to Vedalankar's and Nair's illegal abortion of my and two other Senior Litigator recruitments – Vedalankar's answer was absolutely false in relation to the Senior Litigator post vacancies on

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multiple scores, which is to say Vedalankar told the Portfolio Committee a multitude of criminal lies.

190. *First*, LASA never 'held back on filling' any Senior Litigator posts. LASA's records (annexures '17-V5' and '17-V10-Annexure 1'), including Vedalankar's correspondence with the Director-General (annexure '17-V4') show that freezing these critical, top professional echelon posts was never contemplated. The only posts ever considered by Vedalankar (annexure '17-V4', third paragraph), by Nair (annexure '17-V5'), and by the Management Executive Committee collectively (annexure '17-V10-Annexure 1') for *temporary* freezing until the OSD phase 1 uncertainty had been resolved (annexure '17-V10-Annexure 1', section 4.II) were some non-critical lower criminal court public defender posts serving the District and Regional Courts.

191. Vedalankar's clear implication to the Portfolio Committee that LASA 'held back on filling' Senior Litigator posts on account of the OSD phase 1 uncertainty was absolutely untrue.

192. In truth and in fact, she and Nair had illegally cancelled three substantially complete Senior Litigator recruitments for reasons unconnected with any financial consideration. (Indeed, discussed below, both she and Nair would later drop the false financial alibi and replace it with others.)

193. *Second*, Vedalankar's statement – 'OSD was now settled in the baseline figures, and she thanked the Committee for its support in this regard. LASA now had 96% of all posts filled.' – dishonestly falsely implied that LASA had since met its original recruitment target by filling all the posts it had intended to fill at the beginning of the year, before the OSD uncertainty arose, including its remaining vacant Senior Litigator/Professional Assistant posts.

194. Vedalankar's clear implication to the Portfolio Committee, namely that, with the resolution of the OSD phase 1 uncertainty, LASA had now filled it vacant Senior Litigator posts, was absolutely false.

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195. In truth and in fact, three of LASA's nine budgeted and funded Senior Litigator posts had been permanently frozen, off the record, without authority under the Approval Framework, in defiance of the Board's resolution that critical posts be prioritised for recruitment, in defiance of the Portfolio Committee's repeatedly stated concern that critical posts in the Justice cluster be filled, in defiance of the Minister's express wish that LASA not freeze any posts and that it continue recruiting to fill its vacant posts, and criminally and otherwise illegally under the PFMA.

196. Nowhere in her presentation – neither in her main address, nor in reply to Jeffery's question about 'the vacancy rate' – after the Portfolio Committee had complimented LASA for its impact litigation (conducted by Senior Litigators), and after Hlabatau had assured it that LASA was duly spending its budget – did Vedalankar inform the Portfolio Committee that in July 2010 she and Nair had aborted the recruitments of the three candidates recommended for LASA's three remaining Senior Litigator posts at Pietermaritzburg, Durban and Mthatha, and that they'd permanently frozen the budgeted and funded posts, and that LASA was deliberately illegally not spending one third of its Senior Litigator salary budget on filling them.

197. Vedalankar deceptively failed to inform the Portfolio Committee that one of the major reasons 'that targets for civil work had not been achieved in the past' was precisely that she and Nair had illegally obstructed the recruitments of three Senior Litigators to perform civil impact litigation to which the Portfolio Committee had specifically referred and – kept uninformed of the true facts – had been impressed by.

198. Vedalankar further deceptively failed to inform the Portfolio Committee that even as 'LASA sought to increase the capacity of its legal practitioners through training', she and Nair had illegally hindered this by blocking the appointments of three Senior Litigators to provide it. Among the responsibilities of Senior Litigators, according to the advertisement for the posts (annexure '8') was to 'Assist with in-house legal training sessions' and 'Develop the litigation

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expertise within the LAB by providing individual mentoring and coaching to legal staff.

199. In the premises, Vedalankar wilfully misled the Portfolio Committee in criminal contravention of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

COUNT 6: FALSE REPORTING TO THE PORTFOLIO COMMITTEE

200. Not only did Vedalankar deceptively fail to inform the Portfolio Committee at the 31 March 2011 meeting about her and Nair's criminally illegal, unauthorised, off-the-record abortion of the Pietermaritzburg, Durban and Mthatha recruitments and freezing of these critical Senior Litigator posts, she positively misinformed it by producing to it a 'false, untrue, fabricated or falsified document' 'with intent to deceive' the Portfolio Committee (in the language of section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, quoted in paragraph 147 above), to wit LASA's false 'Annual Performance Plan (APP) also referred to as the Business Plan', as she put it, for 2011/12. Material excerpts of it are annexed marked '43'.

201. Under the heading, 'Talent acquisition and retention', section P26-10 of LASA's 'Business Plan 2011/12' falsely stated: 'No longstanding vacancies'.

202. In truth and in fact, contrary to this blatant lie told to the Portfolio Committee in this 'Business Plan 2011/12', as at 31 March 2011 (the date of the meeting at which Vedalankar presented it), LASA's critical Pietermaritzburg and Durban Senior Litigator posts had been vacant for four-and-half years since the creation of the posts by resolution of the Board in November 2006, at the instance of executive management, Vedalankar and Nair included. The Report to the Board motivating that the posts be created is annexed marked '44'. The Board Secretary's confirmation that the proposal was approved and that salary funding be budgeted for the new posts is annexed marked '45'. An excerpt from LASA's budget application for funding for the nine new Senior Litigator posts is annexure '42'. (It shows that a post at Nelspruit was originally intended; in the

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event, a second post for KwaZulu-Natal was created at Pietermaritzburg instead.)

203. Indeed, just three months before this criminally false information to the Portfolio Committee – 'No longstanding vacancies' – to cover up the criminally illegal, unrecorded, unauthorised, abortion of the Pietermaritzburg, Durban and Mthatha recruitments and freezing of the posts, LASA's December 2010 recruitment/vacancy/budget statistics truthfully show that the Pietermaritzburg and Durban Senior Litigator posts were vacant (annexure '19'). Also the original Kimberley post. And the posts are still vacant. All this exposing the flat-out lie contained in the false Business Plan 2011/12 that Vedalankar produced to the Portfolio Committee.

204. The original author of this lie, 'No longstanding vacancies', told to the Portfolio Committee in the 'Business Plan 2011/12', which Vedalankar specifically vaunted to it, was the 'Responsible Executive', 'HRE' Clark (annexure '42'). (Clark will be the subject of a separate criminal complaint for it.)

205. The Portfolio Committee, indeed the National Assembly, was successfully defrauded: 'All members expressed their congratulations both on the achievements and the report' (annexure '41'), including such 'achievements' falsely alleged as having 'No longstanding vacancies' (annexure '43'). The official transcript of the 'Proceedings of the Extended Public Committee' two months later on 7 June 2011 chaired by 'House Chairperson Mr C T Frolick' to debate the 'Appropriation Bill', 'Vote No 24 – Justice and Constitutional Development' records that 'The Justice and Constitutional Development portfolio committee, as in previous years, has been impressed by Lasa's presentation of its strategic and annual performance plan' – including the impressive lie in LASA's 'annual performance plan' for 2011/12, i.e. its 'Business Plan 2011/12', about 'No longstanding vacancies'. 'The ANC supports Lasa's goal of expanding its civil work and impact litigation despite the financial constraints that it faces in this regard. Therefore, the ANC supports Lasa's aim to reach the rural poor.' (The 'financial constraints' limited LASA's wish to increase the number of its civil posts, not fill existing posts.)

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206. On account of Vedalankar's deceptive failure to disclose this, the National Assembly's Extended Public Committee was unaware that LASA's proclaimed 'goal of expanding its civil work and impact litigation' had been obstructed – entirely in KwaZulu-Natal and substantially in the Eastern Cape – by Vedalankar's and Nair's illegal backroom abortion of three substantially complete recruitment processes to fill LASA's remaining three budgeted and funded Senior Litigator posts at Pietermaritzburg, Durban and Mthatha with the suitably qualified and experienced lawyers recommended for them to meet its 'goal of expanding its civil work and impact litigation'.

207. In sum, the Extended Public Committee declaimed:

> One of the shining stars is clearly Legal Aid SA, whose presentation greatly impressed many members. ... [It] serves as an inspiration to other organs and departments that service delivery can be effectively provided. Well done Judge Mlambo and your team! [Applause.]

208. Had Vedalankar informed the Portfolio Committee about her and Nair's criminally illegal, unauthorised, off-the-record abortion of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments and freezing of the critical posts, obstructing LASA's 'goal of expanding its civil work and impact litigation', the National Assembly's Extended Public Committee would certainly not have clapped its hands for this profoundly corrupt organisation and its lawless, criminally mendacious top officers as a model of probity and good governance for other public entities and departments to emulate.

209. In the premises, Vedalankar criminally contravened section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

COUNT 7: FALSE REPORTING TO THE PORTFOLIO COMMITTEE

210. Quoted in paragraph 147 above, section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004

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criminally sanctions with two years imprisonment the production to the Portfolio Committee of a 'false, untrue, fabricated or falsified document' 'with intent to deceive' it.

211. The heading of the minute of LASA's meeting with the Portfolio Committee on 31 March 2011 (annexure '41') reflects that Vedalankar and her colleagues also presented 'LASA's budget 2011/12'. Material excerpts of this budget are annexed marked '47'.

212. Section 2.2 of its Executive Summary alleged to the Portfolio Committee that that at 'regional and justice centres', the 'recruitment rate was increased to 100% in the 2011/12 financial year.' And again in section 4.1: 'The recruitment level was also increased from 97% in [the] 2010/11 financial year to 100% in 2011/12.'

213. This claim was absolutely false. The 'recruitment level' had not been 'increased to 100% in the 2011/12 financial year', as dishonestly alleged to the Portfolio Committee. Vedalankar and her colleagues at the meeting, who produced LASA's Budget 2011/12 to the Portfolio Committee, with its Executive Summary repeatedly making this false claim, well knew that three substantially complete recruitments to LASA's remaining three vacant Senior Litigator posts at the top of LASA's legal professional staff establishment had been illegally aborted off the record, and the budgeted and funded critical posts deliberately left unfilled with the intention of keeping them filled indefinitely (until I'd abandoned my pursuit of my appointment).

214. That is, the 'recruitment level' hadn't been 'increased to 100% in the 2011/12 financial year', because in truth and fact: (i) the said three critical posts were vacant (the vacancies concealed by the lie about 'No longstanding vacancies' told in the false Business Plan 2011/12 (annexure '43'); and (ii) Vedalankar and Nair intended keeping the budgeted and funded vacant – illegally under section 53(4) of the PFMA – as indeed they did, because the budgeted and funded posts remain vacant to this day. (Frustrating their corrupt designs, I didn't walk away, and more than a decade later I continue to pursue my appointment to the top

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professional post for which I was unanimously recommended instead of Mlambo JP's former long-time judicial colleague.)

215. In the premises, Vedalankar criminally contravened section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

COUNT 8: MISLEADING THE PORTFOLIO COMMITTEE

216. Quoted in paragraph 157 above, section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 criminally sanctions wilfully furnishing the Portfolio Committee with information, or making a statement before it, which is false or misleading, with two years imprisonment.

217. On 11 October 2011, Vedalankar, Hundermark and other LASA officers appeared before the Portfolio Committee to present LASA's annual report for 2010/11. The PMG made an audio recording of the meeting and posted on its website. A transcription of material portions is annexed marked '48'.

218. As mentioned above, I'd complained directly to Jeffery *inter alia* about Vedalankar's and Nair's abortion of my recruitment to the Pietermaritzburg Senior Litigator post and the obvious lies they'd told me about it.

219. I'd also copied to 'The chairperson of the Portfolio Committee on Justice and Constitutional Development, Luwellyn Landers MP, and all committee members' my letter to the Board of 29 July 2011 announcing that I'd now sued for my instatement to the Pietermaritzburg Senior Litigator post and pleading for a conciliatory resolution of my claim. My letter is annexed marked '49'.

220. In short, at the 11 October 2011 meeting Jeffery was aware that LASA's remaining three out of nine budgeted and funded Senior Litigator posts had been irregularly left unfilled due to recruitment malfeasance; and he accordingly raised his concern about whether LASA was using its own lawyers to conduct impact litigation – which 'specifically our Senior Litigators' did, as Hundermark confirmed (see below) – or whether private counsel were being briefed to do it,

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'because ... you don't seem to be spending the money allocated to impact litigation' – just as I'd complained to him.

221. Jeffrey asked:

> I just have a question on the impact litigation. I see there was a booklet in the bag you gave us on impact litigation, and I think it's a good concept, but the booklet refers to a number of cases, I sort of just wanted to find out: was LASA involved in these cases referred to in the booklet, but that's from 6.1 on page 14 of the booklet, I mean in terms of, in what way, was it LASA employees or was it Judicare effectively because I see that the, if I'm understanding it correctly on page 101 of your report, you don't seem to be spending the money allocated to impact litigation, so if you can give clarity on that, thanks Chair.

222. Instead of 'giv[ing] clarity on that', Vedalankar prevaricated in reply, elliptically reiterating her lying budgetary insufficiency excuse for not appointing the candidates recommended for LASA's three remaining Senior Litigator posts – the lie she'd told me in October 2010 (annexure '16'), repeated in January 2011 (annexure '17'), confirmed on oath in April 2011 (annexure '2'), and repeated to the Portfolio Committee on 31 March 2011:

> Now we run quite a tight operation as you can see and it's very hard for us and what we will do is so that we don't jeopardise our service delivery we won't cut in [inaudible; *semble*: recruitment] all we do is manage our recruitment level so that we don't overspend in terms of what we have, so that is where we, we hold recruitment levels until we can get some additional funds [inaudible] as you can see our recruitment levels are high at 96%, we were intending to increase it to 98% because we are able to recruit but now that we have this we will probably keep it at around 97%, so that is one way just of managing it without, without jeopardising the service delivery, but in terms of our discussions with treasury and the rest of what else

we can do, let's start with that because that's one sector with Jerry [inaudible].

223. Having regard to Jeffery's express concern that 'you don't seem to be spending the money allocated to impact litigation', Vedalankar's answer implied: (1) that she and her executive management colleagues were duly recruiting staff to fill LASA's budgeted and funded posts, including seasoned litigation lawyers to fill LASA's vacant Senior Litigator posts to conduct impact litigation; (2) that LASA was duly spending its budgeted revenue, including funds allocated and transfered for impact litigation by employing Senior Litigators to conduct it; (3) that in recruiting lawyers to fill LASA's budgeted and funded vacant posts, including expert litigation lawyers to fill its Senior Litigator posts to conduct impact litigation, 'we don't jeopardise our service delivery' by making illegal, unauthorised, unrecorded decisions to obstruct the delivery of impact litigation services in KwaZulu-Natal and in the Eastern Cape; (4) that the expenditure of budgeted revenue was duly being managed 'without jeopardising the service delivery' of impact litigation, *inter alia*, conducted by Senior Litigators; and (5) LASA was strapped for funds with which to recruit staff to fill its posts, including its Senior Litigator posts created for the delivery of specialist complex impact litigation services.

224. In truth and in fact, and contrary to Vedalankar's criminally false implications to the Portfolio Committee: (1) LASA wasn't duly recruiting Senior Litigators to fill all its posts for these, in that she and Nair had illegally aborted three substantially complete Senior Litigator recruitments and had illegally left one third of LASA's Senior Litigator posts vacant: three out of nine of them; (2) LASA wasn't spending all its budgeted revenue received on employing Senior Litigators to conduct impact litigation for the just mentioned reason; (3) she and Nair had indeed deliberately and very seriously 'jeopardise[d] service delivery' by aborting the appointments of three Senior Litigators; (4) budgeted revenue wasn't being duly being managed 'without jeopardising the service delivery' of impact litigation conducted by Senior Litigators; (5) no financial impediment whatsoever existed to prevent her and Nair from co-approving under section

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8.2.2(b) of the Approval Framework the appointment of the three candidates selected and recommended for the budged and funded vacant Pietermaritzburg, Durban and Mthatha Senior Litigator posts.

225. In his turn to answer Jeffrey's question, Hundermark confirmed that it was 'specifically our senior litigators' based at Justice Centres at seats of the High Court that 'do the impact litigation'.

226. Being complicit in the corruption of Senior Litigator recruitment and its cover-up at LASA, Hundermark obviously didn't truthfully disclose to the Portfolio Committee that LASA deliberately wasn't 'spending the money allocated to impact litigation' by illegally deliberately keeping three budgeted and funded Senior Litigator posts vacant, thus preventing 'our senior litigators' from being able to 'do the impact litigation' in KwaZulu-Natal at all, and hampering its delivery in the Eastern Cape, where just one Senior Litigator at Port Elizabeth was having to service all four High Courts in that geographically huge province. To maintain the corruption cover-up, Hundermark deceptively concealed from the Portfolio Committee this non-delivery of critical specialist legal professional services in which it had expressed it special interest. (Hundermark's criminal deception of the Portfolio Committee and his subsequent perjuries will be the subject of a separate criminal complaint and a complaint to the Legal Practice Council for his strike-off as an attorney.)

227. In the premises, by misleading the Portfolio Committee in the above manner, Vedalankar criminally contravened section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

COUNT 9: WILFULLY FAILING TO FAIRLY PRESENT IN LASA'S ANNUAL REPORT ITS STATE OF AFFAIRS, ITS BUSINESS, ITS FINANCIAL RESULTS, ITS PERFORMANCE AGAINST PREDETERMINED OBJECTIVES, AND ITS FINANCIAL POSITION AS AT THE END OF THE FINANCIAL YEAR CONCERNED

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COUNT 10: FALSE REPORTING TO THE PORTFOLIO COMMITTEE

228. Section 55(2)(a) of the PFMA prescribes:

> The annual report and financial statements ... must ... fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned.

229. Section 86(2) of the PFMA provides:

> An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.

230. Quoted in paragraph 147 above, section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 criminally sanctions with two years imprisonment the production to the Portfolio Committee of a 'false, untrue, fabricated or falsified document' 'with intent to deceive' it.

231. On 9 October 2012, Vedalankar appeared before the Portfolio Committee at the presentation of LASA's annual report for 2011/12 and its 'Report on Completion of Strategic Plan 2009–2012' in its 'Annual Performance Report 2011–12 Briefing of Portfolio Committee on Justice and Constitutional Development 9 October 2012'. The minute of the presentation is annexed marked '50'.

232. In her 'Chief Executive Officer's Statement' included the annual report, Vedalankar alleged: 'Senior Litigators employed are working on complex matters in the higher courts.' Again, in her discussion of 'the completion of our three-year Strategic Plan period 2009–12', she claimed: 'To a large extent we were able to make the strategic shift that we mapped for the 2009–12 Strategic Plan (SP) period as indicated below ... We employed Senior Litigators who are working on complex matters and matters in higher courts.'

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233. Vedalankar's 'Chief Executive Officer's Statement' in which she made these claims to the Portfolio Committee is annexed marked '51'.

234. LASA's 'Report on Completion of Strategic Plan 2009–2012' alleged a third time: 'Senior Litigators employed are working on complex matters and matters in higher courts'. A material except is annexed marked '52'.

235. These statements about the employment of Senior Litigators were intended to imply to the Portfolio Committee and to induce its members to believe that LASA's Strategic Plan 2009–12 regarding the recruitment of Senior Litigators to handle complex constitutional and other specialist litigation and to mentor LASA's legal staff in conducting it had been successfully implemented and completed.

236. Indeed, Vedalankar's claim in her CEO 'Statement' at the head of the annual report that 'Senior Litigators employed are working on complex matters in the higher courts' was immediately preceded by her statement: 'Our specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts and children's matters is in place and practitioners are continuously trained in handling these specialist matters.' The 'Report on Completion of Strategic Plan 2009–12' falsely alleged likewise, under the heading making the false claim, '2009–12 period legal services delivery shift achieved'.

237. In truth and in fact, contrary to Vedalankar's dishonestly false CEO 'Statement' to the Portfolio Committee about this, falsely repeated in the 'Report on Completion of Strategic Plan 2009–12', such 'specialist capacity' wasn't 'in place', inasmuch as three out of LASA's nine budgeted and funded Senior Litigator posts were still unfilled, then six years after the creation of the nine posts by resolution of the Board in November 2006. As a result of recruitment corruption and a disintegrated attempt to cover it up, KwaZulu-Natal had – and still has – no such 'specialist capacity' at all, and the Eastern Cape's 'specialist capacity' was and remains seriously constrained – now ten years after the selection and recommendation of suitable candidates for appointment to the Pietermaritzburg, Durban and Mthatha Senior Litigator posts.

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238. For the same reason, Vedalankar lied in her CEO 'Statement' in implying that LASA's legal 'practitioners are continuously trained in handling these specialist matters' in KwaZulu-Natal, as in other provinces. In truth and in fact, as a result of recruitment corruption and its cover-up, KwaZulu-Natal has no Senior Litigators to 'train' them at all, i.e. to 'Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff', as envisaged in the advertised job description (annexure '8'); to 'provide support for practitioners in more complex matters', as the respondent's Annual Report 2009/10 puts it – a material excerpt of which is annexed marked'53'; and for 'protecting the rights of women and children ... In very complex matters, our Senior Litigators provide support and advice to practitioners that need it', per LASA's press release in March 2012, annexed marked '54'.

239. As mentioned above, Note 30 of the Approval Framework (annexure '30') records that the Board, as LASA's accounting authority under section 1 of the PFMA, duly 'delegate[d] to the Chief Executive Officer all the powers entrusted or delegated to the accounting authority in terms of the Act' on 24 November 2007 under section 56(1)(a).

240. Having regard to her claims to me in her correspondence in October 2010 and January 2011, confirmed on affidavit on 5 April 2011, Vedalankar well knew that in making substantially false and deliberately misleading claims about LASA's employment of Senior Litigators and its specialist legal professional capacity being 'in place', LASA's 'annual report' did not 'fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned', per the language of section 55(2)(a) of the PFMA.

241. In the premises – by dishonestly misrepresenting 'the state of affairs of [LASA], its business, its financial results, its performance against predetermined objectives [set out in its Strategic Plan 2009–12] and its financial position as at the end of the financial year concerned' in LASA's 'annual report and financial statements' for 2011/12, so as to mislead and defraud LASA's constitutional oversight authority, the Justice Portfolio of the National Assembly, and induce it

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to wrongly believe that (i) LASA's Strategic Plan 2009–12 regarding the employment of Senior Litigators had been implemented and that such specialist legal service delivery capacity was now 'in place', (ii) LASA had filled its vacant posts, especially its critical posts, and (iii) LASA was applying its Senior Litigator budget to the employment of Senior Litigators – Vedalankar criminally contravened section 55(2)(a) of the PFMA, for which under section 86(2) she's liable to be jailed for five years.

242. In the premises further, Vedalankar's untruthfully false reporting to the Portfolio Committee in the Report on Completion of Strategic Plan 2009–12 criminally contravened section 17(2)(d) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

COUNT 11: LYING TO THE PORTFOLIO COMMITTEE

243. Quoted in paragraph 157 above, section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 criminally sanctions wilfully furnishing the Portfolio Committee with information, or making a statement before it, which is false or misleading, with two years imprisonment.

244. On 9 October 2012, Vedalankar appeared before the Portfolio Committee to present LASA's annual report for 2011/12, mentioned in the preceding Count. The minute of the meeting is annexed marked '55'.

245. The minute records that 'Mr Jeffrey asked about the discrepancy between staff and number of posts in terms of their expenditure in their budget for each'.

246. For the following several reasons, Vedalankar well understood Jeffery to be alluding to LASA's illegal failure to have filled its remaining vacant, budgeted and funded Senior Litigator posts with the suitably qualified and experienced lawyers selected and recommended for them, and its illegal failure to have duly applied the millions of rands it was receiving annually from the Treasury to paying their salaries. That is, Vedalankar well appreciated that Jeffery was

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alluding to her and Nair's illegal abortion of the three Senior Litigator recruitments for Pietermaritzburg, Durban and Mthatha, and to their illegal freezing of the posts – a matter about which I'd complained directly to Jeffery on the telephone in 2011.

247. *First*: I'd brought this to the attention of the chairperson of the Portfolio Committee on 25 February 2011, by copying him my third petition to the Board, and he'd responded by requiring Mlambo JP and Vedalankar to account. The Portfolio Committee chairperson's letter to Mlambo JP about this is annexed marked '56'. Mlambo JP's covering letter under which he delivered his response is annexed marked '57'.

248. Vedalankar didn't herself respond as the Portfolio Committee chairperson had required of her, but in his evidence in the Labour Court in mid-2013, Nair testified that he gave her the response he'd ghost-written for Mlambo JP, to pass on to him to give the chairperson of the Portfolio Committee (annexure '6', pages 352–4). And the response that Nair drew and Vedalankar passed on to Mlambo JP to sign and submit repeated the budgetary insufficiency lie. A material excerpt of this response is annexed marked '58'. The many demonstrably false allegations made in it are the subject of a gross misconduct complaint against Mlambo JP pending before the JSC's JCC, accessible online at illegal-aid.co.za/JSC.

249. *Second*: Vedalankar also knew that Jeffery was aware of her and Nair's unlawful failure to finalize LASA's successful, substantially complete recruitments to its Pietermaritzburg, Durban and Mthatha Senior Litigator posts, because the year before on 31 March 2011 he'd specifically enquired about 'the vacancy rate ... at professional assistant [Senior Litigator] level' and on 11 October 2011 pointedly raised the fact, which I'd reported to him, that LASA wasn't 'spending the money allocated to impact litigation' – the job 'specifically of our Senior Litigators', as Hundermark confirmed at the meeting.

250. *Third*: Refusing to comply with a PAIA request I made in April 2019 testing the veracity Vedalankar's claims to the Portfolio Committee at this meeting on

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9 October 2012, Hundermark confirmed that in responding to Jeffery's query, Vedalankar's reference to 'those positions' was precisely to LASA's three remaining vacant Senior Litigator posts. My request and Hundermark's refusal of it, in order to obstruct my corruption investigation and to aid and abet Vedalankar's evasion of accountability for her criminal lies to the Portfolio Committee, are annexed marked '59' and '60' respectively.

251. The minute of the meeting records Vedalankar response to Jeffery's enquiry as follows:

> In terms of the discrepancy with the posts and employees, it was very clear in the report. They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.

252. LASA's annual report to the SAHRC for 2010/11 under section 32 of PAIA included a similar lie: 'the decision to freeze the [Pietermaritzburg Senior Litigator] post due to change in business needs budget.' The false report is annexed marked '61'.

253. In my labour case, LASA in-house attorney Mtati likewise swore regarding the Mahikeng Senior Litigator, recommended for transfer to the new Mthatha post, that 'after the interview of the Applicant in KZN [Brink] had taken place', it was 'later decided not to also proceed with this transfer as it had become important to divert the funds budgeted to a different project' (annexure '3', page 28). Requested under PAIA, no record of any such decision has been forthcoming. Which is to say the allegation was casually perjured in the usual LASA manner.

254. Had Vedalankar told the Portfolio Committee the truth and not a criminal lie in claiming that 'those positions could not be filled' (i.e. LASA's remaining three vacant budgeted and funded Senior Litigator posts) with the result that 'they adjusted the budget', in other words deviated from the Board's Strategic Plan and from executive management's Business Plan based on it, and reallocated the budget for the three posts to another cost centre, section 1.1 of the Approval Framework (annexure '30') would have required the Board's 'Final

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approval'; section 1.2 would have required that the Board 'be consulted (before)' executive management changed the Business Plan; and section 2.3 governing 'Reallocation of budget – Operational expenditure' and more specifically 'Reallocation of budget in excess of 8% between cost centres' would have required Board approval, seeing as one third, 33.3%, of the Senior Litigator salary budget was involved.

255. But in Nair's April 2011 affidavit (annexure '1', paragraph 36), confirmed by Vedalankar (annexure '2'), Nair stated (justifying it spuriously) that 'The Board was ... not informed of the decision.' That is, the Board wasn't even told about his and Vedalankar's deviation from the Strategic Plan by deciding off the record to indefinitely, and in the result permanently, freeze recruitment to three vacant Senior Litigator posts, comprising one third of LASA's Senior Litigator establishment, much less was it 'consulted (before)' changing the Business Plan to employ Senior Litigators in all nine posts for them, including the thrice-advertised Pietermaritzburg and Durban posts. (The first recruitment process had failed, and the critical posts were then twice again advertised. The first advertisement is annexure '8'; the second and third advertisements are annexed marked '62' and '63'.) Nor was the Board asked to approve the reallocation of a third of the budget for this key component of the Strategic Plan 2009–12, right after it had just approved (annexure '17-V10') executive management's 'Report to Board' in July 2010 (annexure 17-V10-Annexure 1') proposing that *recruitment to such critical posts be prioritised* (section 2.2(b)).

256. Only in November 2011, well over a year after Vedalankar's and Nair's final illegal off-the-record abortion of the three Senior Litigator recruitments and their freezing of the posts allegedly for financial reasons, was the Board told under mounting pressure about this decision. Except that in his 'Report to Board', stating this in a buried note, Nair fabricated new, totally different false reasons for not filling the posts. Leaked to me by a sympathetic insider at LASA, Nair's November 2011 'Report to Board' is annexed marked '64'. He admitted authoring it at the trial of my labour claim (annexure '6', page 359). I'll revert to this.

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257. Contradicting and refuting Vedalankar's criminal lie to the Portfolio Committee, LASA's own financial records show that in truth and in fact there's never been any 'change in business needs budget' concerning the Pietermaritzburg Senior Litigator post and those at Durban and Mthatha; and they show that LASA never 'adjusted the budget' because 'those positions could not be filled', or for any other reason.

258. On the contrary, since their creation by Board resolution in November 2006, LASA has applied and continues applying to the Department every year, and has received and continues receiving millions of rands from the Treasury every year in salary funding for all nine of its Senior Litigator posts, including its three now very long vacant Pietermaritzburg, Durban and Mthatha/Kimberley posts. A sample of these Senior Litigator salary budget applications for the financial years 2010/11 to 2014/15 are bundled and annexed marked '65'.

259. I'm unable to put up any payment vouchers because although I've duly requested them under PAIA, Hundermark is suppressing them illegally and unconstitutionally to hinder my exposure of the corruption I've uncovered at LASA, in which he's complicit, on the fullest available evidence.

260. But in stating 'They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget', Vedalankar conceded that the budgeted Senior Litigator salary funds were indeed received. LASA in-house attorney Mtati did likewise in deposing that 'after the interview of the Applicant in KZN [Brink] had taken place' in November 2009 (annexure '17-V7') and the interview of the Mahikeng Senior Litigator had taken place in May 2010 (annexure '15') to consider his transfer to the just created Senior Litigator post at Mthatha, it was 'later decided not to also proceed with this transfer as it had become important to divert the funds budgeted to a different project' (annexure '3', page 28).

261. Contradicting and refuting Vedalankar's criminal lie to the Portfolio Committee that 'They had allocated a certain amount of funds [*true*] but they knew that those positions could not be filled [*false*] so they adjusted the budget

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[*false*]', LASA confirmed truthfully in my labour case (as indeed LASA's financial records vouch) that 'there was no re-allocation of any budget between costs centres', i.e. the budget for the allegedly frozen Senior Litigator posts was not transferred to any other cost centre. Annexure '7' is a material excerpt of LASA's pleading in this regard (see paragraph 2.6).

262. Diametrically contradicting and abandoning the original budgetary insufficiency lie she'd repeatedly told me, including under oath in April 2011, Vedalankar implicitly truthfully confirmed in her response to Jeffery's query that LASA had indeed received the salary funding that the National Assembly had allocated for all its budgeted posts, both filled and vacant, including its three remaining vacant critical Senior Litigator posts at Pietermaritzburg, Durban and Mthatha/Kimberley – only, according to Vedalankar's criminally false information to the Portfolio Committee, some unspecified insurmountable difficulty, which 'they knew', prevented the due expenditure of this budgeted salary funding that LASA had received from the Treasury via the Department on hiring suitable candidates to fill the posts, so, for this unspecified reason which 'they knew' LASA had resolved to divert and apply this unspent salary budget for the top posts to another cost centre.

263. It's certain for two reasons that Vedalankar couldn't have meant and in fact didn't mean that after LASA received its salary budget for the employment of three Senior Litigators at Pietermaritzburg, Durban and Mthatha, some intractable problem prevented LASA filling these three posts, leading it to adjust its *next* budget for the *following financial year*, so as to make provision only for six incumbent Senior Litigator salaries, and no longer nine such salaries including for three vacant posts. It's certain, *first* because Vedalankar didn't claim to the Portfolio Committee that the three long-vacant Senior Litigator posts had been abolished, and they haven't been; and *second* because in the following years LASA continued budgeting for salary funding for all nine Senior Litigator posts in its staff establishment, as LASA's budget applications for the financial years 2010/11 to 2014/15 show (annexure '65'). (I would have requested and put up more such budgets, running on to the current financial year, but to

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aid and abet in the corruption cover-up, Hundermark is reflexively refusing to comply with my PAIA requests on the dishonestly false basis that they're all a deliberate obvious waste of LASA's time, and therefore hit by section 45, allowing the refusal of 'manifestly frivolous or vexatious requests'.)

264. Nor could Vedalankar have been referring to LASA's Legal Services Technical Committee's resolution in March 2011 to abolish the long vacant, unnecessary Kimberley Senior Litigator post (reportedly no demand for it), and to create a new such post at Mthatha (where it was sorely needed for several cogent reasons motivated by the Regional Operations Executive), and to transfer the salary budget from the old post to the new. Vedalankar couldn't have been referring to this because in the result, although the new Mthatha post was immediately recruited for and a suitable candidate selected for it, the budget wasn't actually transferred. LASA's occupancy and vacancy statistics show the budgeted and funded Kimberley post still vacant in December 2010 (annexure '19'). That is, LASA's budget for the Kimberley Senior Litigator post wasn't 'adjusted'.

265. Also, Vedalankar mentioned a number of 'positions': *plural* – just like Nair did in his 'Report to Board' of November 2011 (annexure '64'), dishonestly falsely claiming (among his other lies) that 'recruitment challenges' prevented the filling of LASA's three remaining vacant Senior Litigator posts at Pietermaritzburg, Durban and Mthatha, whereas in truth and fact three eminently qualified and experienced candidates had been selected and recommended for the three respective posts.

266. The records show that only 'recruitment challenges' preventing any Senior Litigator recruitment were in respect of the Kimberley post. No suitable applicant was attracted by first advertisement for it, along with the other eight posts, in October 2007 (annexure '8'), nor by the readvertisement of the post in May 2009. A copy of the latter is annexed marked '66'. The result is that in November 2009, the Regional Operations Executive, mentioning this problem (mentioning also an unsuccessful internal, third advertisement) and the fact that there'd never been a need for the post at Kimberley, motivated for the transfer of

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the post to another centre where it might be 'required'. His motivation is annexed marked '67'. In February 2010, Nair's Legal Services Technical Committee invited applications for the transfer of the post to any region needing it. The minute is annexed marked '68'. In March 2010, the Eastern Cape motivated for its transfer to Mthatha. The motivation is annexed marked '69'. And later that same month on the 24th the LTSC agreed; resolved to abolish the Kimberley post and create a new one at Mthatha; and ordered that the new post be advertised immediately (annexure 13'). As indeed it was the following month in April (annexure '14'). And successfully interviewed for in May (annexure '15').

267. But to the Portfolio Committee, as Nair did to the Board, Vedalankar lied that LASA had been challenged in recruiting for the vacant Senior Litigator posts in question: at Pietermaritzburg, Durban and Mthatha despite the selection and recommendation of suitable candidates to fill the posts at thiose centres.

268. Besides that (i) LASA had indeed, in truth, budgeted for salary funding for all its vacant and occupied posts, as it was bound to do under section 53(4) of the PFMA; and, (ii) as truthfully implied by Vedalankar, such salary funding had indeed been allocated by vote of the National Assembly and paid to LASA by the Treasury via the Third Party Funds division of the Department for the financial year in question, like all other years, every other statement Vedalankar made to the Portfolio Committee, quoted here, was a lie told to deceive it.

269. *First*, 'the discrepancy with the posts and employees' was not 'very clear in the report' at all; even less did it clearly state or indicate that 'They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.' In truth and in fact, there was nothing at all in the annual report about any problems filling any of LASA's posts and about adjusting the budget, much less was it 'very clear in the report'. Here was Vedalankar stupidly dishonestly improvising and telling a bare-faced lie to the Portfolio Committee to put it off pursuing Jeffery's enquiry, which she well understood concerned the illegal abortion of the substantially complete recruitment processes for the three remaining vacant Senior Litigator posts and

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LASA's illegal failure to fill the posts using the budgeted funding that LASA had received for them, year after year.

270. *Second*, in truth and in fact, nothing prevented the filling of any budgeted and funded vacant posts, especially the Senior Litigator posts at Pietermaritzburg, Durban and Mthatha, for which three suitable candidates had been selected and recommended. It certainly wasn't any lack of salary funding received from the Treasury via the Department, because LASA's financial records show that the posts have always been and remain budgeted and funded.

271. Although inessential to this criminal charge, the true unlawful reason why the substantially complete recruitment processes for the three posts was aborted off the record, and the three posts indefinitely 'frozen' off the record, was to maintain a recruitment cover-up by illegally keeping them unfilled year after year on the false basis originally alleged to me that LASA hadn't received the expected budget to fill the posts. This is the true reason the posts hadn't been filled and why Vedalankar lied to the Portfolio Committee to cover it up.

272. To gin up her basic lie that 'those positions could not be filled so they adjusted the budget', and to make it sound more convincing, Vedalankar told the Portfolio Committee an additional lie: 'they knew' this, when in truth and fact, 'they' (she, Nair and her national office colleagues) didn't; 'they knew' very well that nothing stopped the posts being filled with the eminently qualified and experienced candidates selected and recommended for them – nothing besides recruitment corruption and its criminal cover-up

273. Contrary to Vedalankar's criminal lie to the Portfolio Committee about this, in truth and in fact there were no vacant posts in its staff establishment that LASA found impossible to fill – and particularly not its remaining three unfilled Senior Litigator posts for which selection panels had interviewed and recommended suitable candidates for the Pietermaritzburg and Durban posts in November 2009 and for the Mthatha one in May 2010.

274. Although Vedalankar didn't specify the reason 'they knew that those positions could not be filled', it's likely she had in mind the new lying cover-story

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Nair had concocted to replace the old obviously unsustainable budgetary insufficiency one, which new lie, among others, he told in his 'Report to Board' in November 2011 (annexure '64'), namely that 'recruitment challenges' prevented the filling of the posts.

275. Consistently with this new lie – 'they knew that those positions could not be filled' – Nair falsely alleged in an affidavit he made in my PAIA litigation against him in the Eshowe Magistrate's Court (opposition to it finally abandoned at court at the point of argument) that the Senior Litigator post for which I'd applied had been 'aborted for operational reasons', not financial reasons as originally alleged to me. Material excerpts of his affidavit are annexed marked '70'. (The profusion of criminal lies Nair told in the cover-up will be treated in a separate criminal complaint against him and in a complaint to the Legal Practice Council for his strike-off as an advocate.)

276. In telling the Portfolio Committee these criminal lies of hers, Vedalankar's intention was to misinform and mislead it to pervert its enquiry into LASA's illegal failure to have spent its funding allocation by the National Assembly in accordance with its budget, by falsely claiming that a valid albeit unstated reason existed for not filling its remaining long vacant Senior Litigator posts.

277. By telling her criminal lies to the Portfolio Committee, Vedalankar successfully frustrated its exercise of its constitutional oversight function over LASA and prevented it remedying the serious illegality of which I'd complained to Jeffery the year before.

278. The minute reflects that, knowing the truth, Jeffery very correctly didn't accept and believe the lies Vedalankar told him (i) to pretend that LASA was duly spending its salary budget and (ii) to conceal her and Nair's criminally illegal, unauthorised, off-the-record final decision in July 2010 to abort the three substantially complete Senior Litigator recruitments for Pietermaritzburg, Durban and Mthatha and to freeze the posts. Aware that she was lying, and correctly insisting otherwise, 'Mr Jeffery said that the expenditure could not be 99% with the [post occupancy] figures that they had.'

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279. The minute further records that 'Ms Vedalankar said she would send the information to the Committee' – in addition to the 'very clear' information alleged to have been contained 'in the report' – to persuade Jeffery, and to overcome his well-justified disbelief of her lying claim that 'They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.'

280. Seeing as she repeatedly told lies on other scores in her address – including that the Portfolio Committee had been sent LASA's quarterly reports, which lie she retracted and then apologised for when Jeffery challenged it – and she'd previously lied to the Portfolio Committee as detailed above, it's highly likely that Vedalankar's undertaking to 'send the information to the Committee' was false, and was given with no intention of honouring it and only to escape the pinch of Jeffery's enquiry threatening to expose her criminal and otherwise illegal off-the-record abortion of the three Senior Litigator recruitments in question and her freezing of the posts (no record of the decision; *ultra vires* her powers; an unauthorised deviation from the Business Plan and Strategic Plan; and criminally illegal under the PFMA).

281. If Vedalankar did 'send the information' to the Portfolio Committee after the meeting, there will be a record of this. (I'm unable to access it myself or have it confirmed under section 23 that no such record exists, because, as mentioned above, to obstruct my corruption investigation and to protect Vedalankar from being held criminally accountable for her lies to the Portfolio Committee on the fullest available evidence, Hundermark has illegally and unconstitutionally denied my duly made request for access to relevant records in this regard.)

282. In the premises, to frustrate and defeat the Portfolio Committee's constitutional oversight function and to maintain the cover-up of the criminally illegal abortion of the Pietermaritzburg, Durban and Mthatha recruitments and freezing of the posts, Vedalankar wilfully furnished the Portfolio Committee with false and misleading information, and thereby criminally contravened section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

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COUNT 12: LYING TO THE PORTFOLIO COMMITTEE

283. At the 9 October 2012 meeting, besides telling the Portfolio Committee her new different lies about why the remaining vacant three Senior Litigator posts hadn't been filled so as to cover the top-level recruitment corruption in which she was involved – the old lie being that LASA *hadn't received* sufficient budget, the new lie being that because LASA had trouble filling them it 'adjusted' the budget it *had received* for them – Vedalankar also told the Portfolio Committee several criminal lies to cover her and Nair's repeated illegal and unconstitutional refusals to comply with my PAIA requests to obstruct my investigation of this corruption.

284. Among my persistent complaints to the SAHRC's PAIA Unit about Vedalankar's and Nair's illegal and unconstitutional refusals of my first three PAIA requests made in 2010 and 2011, I'd protested also that LASA's had made false annual reports for 2010/11 and 2011/12 under section 32 of PAIA to conceal this.

285. Had LASA duly reported its handling of my PAIA requests in 2010 and 2011 to the SAHRC under section 32, the Portfolio Committee would have been alerted via the SAHRC's section 84 reports for 2010/11 and 2011/12 to Vedalankar's and Nair's illegal refusals of my PAIA requests and to their repeated violation of my fundamental right to information in determinedly suppressing LASA's business records that I wished to examine in my investigation of the circumstances in which my recruitment had been aborted and the true reason for it.

286. LASA's repeated false annual reporting under section 32 was therefore a further extremely serious additional layer of the cover-up, contrived to obstruct and defeat the Portfolio Committee's constitutional oversight function over LASA.

287. Finding that indeed neither section 32 report complied with the detailed reporting requirement of the section and did not reflect LASA's unlawful refusals

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of my requests, the SAHRC reported this to the National Assembly in its section 84 report for 2011/12:

> A case in point [of false section 32 reporting by public bodies is] where a complainant [Brink] brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA's 2010/11 section 32 report despite the fact that the requests were made in that financial year. ... The Commission engaged with LASA and remains concerned about the accuracy of section 32 reporting by LASA.

A material excerpt of the report is annexed marked '71'.

288. At LASA's said October 2012 meeting with the Portfolio Committee, its annual report was presented by Board member Jan Maree. In full knowledge of the true facts, having received and acknowledged my first petition to the Board of 30 November 2010 protesting and substantiating exactly the opposite, the minute (annexure '55') records Maree's outright lie told to the Portfolio Committee that LASA had achieved '100% ... compliance with the Promotion of Access to Information Act'. A material excerpt of my petition (paragraphs 17–43) regarding Vedalankar's illegal and unconstitutional total refusal of my first PAIA request in August 2010, in which petition I laid bare her spurious, indeed fraudulent grounds for refusing it, is annexed marked '72'. Maree's acknowledgment of receipt of this petition is annexed marked '73'.

289. Quite correctly the Portfolio Committee didn't believe attorney Maree's criminal lie to it about LASA's '100% ... compliance with' PAIA. On the contrary, its members repeatedly voiced their concern over LASA's *non-compliance* with the Act.

290. Immediately after Vedalankar's address, Jeffery cut straight to the SAHRC's PAIA report:

> Mr Jeffery (ANC) said ... it was the Committee's job to make sure they did oversight. He was curious about a Promotion of Access to

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> Information Act (PAIA) report that was released that stated the South African Human Right Commission was unhappy with LASA and their cooperation in terms of PAIA.

291. Since the SAHRC's section 84 report mentioned only LASA's defective annual section 32 reporting, not its substantive non-compliance with my first three PAIA requests (the 'unlawfulness' of which the SAHRC had noted in June 2011), Jeffery clearly had in mind my telephonic complaint to him about Vedalankar's and Nair's repeated refusal to comply with my PAIA requests. And as her reply revealed, Vedalankar understood perfectly that Jeffery was indeed referring to her and Nair's persistent illegal obstruction of my constitutionally guaranteed right of access to LASA's public records, in service of a top-level criminal corruption cover-up.

292. The Portfolio Committee chairperson also raised the SAHRC's adverse PAIA report regarding LASA – the only matter of concern to him that he raised during the presentation: 'The Chairperson told the [LASA] delegation that they would arrange for Legal Aid to view the PAIA report.'

293. When Vedalankar tried silently evading the SAHRC's negative report, pertinently raised by Jeffery as well as by the chairperson, the latter called her to account: 'The Chairperson said that he wanted to know about the PAIA report.'

294. With the corrupt intention of discrediting the SAHRC's adverse PAIA report on LASA, with the ultimate purpose of concealing her and Nair's repeated and persistent illegal refusals of my PAIA requests to obstruct my investigation and refutation of the fake budgetary insufficiency excuse she'd repeatedly fed me, including under oath, about why my appointment had been aborted, Vedalankar responded with a string of lies:

> Ms Vedalankar said she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgment about this.

295. In truth and in fact, contrary to Vedalankar's criminal lies to the Portfolio Committee, the SAHRC's report was perfectly true. LASA had indeed repeatedly failed to comply with its reporting obligations prescribed by section 32; and its false and defective, non-compliant reporting of its unlawful refusals of my PAIA requests about which I'd complained is apparent on the face of LASA's section 32 reports for 2010/11 and 2011/12, having regard to the specific, detailed information the section required. The 2010/11 report is annexure '61', and the 2011/12 report (containing no mention of Nair's unlawful response in April 2011 to my third PAIA request the month before, in which he illegally and unconstitutionally refused me access to several duly requested records, on spurious grounds later abandoned) is annexed marked '74'. (The multiple specific respects in which the 2010/11 report failed to comply with section 32 are enumerated in my Special Report to the SAHRC, accessible online at illegal-aid.co.za/PAIA.)

296. At the Portfolio Committee's next meeting with the SAHRC shortly afterwards on 3 December 2012, Jeffery raised Vedalankar's repudiation of the SAHRC's allegedly 'untrue' section 84 report concerning LASA's non-compliance with section 32:

> Mr Jeffery asked for more detail on the compliance monitoring audits. The Commission complained about Legal Aid South Africa (LASA) on page 29 of the report, yet when this point was raised with LASA, it had responded that it was not happy with the SAHRC report, and disputed the findings.

297. SAHRC deputy information officer and PAIA Unit head Dr Fola Adeleke forthrightly rejected Vedalankar's false repudiation of the report and confirmed that it was correct:

> Mr Adeleke answered the question of LASA disputing the SAHRC's report. He said that LASA could not dispute the finding, because the Commission had shown the PAIA report that they had omitted. The PAIA request was sent to LASA, and it was requested to report

on it. However, LASA maintained that this request should have been done during the last reporting period, whereas SAHRC held the view that this fell within the current reporting period.

298. In response to Adeleke's information to the Portfolio Committee that the SAHRC had pertinently called on LASA to report its handling (in April 2011) of my PAIA request (in March), which it had shown it, but that LASA had refused to do so (which is exactly what happened), 'Mr Jeffery said that the detail was useful and the Committee should get more information and put it to LASA.' It's clear from this that Jeffery remained dissatisfied that Vedalankar's repudiation of the SAHRC's section 84 report was truthful.

299. A material excerpt from minute of the meeting is annexed marked '75'.

300. Apart from being false and misleading on multiple scores, Vedalankar's statement to the Portfolio Committee, 'Legally one could not use PAIA when one was in court', made to discredit the SAHRC's report of LASA's false annual reporting under section 32, was irrelevant and no answer to the SAHRC's reported findings that LASA had repeatedly failed to comply with its reporting obligations under section 32.

301. It's clear that in answering in this particular way Vedalankar had in mind my PAIA requests, which she and Nair had persistently illegally and unconstitutionally refused, and about which she knew I'd repeatedly complained to the SAHRC. That is, Vedalankar was well aware that the SAHRC was alluding in its section 84 report to my repeated complaints to it about her and Nair's persistent illegal and unconstitutional refusals of my PAIA requests, i.e. their *primary substantive non-compliances* with them, and not just to LASA's (her, as information officer) repeated *non-compliances with its (her) secondary reporting obligations* under section 32 in making its (her) annual reports as information officer. The SAHRC's section 84 report to the National Assembly inexplicably didn't deal with her and Nair's substantive non-compliance with PAIA, only with LASA's false and misleading reporting afterwards to conceal this.

302. Vedalankar's answer, 'Legally one could not use PAIA when one was in court', was dishonestly false and calculated to mislead the Portfolio Committee on two scores.

303. *First*, when I made my first three PAIA requests in August and December 2010 and March 2011, I wasn't yet 'in court', and only went to court later that year in July 2011, as I mentioned in my letter to the Board that month (annexure '49'), claiming my instatement to the top legal professional post for which I'd been unanimously selected and recommended.

304. *Second*, even had I been 'in court' when I made my PAIA requests, which I wasn't, any documents thus irregularly obtained would have been potentially admissible with the special leave of the judge under section 7(2) of PAIA. That is, a requester being 'in court' is no justification under PAIA for refusing access to a requested record.

305. Not having yet been 'in court' when I made my record requests in question, neither of Vedalankar's October 2010 or January 2011 letters raised this spurious justification for refusing them. Nor did Nair raise this in his April 2011 affidavit or covering correspondence.

306. When I did institute action in the Labour Court later on in July 2011, and the pleadings closed with the filing of LASA's response to my statement of claim, I duly followed the court's discovery rules to access documents I needed for trial – against great resistance and with considerable difficulty; but LASA's telling secrecy and reluctance to share its public records, and the round after round of legal processes to which I had to resort to overcome this, isn't relevant to this criminal complaint.

307. Vedalankar's dishonest motivation for lying that I was 'in court' when I made my PAIA requests, when I wasn't, was to falsely justify to the Portfolio Committee her and Nair's illegal and unconstitutional refusals of my PAIA requests, so as to obstruct my investigation of the corrupt, criminally illegal circumstances in which my recruitment had been cancelled.

308. Vedalankar's claim that 'there was going to be an official judgment about this' ('this' being her claim that 'one could not use PAIA when one was in court') was pure invention to mislead the Portfolio Committee and pervert its enquiry. The law on the use of documents obtained via PAIA in legal proceedings after they have commenced is clearly set out by section 7 of PAIA. No such issue in my labour action was before court for decision, as Vedalankar falsely implied to the Committee. It was a crowning lie contrived to put the Committee off taxing her any further about her and Nair's repeated non-compliance with the Act to hide duly requested documents in furtherance of their cover-up of the recruitment corruption I was investigating. And the minute of LASA's presentation shows that Vedalankar's final lie achieved this.

309. Vedalankar's criminal lies to the Portfolio Committee to cover LASA's non-compliance with PAIA successfully derailed its enquiry into her and Nair's repeated and persistent, illegal and unconstitutional violation of my fundamental right of access to LASA's public records, and enabled her and Nair to escape being held to account for it.

310. In other words, at her appearance before the Portfolio Committee, Vedalankar lied her way out of the trouble, namely LASA's repeated false reporting to the SAHRC to cover her and Nair's illegal and unconstitutional refusals to allow me access to duly requested records to obstruct my investigation of the most serious, criminal corruption at the top of LASA's governing and executive management ranks, in which she as CEO, her next-in-command Nair, and Board chairperson Mlambo JP were all directly implicated.

311. And by deliberately misinforming and misleading the Portfolio Committee with her lies and thereby perverting its enquiry, Vedalankar prevented it carrying out its constitutional oversight function over LASA imposed on it by section 55(2)(b)(ii) of the Constitution, thus criminally obstructing and defeating the crucial oversight machinery set in place by the Constitution to check corruption and malfeasance in the public service generally and at LASA particularly.

AB S.P. 3

312. In the premises, Vedalankar criminally contravened section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, for which she's liable to be jailed for two years.

Signed at Eshowe on 12 June 2020

ANTHONY BRINK

Signed before me at Eshowe on 12 June 2020 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and who affirms its contents to be true to the best of his knowledge and belief.

SGT SP ZIBANE
7023796 4
COMMISSIONER OF OATHS

Name: SIHENDILE PRUDENCE ZIBANE

Address: 79 MAIN STREET ESHOWE 3815

Capacity: SERGEANT

SOUTH AFRICAN POLICE SERVICE
CRIME INVESTIGATION SERVICE
2020 -06- 12
ESHOWE
KWAZULU-NATAL

Criminal complaint no. 1: Vedalankar

In two volumes:

Vol. 1: Affirmed criminal complaint

Vol. 2: Supporting documents

TWELVE CRIMINAL CHARGES AGAINST VIDHU VEDALANKAR, FORMER CEO OF LEGAL AID SA

VOLUME 2

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TWELVE CRIMINAL CHARGES AGAINST VIDHU VEDALANKAR, FORMER CEO OF LEGAL AID SA

VOLUME 2

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

In the matter between:

ANTHONY BRINK **Applicant**

and

THE LEGAL AID SOUTH AFRICA **Respondent**

AFFIDAVIT IN TERMS OF SECTION 23 OF THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

I, the undersigned,

BRIAN NAIR

do hereby make oath and state that:

1. I am an adult male person employed by Legal Aid South Africa, a statutory body established under Legal Aid Act 22 of 1969, having its principal place of business at 29 De Beer Street, Legal Aid House, Braamfontein, Johannesburg.

2. The information contained herein is, save where otherwise stated by me or where the content clearly indicates the contrary, within my personal knowledge, and to the best of my belief, both true and correct.

3. I am the National Operations Executive of Legal Aid South Africa, responsible for all functions and personnel delivering legal representation to indigent persons.

4. I am equally the person responsible to make all appointments to certain positions in terms of our Approval Framework. The positions referred to herein also include that of Senior Litigator.

5. I confirm that I am the Deputy Information Officer duly delegated by the Information Officer in terms of section 17 of Promotion of Access to Information Act 2 of 2000. I therefore and in compliance with section 17(3) annex my written authority (as annexure BN1) in terms of which I depose to this affidavit.

6. I am accordingly in the best position to respond to a number of requests raised by Mr Anthony Brink.

7. Hereunder, I respond to all the concerns or accusations that Legal Aid South Africa may not have fully responded to Mr Brink's previous requests. I follow his sequencing of the 20 (twenty) points he refers to in his Memorandum to the Human Rights Commission dated 3 March 2011.

FIRST REQUEST, AUGUST 2010

PART 1

Reply to paragraph 1-2

8. The National Operations Executive, in consultation with both the Chief Executive Officer and the Human Resource Executive, agreed that the process of recruitment for Senior Litigators will include a second round of interviews. This

decision was taken verbally in April 2008. Since then the second interview panel has sat on three separate occasions to consider prospective candidates.

9. It was agreed that the second interview panel will consist of identified National Office executives. This decision was guided and informed by the seniority of the senior litigator position.

10. The Chairperson of the Board was also invited to participate in this panel.

11. The second interview panel would consider all candidates recommended from the first round of interviews to the second round of the interviews. The second interview panel would however not be bound to support the recommendation of the first interview panel. It is confirmed that the second panel had previously refused to support a candidate that was recommended by the first panel for this same position that is under dispute.

12. If after the second round of interviews a recommendation is made, the Regional Operations Executive in charge would finalise the appointment only after the National Operations Executive and the Chief Executive Officer agree with the recommendation.

PART 2

Reply to paragraph 9

13. The second round of interviews was not proceeded with and as such, no candidate or persons were considered for the second round. The decision that led us not to proceed with the second round was fully explained to Mr. Brink in the letters by the Chief Executive Officer dated 18 October 2010 and 28 January 2011. I specifically refer to attachments "V1", "V3" to "V6", "V8" and "V10" in the letter dated 28 January 2011 from the Chief Executive Officer to Mr. Brink, clearly

indicating that the reason to freeze the positions of Senior Litigator was due to fiscal pressures.

14. For the sake of completeness, I further mention that no written record exists of the decision taken in July 2010 by the NOE in consultation with the CEO and HRE to freeze the senior litigator post.

PART 3

Reply to paragraph 10

15. There were no time frames set to finalise the recruitment process for the senior litigator positions. It was always anticipated that the process will be completed within a reasonable time. However, as communicated in our earlier submissions/ letters to Mr. Brink dated 18 October 2010 and 28 January 2011, the uncertain funding difficulty resulted in a decision being taken by Legal Aid South Africa executives to delay and eventually freeze the recruitment of certain positions including the vacant senior litigator positions. For the sake of completeness, I further mention that no written record of this decision taken exists except annexures "V1" to "V12" which have already been furnished to Mr. Brink.

PART 4

Reply to paragraphs 11-12

16. The decision was taken by me in consultation with the Chief Executive Officer and the Human Resources Executive. The background leading to the decision was explained to Mr. Brink on letters and annexures referred to on paragraph 15 above. For the sake of completeness, I further mention that no other written record of this decision exists.

PART 5
Reply to paragraph 16

17. No records of discussions exist where Mr. Brink was mentioned after August 2009 by the Management Executive Committee.

PART 6
B: OTHER RECORDS

Further reply to paragraph 1:

18. I am advised that there are no other records that exist save for what was previously provided to Mr. Brink.

Further reply to paragraph 28

19. I annex hereto a copy of my email instruction to the ROE which is marked "BN2".

Further reply to paragraph 32

20. As far as I could ascertain, this information was communicated verbally by the ROE to the JCEs at both Durban and Pietermaritzburg JCs. I am also informed that copies of the regret letters were forwarded to both the JCEs.

PART 7

RECORDS

Further reply to paragraph 3 and

21. I am not aware of any such written communications.

PART 8

Further reply to paragraph 13

22. I confirm that no such written records exist.

Further reply to paragraph 14

23. I confirm that no such written records exist as the decision was taken by me in consultation with Chief Executive Officer and the HRE.

Further reply to paragraph 15

24. I confirm that the documentation relating to the reasons were sent to Mr. Brink in the letter by the CEO dated 28 January 2011.

PART 9

Further reply to paragraph 16

25. To the best of my knowledge, I can confirm that no such correspondence exists.

Further reply to paragraph 26

26. I confirm that regret letters were sent to two other applicants for the senior litigator positions. However, such information cannot be disclosed to third parties without their consent.

PART 10

Further reply to paragraph 17-18

27. I can confirm that the request by the CEO for me to provide Mr. Brink with a response was done per e-mail. Copy thereof is attached marked "BN3".

PART 11

Further reply to paragraph 25

28. I refer you to the reply to part 6 with specific reference to paragraph 19 above.

PART 12

Further reply to paragraph 33

29. I confirm that no written records of this decision exist. For the sake of completeness I refer you to paragraph 16 above.

PART 13

Further reply to paragraph 35

30. I confirm that a search was conducted on our internal email system and there are no records found where Mr. Brink's name was discussed or appears prior to his request for information except for an email from one Jeremy Brink containing your CV sent by the Pietermaritzburg JCE and which was further forwarded to Vela Mdaka.

PART 14

Further reply to paragraphs 1-3

31. I submit with respect that the documentation supplied to Mr Brink by the CEO in her letter of 28 January 2011 contains all the relevant information requested.

PART 15

Further reply to paragraph 4

32. There are no written records of the relevant discussions between myself and the CEO.

PART 16

Further reply to paragraph 5

33. I confirm that the consultation with the HRE on this matter was done verbally.

PART 17

Further reply to paragraph 6-8

34. The documentation forwarded to Mr Brink by the CEO in her letter of response dated 28 January adequately covers, I submit, all the information requested in these paragraphs.

PART 18
Further reply to paragraph 9

35. I confirm that no written record of this decision exists. For the sake of completeness I refer to paragraph 16 hereinabove.

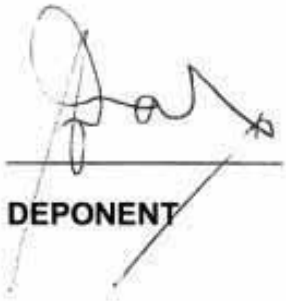
PART 19
Further reply to paragraph 10

36. The decision taken by me, in consultation with the Chief Executive Officer and Human Resources Executive, is in accordance with the Approval Framework and within the powers delegated to the executive. There is no need, in terms of the above Framework, for the executive to refer to the Board in this regard. The Board was therefore not informed of the decision.

PART 20
Further reply to paragraph 11

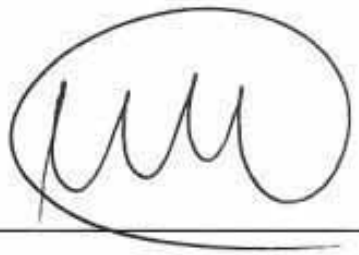
37. I confirm that all regret notifications were communicated by the relevant Regional Human Resources Managers. However, such information can only be disclosed upon consent by the relevant third parties being granted.

Signed at Braamfontein on this ...8th... day of April 2011



DEPONENT

Signed and sworn before me at Braamfontein this ...8th..... day of April 2011 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).



COMMISSIONER OF OATHS:

FULL NAMES:

CAPACITY:

ADDRESS:

MOLATELO MAKHURA
COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA
7th FLOOR BRAAMFONTEIN CENTRE
23 JORISSEN STREET
TELEPHONE (011) 403-2765

Legal Aid South Africa

best EMPLOYERS 2009/10

1ST March 2011

Mr Brian Nair
National Operations Executive
Legal Aid South Africa

Dear Brian

APPOINTMENT AND DELEGATION AS DEPUTY INFORMATION OFFICER FOR LEGAL AID SOUTH AFRICA

I hereby, and in my capacity as the Chief Information Officer and in compliance with section 17(6), appoint you to act as the Deputy Information Officer for Legal Aid South Africa with effect from 1st March 2011. Your appointment shall be valid until withdrawn by the Chief Information Officer or Chief Executive Officer.

Regards

Vidhu Vedalankar
Chief Executive Officer and Chief Information Officer

From: Brian Nair
Sent: 16 August 2010 08:57 AM
To: Vela Mdaka
Cc: Bertus Appel
Subject: FW: Senior Litigator Position: Pietermaritzburg

Hi Vela

As discussed, please find our response letter to Mr Brink. Also ensure that you inform your HR section to regret all persons who attended senior litigator interviews for both PMB and Durban as we will not be proceeding this these recruitment.

Thanks

Regards

Brian Nair
National Operations Executive

Legal Aid South Africa

Tel: 011 877 2006
Fax: 011 877 2222
www.legal-aid.co.za

From: Nadeen Long
Sent: 04 August 2010 01:55 PM
To: arbrink@iafrica.com
Cc: Brian Nair
Subject: Senior Litigator Position: Pietermaritzburg

Dear Mr Brink

Attached hereto please find a response to your letter dated 11 July 2010.

Thank you.

Regards

Nadeen Long
Executive PA to Brian Nair
National Operations Executive
Legal Aid **South Africa**
Tel: 011 877 2006
Fax: 011 877 2225
E-mail: NadeenS@legal-aid.co.za

DN3

-----Original Message-----
From: Vidhu Vedalankar
Sent: 29 July 2010 02:33 PM
To: Brian Nair; Amanda Clark
Subject: FW: Complaint against the HRE & an interview process

Hi Brian

Please see attached letter
I am not sure what is happening with these senior litigator appointment but we need to finalise the process and advise the persons interviewed of the outcome.

Please will you look into this and discuss with Mandi and then discuss with me.

Regards

Vidhu Vedalankar
CEO

Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

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

In the matter between:

ANTHONY BRINK **Applicant**

And

THE LEGAL AID SOUTH AFRICA **Respondent**

CONFIRMATORY AFFIDAVIT

I, the undersigned;

VIDHULEKHA NARDEV VEDALANKAR

Do hereby make an oath and state;

1. I am a major female and employed as a Chief Executive Officer for Legal Aid South Africa. I am the Chief Information Officer and duly authorised to depose to this confirmatory affidavit.
2. The facts which are herein so confirmed are to my knowledge true and correct, save where the converse so appears and is so expressly stated.

3. I have read the affidavit of Mr. Brian Nair and agree with and confirm the contents insofar as they apply to me.

Signed at Braamfontein on this 5th April day of 2011.

DEPONENT

With the relevant provisions of Annexure A of the rules governing the administration of an oath or affirmation No. R. 1258 of 21 July 1972 as amended by G.N.R. 1648 of 19 August 1977 (as amended) having been complied with:

The deponent has acknowledged that he understands the contents of this declaration, has no objection to taking the prescribed oath and considers the prescribed oath to be binding on his conscience and that he has uttered the words "*So help me God*".

COMMISSIONER OF OATHS

ADDRESS:

MOLATELO MAKHURA
COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA
7th FLOOR BRAAMFONTEIN CENTRE
23 JORISSEN STREET
TELEPHONE (011) 403-2765

R55
3

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY, ROBIN BRINK — Applicant

and

DUNSTAN MLAMBO JP — Respondent

In re:

ANTHONY BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

THEMBILE VUYO MTATI,

do hereby make oath and swear that,

13.4. his recruitment, together with that of the other candidates recommended for the second round of interviews, was aborted immediately after the first round of interviews.

14. I shall deal with the reasons why the recruitment of senior litigators was not proceeded with later in this affidavit.

15. For completeness, I annex hereto the regional panel's recommendation in respect of the Applicant and mark same as **DM2**. What was recommended in this annexure is quite clear, and it is certainly not that the Applicant be appointed to the position applied for. The Applicant has made it his mission to misinform the Court and misrepresent the truth in his campaign against the Respondent by alleging that he was recommended for appointment to the said post and the Respondent was instrumental in thwarting his chances of being appointed to the said post.

16. The second round of interviews with the national office was never continued with simply because at the same time as the recruitment processes took place, Legal Aid SA was busy preparing for its budget for 2010 – 2011.

17. It transpired to Legal Aid SA around November – December 2009, that the Department of Justice and Constitutional Development ("the Department") had delayed to honour its commitment to advance money for Legal Aid SA's affairs, including the money Legal Aid SA was relying upon to appoint professional staff, including, but not limited to, senior litigators. This money was required by Legal Aid SA to recruit and retain suitably qualified professionals at a market related rate and was known as Occupation Specific Dispensation funds ("the OSD").

81..9.1 The Northern Cape Province is a very big province comprising of former Cape of Good Hope Province.. It had, all along its own budgeted funds for Senior Litigator to cater for the vast area.

81.9.21 Invitations for application for this post were constantly not being responded to until the LSTC decided to recommend to Legal Aid SA executive that the position be transferred internally from Kimberly Justice Centre to Mthatha Justice Centre in the Eastern Cape Province. See herein the resolution of the said meeting annexed hereto as **DM13**

81.9.3 Invitations were again called and indeed Mr Skibi applied and was shortlisted for second round of interviews in Johannesburg.

81.9.4 This was after the interview of the Applicant in KZN had taken place.

81.9.5 Legal Aid SA later decided not to also proceed with this transfer as it had become important to divert the funds budgeted to a different project.

105 **AD PARAGRAPH 58.**

105.1 I deny the correctness of the contents of this paragraph.

105.2 I submit that the executives, who have the necessary and personal knowledge of this matter will be able to answer all the questions raised by the Applicant. After all, this is their terrain and the Board or the Respondent had nothing to do with the recruitment process in issue herein save to approve cost cutting measured adopted as indicated hereinabove.

106 **AD PARAGRAPH 59.**

106.1 I deny the correctness of the contents of this paragraph.

106.2 I submit that the Applicant has failed to make out a case for the relief sought and that his application should fail and he be ordered to pay the costs of this application such costs be at a punitive scale.

CONCLUSION

107 I wish to annex hereto confirmatory affidavits of the CEO Ms Vidhu Vedalankar, and Mr Brian Nair and mark them as annexures **DM14** and **DM15.**

108 I respectfully that the Applicant's application herein and the main action is informed by no desire to vindicate any of his rights but the

need to exact vengeance, to embarrass and to insult people who took a decision that he does not like.

WHEREFORE, it may please this Court to dismiss this application accordingly.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at Johannesburg on this 16 January 2013. The regulations contained in the Government Notice No. 1258 dated 21st July 1972 (as amended) and Government Notice No. 1648 dated 19th August 1977 (as amended) having been complied with.

COMMISSIONER OF OATHS

Mabhoko Mathole Attorneys
Commissioner of Oaths
Ex Officio
Mansion House, 132 Market Street
Cell: 082 680 5982 Fax: 086 690 3648
Email: mabhoko@webmail.co.za

DM15

R55
4

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY, ROBIN BRINK Applicant

and

DUNSTAN MLAMBO JP Respondent

ARBEIDSHOF
PRIVAATSAK/PRIVATE BAG X54370
DURBAN 4000
2013 -01- 18
1ST FLOOR LIBERTY HOUSE
269 ANTON LEMBEDE STREET, DURBAN 4000
LABOUR COURT

In re:

ANTHONY BRINK Applicant

and

LEGAL AID SOUTH AFRICA Respondent

CONFIRMATORY AFFIDAVIT TO RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

BRIAN NAIR,

do hereby make oath and swear that,

1. I am the National Operations Executive of the Legal Aid South Africa (hereinafter "Legal Aid SA") with offices at 29 De Beer Street, Braamfontein, Johannesburg.

2. I have read the answering affidavit of **THEMBILE VUYO MTATI** and confirm everything that has been said so far as it relates to me.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at Johannesburg on this ..... January 2013. The regulations contained in the Government Notice No. 1258 dated 21st July 1972 (as amended) and Government Notice No. 1648 dated 19th August 1977 (as amended) having been complied with.

COMMISSIONER OF OATHS

Mabhoko Mathole Attorneys
Commissioner of Oaths
Ex Officio
Mansion House, 132 Market Street
Cell: 082 680 5982 Fax: 086 690 3648
Email: mabhoko@webmail.co.za

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Case No: D529/11

In the matter between

ANTHONY ROBIN BRINK Applicant

and

LEGAL AID SOUTH AFRICA Respondent

DISCOVERY OF DOCUMENTS IN TERMS OF RULE 35(3) OF THE RULES OF COURT IN RE THE PRE-TRIAL MINUTES OF 25 JANUARY 2013

I, the undersigned,

THEMBILE VUYO MTATI

do hereby state under oath that:

1. I am an adult practicing attorney employed as a Corporate Service Executive by the Respondent and I am duly authorised to depose to this affidavit.

2. The facts stated herein are within my personal knowledge, unless stated otherwise, and are to the best of my belief both true and correct.

3. In compliance with paragraph 4 of the parties' Pre-trial minutes held at Durban on 25 January 2013 and following the Applicant's Proposed Pre-Trial Agenda dated 25 January 2013, I wish to submit as follows:

STH

3.1 That I have in my possession or under my control the documents requested by the applicant, which I herewith discover and furnish to the Applicant as required by him in his proposed pre-trial agenda, set out in **Part 1** of the attached schedule.

3.2 That I do not have and never had in my possession documents set out in **Part 2** of the attached schedule.

3.3 That in **Part 3,** I object to provide/discover all the identified records in terms of Uniform Rule of High Court 35(2) (b) on the basis that same are irrelevant to the Applicant's case.

3.4 That in **Part 4,** I further object to commenting or answering all paragraphs identified therein containing questions, interrogatories, remarks, observations, queries, or requests for further particularity, and/or requests for information.

DEPONENT

THUS SWORN AND SIGNED BEFORE ME AT BRAAMFONTEIN ON THIS THE 11TH DAY OF MARCH 2013. THE DEPONDENT HAVING ACKNOWLEDGED TO ME THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS DECLARATION, AND THAT HE HAS NO OBJECTION IN TAKING THE PRESCRIBED OATH AND WHICH HE CONSIDERS TO BE BINDING ON HIS CONSCIENCE.

COMMISSIONER OF OATH

FULL NAMES : SIMON THUNGWANI
DESIGNATION : LT COLONEL
ADDRESS : 16 EMPIRE ROAD, PARKTOWN

SUID-AFRIKAANSE POLISIEDIENS
PROVINSIALE KOMMISSARIS
PROVINCIAL COMMISSIONER
GAUTENG
11 MAR 2013
GAUTENG
LEGAL SERVICES
PROVINCIAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE

PART 1

Document Number	Paragraph	
1	22	A clear original PDF Approval Framework is attached, **DOC1**
3	23	(i)The first page from which LA4 is excerpted is attached, including the full record showing the dates. All reports of Board are reports of the Chief Executive Officer irrespective of the originator. **DOC 3**
9	26	The covering email of Mdaka to Brian is attached, **DOC 9**
35	29(a)	The motivation is attached, **DOC 35(a)**
38	31	No written minute by selection panel but the document attached shows the note made by Brijlal noting the reply to the applicant's answer to the Justice Centre of his choice, **DOC 38**
Other new documents required		
43		Notification of the Board that Brink's claim for instatement to the post is defended, See an extract minutes of 26 November 2011 item **9.5.1** attached as **DOC 43**
46		Extract minutes of the Board on 26 November 2011 under **9.4.6** is attached **DOC 46**

PART 2

Document Number	Paragraph	
3(vi)	23	No such written record exists.
5	24	No posts were cut and therefore no such records exist.
6	25	No such records exist and even if such records existed, they would be in possession of third party, namely Department of Justice.
11	27	The instructions were done telephonically, and therefore no written record exists
12	28	No such record exists
35(b)	29	No such record exists. The documents were in the Respondent's possession and have been lost in transit between Mthatha and Johannesburg.
35(c)	29	No such record exists. The documents were in the Respondent's possession and have been lost in transit between Mthatha and Johannesburg.

Can we just clarify that last sentence:

"This panel does not have to recommend..."

What, what does that mean? --- [No audible reply].

In your view, I do not want to... (Inaudible). My Lord, the second round of interviews was not a rubber stamp (indistinct) was recommended as a suitable candidate from the first round of interviews.

In fact, a specific requirement of the second panel was that all candidates who were interviewed or shortlisted for the first round, their CVs had to be sent... (intervenes)

COURT: Sorry, it was that all candidates were... (intervenes) --- All candidates who were shortlisted for the first round of interviews... (intervenes)

Ja. --- Their CVs also had to be sent to the, so that the second round panellists could consider if there was anyone else they would be interested to interview. And that is the reason why in the earlier letter we saw today the HR Managers and Vela and the Regional had sent what was stated as four CVs. The practice of the second, Ja, the... (intervenes)

So four had been interviewed, they were the only candidates interviewed for the first level? --- Yes, so all four were interviewed, My Lord, their CVs were sent to me. Because in deciding who will be in interview for the second round, we look at all four again and not only the person that the first round panellist interviewed or recommended. I can also confirm, My Lord, that on previous occasions the second round panel did not always support the recommended candidates from the first

round and often came to a contravene recommendation.

MR DU TOIT: Right, and in paragraph... (intervenes)

COURT: Sorry.

MR DU TOIT: Sorry.

COURT: (Indistinct) at 6.4 you are saying this panel, you mean the first panel, this panel refers to the first one or the second? --- In 6.4, My Lord, it refers to the second panel; those are the panellist of the second.

The second panel does not have to recommend? --- Does not have to rubber stamp any decision or recommendation made from the first, by the first panel. It has, it is free to make the decision it wants to make and to interview whoever it wants to interview.

MR DU TOIT: At 6.5 the following is said:

> "The recommendation of the second stage of interviews are finalised by the responsibility Executive in terms of section 8.2.2.b of the Legal Aid SA Approval Framework. As per this approval framework, the relevant Regional Operations Executive, in the case of Durban, Pietermaritzburg, the positions of ROE for KwaZulu-Natal together with the LOE and the CEO approve the founding appointment. The approval framework is approved by the Board of Legal Aid SA from time to time. It was last approved on 27 February 2010. The relevant extract of the approval framework is hereby made available and attached for ease of reference."

Well, that is just setting out the procedure. Do you agree with that? --- Yes.

your candidature for the senior litigator in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as you allege at all."

Now, if you look at the right-hand page, 187, that is a, I think it has been described as a photo shot, but I am not quite sure that that is the right expression. --- Document properties.

Of the document properties, it comes from a computer as we can see. And it says there:

"Author: Brian N."

Oh, sorry:

"VDV, VDV."

Sorry:

"VDV."

Sorry, I am confusing it with the other one. It is:

"VDV."

Correct. And did you author this letter? --- No.

Okay. Then we have at page 209, we have a letter to the applicant by Judge Mlambo in this italic script. Did you author this letter? Did you have anything to do with it? --- No.

And then can we go to page 1012, and here I would like you to have your finger at 1012 and 505 of the (indistinct). Now, this is a report to the Minister by Judge Mlambo and on the basis of the Photostat which appears at 1015. Do you see that? --- (Inaudible).

Sorry, yes, on the basis of the Photostat which appears at 1015, do you see that? --- Yes.

Okay, this is the one I could not read and the other one, but this one does Brian N, I think? --- Yes.

All right. It is suggested that you drafted this report, is that correct? --- I confirm that I did the initial draft.

Now, we note that there was no signature at page 1014? --- (Indistinct).

Let us go to page 505 where another version of this document appears. --- Got it.

Are the two documents the same? --- My Lord, I can confirm that the documents are not the same (inaudible). There has been some additions and amendments in different paragraphs.

The document at 505, if you look at 507 in fact bears the signature which I think we can identify as that of Judge Mlambo? --- Correct.

Can we just turn to page 506 and you can perhaps point out something there. You see in the middle of the page there is a paragraph starting:

"A Brink subsequently referred a dispute."

Do you see that? --- Correct.

Does that appear in your draft? --- No.

COURT: You said it is A Brink subsequently referred?

MR DU TOIT: Ja.

COURT: So that is not in the draft, that will be above paragraph 3. Oh, I see.

MR DU TOIT: Do you know who authored that paragraph, who drafted

that paragraph? --- My Lord, when I did the draft I would have sent it to the CEO for her to discuss further with our Chairperson. So I cannot say for sure who actually (indistinct) it, but it was certainly not me. There are also other changes.

Are there? --- Yes, if you look at background under paragraph, under background, the second paragraph, second sentence. In my initial draft I had:

"Whilst the initial reason of this panel (indistinct) sitting was caused by delays..." (intervenes)

COURT: You said the second, under paragraph 1, the second paragraph? --- Second paragraph, second sentence.

Oh, second paragraph, second sentence, the reason for freezing? --- No, we are dealing with background. Second paragraph, second sentence starts with:

"Whilst."

Yes. Yes. ---

"Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting in time suitable for all members of the panel, other pressing financial..."

If you look at that part that I read, in the version that was signed by Judge:

"Whilst the initial reason for the panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel [and then this is in addition] of which the Chairperson of the Board of Directors is one."

under my watch have never sought to make any decisions regarding the senior litigated posts on any ground other than the budget constraints which you have rejected."

Now, you cannot speak for Mrs Vedalankar, but you can speak for:

"Legal Aid under my watch."

And as far as you are concerned, does this correctly reflect your view? --- Absolutely.

Now, look at page 869. Now, if you look at page 871, there is a little Photostat of a computer panel and it attributes this to Gudu, M. But in fact, who wrote this report? --- My Lord, I did. I was the author of this.

Yes.

COURT: You were the author? --- Yes.

Okay.

MR DU TOIT: And that in particular in the third paragraph on page 869, you say:

"A two-stage interview process was implemented in order to identify candidates for the appointment. Six senior litigators were called in our recruitment processes. The other three posts have remained vacant due to recruitment changes. We have since decided not to fill the main positions until we are reassured that our objectives determined for this position is being achieved by the current incumbents."

Now, it is the accusation against you is that you are here

And a date, you see that? --- And what recommendation, may I ask the applicant, do you think this is referring to?

Look at the heading. --- For the second round of interview?

Yes. --- But there was no dispute that there was going to be a second round to look... (intervenes)

That is not what we are talking about... (intervenes) --- If... (intervenes)

We are talking about whether you needed to sign for approval or disapproval of the recommended candidate for a second round interview. You agree that you were required according to this form and (indistinct)? --- My Lord, this was a regional initiative; they would have compiled that form. So if they actually but a box to say recommended or not recommended, it did not mean that it was a requirement of the organisation. But I confirm to the Court that it was my intention to call a second round interview when I could coordinate a date and time that all members would be available. And as I indicated to the Court yesterday, I immediately realised that that would only be possible sometimes in February.

COURT: If I understand you, once you shall have, you would have coordinated the dates, what would you do? You would then send the email you received to them... (intervenes) --- Yes.

With the attachment? --- Yes.

And then what? --- Because Your, My Lord, would recall I did indicate that we only, we do not only interview the recommended candidates. The panellists can look at all people who were interviewed

at the first round and they can say, "We would also like to see X, Y and Z".

So at what stage is the decision taken? Is it taken by correspondence or is it taken on the date of hearing on those allocated days that you people have agreed on? In other words, when you send the emails, is it so that the members would say, "Look, we want all four", in which case you then tick your box and say all four are recommended for the second level? Or you, I do not know... (intervenes) --- It is... (intervenes)

How would that happen, how... (intervenes) --- I would send it to the five panellists and say, "Please advise who you would like to see", and then you put, you create a small template and you see where there is consensus... (intervenes)

So... (intervenes) --- And eventually you propose, "Okay, we have seen X, Y and Z, all agreed", then they say yes... (intervenes)

That is by correspondence, that is what I am asking? --- Email, it is sent through... (intervenes)

By email, Ja. --- Yes.

For correspondence. --- Yes.

Okay, so by email that is done? --- Yes.

And then what is your role thereafter, do you tick any boxes... (intervenes) --- Once... (intervenes)

In light of... (intervenes) --- No.

That or you do not do anything? --- Once that is done, I will inform the HR Department to coordinate the interview, to get the

logistics of this.

Okay.

MR BRINK: It is your evidence then that your second level or second round interview panel is at large to interview a candidate found unsuitable, rejected by the selection panel of your senior legal professionals in the region? And not, the same follows, and it is also at large not to interview the recommended candidate found under the requirement code to be the most suitable for employment, for appointment? --- My Lord, I have indicated in the past that we, the panel does not confine itself to only the person that is recommended. The panel, as in the past, requested to see other candidates who were interviewed. The panel has also in the past as is stated in the evidence, we have also rejected recommended candidates of first (indistinct). That has already been stated in the evidence.

Stated in the evidence and I have it written down that previously the second panel often, often did not support the recommendation of a selection panel. Now, I know the case of Kalu, who else? --- [No audible reply].

Or is he the only one? --- [No audible reply].

Is that the truth of the matter? --- My Lord, immediately I know of Mr Kalu and if my memory serves me correctly I think there was one other person that was recommended as possible, as possibly appointable that we did not like. This would have happened in 2008 in the first round of interviews, in the first time (indistinct). I do not know have specific names or places.

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ITHONY, ROBIN BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

RESPONDENT'S REPLY TO APPLICANT'S PRE-TRIAL ISSUES RAISED AT A PRE-TRIAL CONFERENCE HELD ON 26 OCTOBER 2011

ISSUES THE RESPONDENT UNDERTOOK TO REVERT ON IN TERMS OF THE PRE-TRIAL MINUTE DATED 26 OCTOBER 2011

1. AD CONFIRMATION OF THE DATA AND PERCENTAGE CALCULATIONS OF LASA'S STAFF COMPLEMENT

1.1. The Applicant requested that the Respondent confirm or deny the correctness of a summary of data extracted from the 2009/2010 and 2011 Annual Reports relating to **'TOTAL ESTABLISHMENT AND**

Funding Budget Proposal (page 67 item 7) annexed hereto and marked **LA2**.

Para 5 of the PTA: Transfer of Northern Cape Senior Litigator Post to Mthatha

2.4. The Respondent annexes hereto an extract of a resolution of the meeting of the Legal Services Technical Committee dated 24 March 2010, (as annexure **LA3)**, read with the minutes thereof dated 24 March 2010 (page 4 item 4.1.7.) which resolved to transfer the Senior Litigator Post: Northern Cape to Mthatha.

Para 6 of the PTA: the budget for Senior Litigator posts both filled and vacant

2.5. The Respondent annexes a document indicating the Respondent's Budget allocation for the Senior Litigator posts both filled and vacant marked **LA4**.

2.6. The Respondent avers that there was no re-allocation of any budget between cost centres.

Para 7 of the PTA: the Salary of a Senior Junior Professional Assistant

2.7. The Respondent does not have the position of a Senior Junior Professional Assistant in its establishment.

31. **Ad Paragraph 31.**

31.1. Agreed.

31.2. It was Mr Nair who gave out the said instruction. This was, in any event, congruent with the cost cutting measures that the Respondent had begun including but not limited to the review of all recruitment processes.

32. **Ad Paragraphs 32 and 33.**

32.1. Agreed.

33. **Ad Paragraph 34.**

33.1. Disagreed.

33.2. The Respondent explained its silence regarding the entire process around that time and the decision to abort the recruitment was not taken a few weeks after the interviews in November 2009 but in July 2010 after the Board meeting.

34. **Ad Paragraphs 35 and 36.**

34.1. Agreed save that the recruitment process was not aborted a couple of weeks after the interviews.

34.2. The two persons referred to herein were eliminated early in the selection process and were not recommended for the second round of interviews. Accordingly, they were not entitled to any information that pertains to the second round of interviews.

46.1. Disagreed.

Ad Paragraph 53.

47.1. Agreed.

Ad Paragraph 54.

48.1. Disagreed.

48.2. The CEO only sought clarity as to the delay in handling the Applicant's application.

Ad Paragraph 55.

49.1. Disagreed.

49.2. The Applicant will have to prove this allegation.

Paragraph 56.

50.1. Agreed.

Paragraph 57.

51.1. Agreed save to clarify that District and Regional practitioner posts are not necessarily "Junior posts."

Paragraphs 58 and 59.

52.1. Agreed save to say that it was inherent in Brian Nair's responsibilities to inform candidates that the process has been aborted.

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Employment Opportunity

Position: Senior Litigator

Salary: R502 725 per annum (Level 13)

Location: Various in SA

Description:
The Legal Aid Board is an autonomous statutory body with the primary objective of rendering or making legal aid available to poor persons. The National Footprint of the Legal Aid Board covers more than 58 Justice Centres, spread throughout the country.

The above position exists in the National Operations Department at the following Justice Centres:
* Johannesburg (SNR L01)
* Pretoria (SNR L02)
* Pietermaritzburg (SNR L03)
* Durban (SNR L04)
* Port Elizabeth (SNR L05)
* Bloemfontein (SNR L06)
* Cape Town (SNR L07)
* Kimberley (SNR L08)
* Mafikeng (SNR L09)

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

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

Requirements:
* Admitted Attorney/ Advocate
* B Proc or LLB degree, with right of appearance in the High Court
* An LLM will be an advantage
* Minimum of ten (10) years' post-admission litigation experience, inclusive of at least five (5) years' high court experience as well as litigation experience as an Attorney and/or Advocate.

To Apply:
* NB: In your application, please indicate the Justice Centre where you need your application to be considered.
* Preference will be given to affirmative action candidates who meet the minimum competency requirements.
* Should you not have heard from us within one month of the closing date, please consider your application unsuccessful.
* A detailed Curriculum Vitae reflecting practical application of the position outputs and the required competencies as advertised, quoting the

reference number, to:

Human Resources
Private Bag X76
Braamfontein
2170

Attention: Mr Richard Baloyi
Fax: 011 – 877 2222
Email: recruit@legal-aid.co.za

Reference No: 2007/NO/JC01

Closing Date: 9 November 2007

SENIOR LITIGATOR EMPLOYMENT STATISTICS

March 2012

Pers.No.	First name	Last name	Personnel Area	Personnel SUbarea	Position	PS group	Ly	Annual salary	July to March 2012	May to June 2011	Apr-11	Total
10502	Pieter Willem	Nel	LAB FS & NW Region	Bloemfontein JC	Senior Litigator	LP-10	17	966 396.00	R 724 797.00	R 158 585.50	R 74 291.00	R 957 773.50
10807	Herman Ludik	Alberts	LAB Gauteng Region	Pretoria	Senior Litigator	LP-10	11	883 800.00	R 662 850.00	R 145 124.50	R 67 942.25	R 875 916.75
10830	Momay	Calitz	LAB WC & NC Region	Cape Town	Senior Litigator	LP-10	7	832 704.00	R 624 528.00	R 138 733.00	R 64 013.50	R 825 274.50
12086	William Anthony	Karam	LAB Gauteng Region	Johannesburg	Senior Litigator	LP-10	14	924 180.00	R 693 135.00	R 151 753.00	R 71 045.50	R 915 933.50
12287	Nzamo Lamec	Sibi	LAB FS & NW Region	Mafikeng JC	Senior Litigator	LP-10	2	772 968.00	R 579 726.00	R 126 923.50	R 59 421.00	R 766 070.50
12304	Elizabeth	Crouse	LAB Eastern Cape Region	Port Elizabeth	Senior Litigator	LP-10	7	832 704.00	R 624 528.00	R 138 733.00	R 64 013.50	R 825 274.50
	Frozen			Durban								
	Frozen			Pietermaritzburg								
	Frozen			Kimberley								
												R 5 166 243.25

LEGAL AID BOARD

Justice for all!

SUMMARY OF THE SCORING FOR SENIOR LITIGATOTR POSITIONS (LVL LP-10)

LEVEL OF COMPETENCY			
1	2	3	4
Poor	**Average**	**Above Average**	**Excellent**
0 %- 49 %	**50 % -64 %**	**65 % - 79 %**	**80 % - 100 %**
Falling short of required standard	Meeting the required standard	Meeting the required standard to an above average level	Exceeding the required standard

CANDIDATE	TOTAL WEIGHTED SCORE	COMPETENCE	COMMENTS
1.Wilson Rambau	54%	Meeting the required standard	Not recommended for the position
2.Heman Alberts	80%	Meeting the required standard	Recommended for the position(**Pretoria**)
3.Patrick Loots	60%	Meeting the required standard	Not recommended for the position
4.Ashok Kaloo	52%	Meeting the required standard to an above average level	Not recommended for the position
5.Lilla Crouse	75%	Meeting the required standard to an above average level	Recommended for the position(**Port Elizabeth**)
6.Mornay Calitz	74%	Meeting the required standard to an above average level	Recommended for the position(**Cape Town**)
7.William Karam	76%	Meeting the required standard to an above average level	Recommended for the position(**Johannesburg**)

Names of panel members who interviewed the candidates

NAME	DESIGNATION
Judge Dunstan Mlambo	Chairperson Legal Aid Board
Brian Nair	National Operations Executive
Patrick Hundermark	Legal Development Executive
Amanda Clark	Acting Human Resources Executive
Jerry Makokoane	Chief Operations Officer

Consensus of the panel to appoint the following candidates in the position as Senior Litigator at the Legal Aid Board

NAME	High Court UNIT Centre
Herman Alberts	Pretoria
Lila Crouse	Port Elizabeth
Mornay Calitz	Cape Town
William Karam	Johannesburg

Judge Dunstan Mlambo
Chairperson: Legal Aid Board

Amanda Clark
Act Human Resources Executive

Brian Nair
National Operations Executive

Patrick Hundermark
Legal Development Executive

Jerry Makokoane
Chief Operations Officer

Candidate	D Mlambo	J Makokoane	B Nair	P Hundermark	A Clark	Average
Wilson Rambau	55	54	55	52	55	**54**
Herman Alberts	85	76	85	74	80	**80**
Patrick Loots	60	64	60	53	65	**60**
Ashok Kaloo	55	50	55	43	55	**52**
Lilla Crouse	75	71	75	78	75	**75**
Mornay Calitz	75	72	75	72	75	**74**
William Karam	80	74	80	76	70	**76**

NAME	RECOMMENDATION ACCEPTED	NOT ACCEPTED	DATE
VIDHU VEDALANKAR CHIEF EXECUTIVE OFFICER	V. Vedalankar		5.12.2008

Legal Aid
South Africa

LEGAL AID SOUTH AFRICA
BUDGET 2010/11

Office of the CFO
February 2010

LEGAL AID SOUTH AFRICA
SALARIES BUDGET 2010/2011

Pers. No	Employee Group	New levels 10/11	Position	Total CTC
Filled	Permanent Employees	LP-10-5	Senior Litigator	704 008.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00

LEGAL AID SOUTH AFRICA

RECRUITMENT STATS - NATIONAL SUMMARY - 30 June 2010 (Excluding frozen positions)

Category	Position	EC				FSNW				GP				KZN				LPMP				WCNC				Grand Total			
		Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%
Service Delivery	CA	88	3	91	97%	83	4	87	95%	132	5	137	96%	116	3	119	97%	67	1	68	99%	113	5	118	96%	599	21	620	97%
	CA - Civil	3	2	5	60%	4	1	5	80%	5		5	100%	5		5	100%		4	4	0%	2	4	6	33%	19	11	30	63%
	HCU Manager	4		4	100%	1	1	2	50%		2	2	0%	2		2	100%	1		1	100%	2		2	100%	10	3	13	77%
	JCE	8	1	9	89%	12	1	13	92%	7	1	8	88%	7	1	8	88%	9		9	100%	9	1	10	90%	52	5	57	91%
	JCE 2	1		1	100%				#DIV/0!	2		2	100%	2		2	100%				#DIV/0!	2		2	100%	7	0	7	100%
	PA - Children Civil	4	1	5	80%	3		3	100%	5		5	100%	4		4	100%	1	1	2	50%	2		2	100%	19	2	21	90%
	PA - Children Criminal	3	1	4	75%	2		2	100%	2		2	100%	2		2	100%		1	1	0%	5		5	100%	14	2	16	88%
	PA - Civil	13		13	100%	13	2	15	87%	14		14	100%	11		11	100%	9	2	11	82%	15		15	100%	75	4	79	95%
	PA - Commercial Crime	1		1	100%	1		1	100%	5		5	100%	1		1	100%				#DIV/0!	1		1	100%	9	0	9	100%
	PA - DC		2	2	0%	1		1	100%	1	2	3	33%	1	1	2	50%	9	1	10	90%				#DIV/0!	12	6	18	67%
	PA - Estates Children				#DIV/0!	1		1	100%				#DIV/0!				#DIV/0!				#DIV/0!				#DIV/0!	1	0	1	100%
	PA - HCU	17	1	18	94%	11		11	100%	19	1	20	95%	9	2	11	82%	8		8	100%	15	1	16	94%	79	5	84	94%
	PA - HCU Civil	2	1	3	67%	1		1	100%	1		1	100%	2		2	100%				#DIV/0!	1		1	100%	7	1	8	88%
	PA - JC	91	3	94	97%	83	9	92	90%	105	8	113	93%	95	3	98	97%	79	3	82	96%	120	6	126	95%	573	32	605	95%
	PA - Labour	1		1	100%				#DIV/0!	1		1	100%	1		1	100%				#DIV/0!	1		1	100%	4	0	4	100%
	Paralegal	24		24	100%	23		23	100%	25	2	27	93%	22	1	23	96%	26		26	100%	28	1	29	97%	148	4	152	97%
	Paralegal - ATP	3		3	100%	1		1	100%	3		3	100%	2		2	100%	1		1	100%	2		2	100%	12	0	12	100%
	Paralegal - HCU	2	1	3	67%	2		2	100%				#DIV/0!	1		1	100%	1		1	100%	1		1	100%	7	1	8	88%
	Principal Attorney	4		4	100%	2		2	100%	6		6	100%	3		3	100%	1		1	100%	6	1	7	86%	22	1	23	96%
	Principal Attorney - Civil	1		1	100%	1	1	2	50%	1	1	2	50%	2		2	100%		2	2	0%		2	2	0%	5	6	11	45%
	Senior Litigator	1	1	2	50%	2		2	100%	2		2	100%		2	2	0%				#DIV/0!	1		1	100%	6	3	9	67%
	SPA	14	1	15	93%	19	1	20	95%	20	1	21	95%	18		18	100%	15		15	100%	19		19	100%	105	3	108	97%
	SPA - HCU				#DIV/0!	1		1	100%	2		2	100%				#DIV/0!				#DIV/0!	1		1	100%	4	0	4	100%
	SPA - SO	8	1	9	89%	6		6	100%	4		4	100%	11		11	100%	14	3	17	82%	14	1	15	93%	57	5	62	92%
	Service Delivery Total	293	19	312	94%	273	20	293	93%	362	23	385	94%	317	13	330	96%	241	18	259	93%	360	22	382	94%	1846	115	1961	94%
Support	Admin Manager	10		10	100%	13		13	100%	10		10	100%	10		10	100%	9		9	100%	11	1	12	92%	63	1	64	98%
	Admin Officer	28	1	29	97%	25		25	100%	28	1	29	97%	27	1	28	96%	15		15	100%	32		32	100%	155	3	158	98%
	Admin Officer - Civil	2	1	3	67%	14		14	100%	4		4	100%				#DIV/0!	5		5	100%	7	1	8	88%	32	2	34	94%
	Executive PA	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	6	0	6	100%
	HRM	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	6	0	6	100%
	Office Assistant	2	1	3	67%	8		8	100%	8	1	9	89%	12		12	100%	11		11	100%	11		11	100%	52	2	54	96%
	Reception/Typist	11		11	100%	7		7	100%	8		8	100%	10		10	100%	9	1	10	90%	9		9	100%	54	1	55	98%
	Regional Accountant/Admin	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	6	0	6	100%
	Regional Communications Manager	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	6	0	6	100%
	Regional Legal Manager	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	6	0	6	100%
	Regional SPA	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	6	0	6	100%
	RDE	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	1		1	100%	6	0	6	100%
	Secretary	7		7	100%	1		1	100%	11		11	100%	3	1	4	75%				#DIV/0!	4		4	100%	26	1	27	96%
	Support Total	67	3	70	96%	75	0	75	100%	76	2	78	97%	69	2	71	97%	56	1	57	98%	81	2	83	98%	424	10	434	98%
	Grand Total	360	22	382	94%	348	20	368	95%	438	25	463	95%	386	15	401	96%	297	19	316	94%	441	24	465	95%	2270	125	2395	95%

Legal Aid South Africa

Minutes of the Legal Services Technical Committee Held on 24th March 2010, 6th Floor, Legal Aid House

MEMBERS PRESENT:

Chairperson:
Brian Nair (NOE)

Members:
Jerry Makokoane (COO), Cordelia Robertson (CR), Vincent Mayisela (VNM), Thembile Mtati (TM), Martha Mbhele (Martha), Wilna Lambley (WL), Patrick Hundermark (LDE)

Board Members:
No Board member required

Invited Attendees:
Bee-Mari Schoeman [Legal Service Delivery] (BS), Rupert Roos [Legal Service Delivery – Data Unit] (RR)

SECRETARIAT:

Nadeen Long

1.	Welcome and Apologies
1.1.	**Welcome:** The meeting was declared open and all present were welcomed. It was noted that there will be no LSTC meeting in June.
1.2.	**Apologies:** Apologies were received from Vela Mdaka (VM), Michael Miller (MM), Upkaar Mungar (UM) and Dick Khubana (DK) who are attending conferences on behalf of Legal Aid South Africa. Jerry Makokoane (COO) was excused to attend to urgent matters.

2.	Minutes	Responsible Person	Due Date
2.1.	**Minutes of the previous meeting dated 25 February 2010:** The minutes were confirmed and accepted.		
2.2.	**Matters Arising:** Please refer to the LSTC Decision Sheet. All members are requested to update progress, before the meeting.		

SECTION A – Co-Operation Agreements

3.	Co-Operation Agreements:		
3.1.1	**Administration of Estates: Children - Pilot Project Statistics:** The stats were noted. RR was requested to add a YTD column.	RR	Soonest
3.1.2	**Update on Administration of Estates: Children – Pilot Project:** It was noted that the staffing of the Estate unit was discussed at NOE/ROE Session. It was noted that with the introduction of civil units, it would be possible that additional CAs and civil PAs also participate in estate unit matters. Hence, we must monitor demand at these units in a more holistic level.		

	The question of funding in respect of the FIFA World Cup Courts was raised. It was noted that they wanted us to spend the money and claim it back. They do not want to pay up front. WL was requested to facilitate a meeting and invite Rebecca (copy Jerry and Brian) to discuss the issue of funding. The plan for the World Cup was discussed, including the location of all designated courts. ROEs were requested to ensure that they monitored this issue carefully for their regions. It was noted that if a matter remains pending beyond the period the period established for these world cup courts, we may then request these practitioners to take on these matters on a Judicare basis. We must only identify accredited attorneys and they must be experienced practitioners. BS to send out this email survey weekly. World Cup email group to be created.	WL ROEs BS	Soonest Immediate Soonest
4.1.5.	**Judicare – Verify Instruction:** The NOE explained the difficulties that were encountered when JCs did not complete the verify step as part of the Judicare instruction process. ROEs were therefore requested to ensure that they discuss this item at their JCE forums to ensure that this step is timeously done. It was agree that Judicare instructions must be verified within 5 days. (Signed LA2 form must be sent back within 5 days.) These LA2's can be faxed or scanned immediately and the original can be sent by post. DK was requested to include in the next Judicare newsletter a reminder to Judicare practitioners to return the signed LA2 forms within 5 working days of receiving same and that non-compliance with this requirement may result in the instruction to them being terminated and reallocated. The LDE was also requested to include this in the Legal Aid Guide. ROEs were reminded that regions are not to do any transfers for Judicare (in or out) as this budget will be managed from National Operations Department until the end of this financial year. Further, noting the constraints on the Judicare budget, JCs requiring the use of Judicare must seek authorisation from the NOE's office ROEs were requested to do an analysis of Judicare in their regions. The current usage of Judicare is very skewed, it being noted that one JC alone accounts for 15% of the Judicare budget. This issue will need to be more carefully managed going forward.	ROEs DK LDE ROEs	Next JCE forum Soonest Soonest Soonest
4.1.6.	**Allocation of Senior Litigator – LP/MP:** The request for a Senior Litigator in the LP/MP region was withdrawn by the ROE for L/Mp, it being noted that the high court is still to be established in the province.		
4.1.7.	**Allocation of Senior Litigator – EC:** The request for a Senior Litigator in the EC region was approved. BS was requested to update recruitment reports as well as to facilitate the transfer of the budget. The ROE was requested to immediately commence recruitment for this position to be based at the Mthatha JC.	BS TM	Immediate Immediate

10.1.2.	**Legal Training** Programme **2009/2010:** The report was noted.		
10.1.3.	**Administration** of Estates – **training** material by **Justice College:** The report was noted.		
10.1.4.	**Child Justice Training Manual:** The report was noted. Because of urgency plan a Saturday training session.		
10.1.5.	**Child Justice Manual Programme** for Training **at JCs:** The report was noted. ROEs were requested to ensure that their JCEs meet with their legal staff and decide collectively how they will roll out this training without disrupting their courts. Regions were requested to provide details of each JCs training plan for this Child Justice training programme to the training co-ordinator. It was noted that LDD will provide the training materials in order for JCs to conduct these training sessions at their JC, including power point presentation/manuals/trained trainer. A certificate will also be given to all practitioners at JCs who have done this training. ROEs were requested to discuss the training programme for each JC with the respective JCEs. There were requested to ensure that the programme covers at least 12 hour training session. It was suggested that JCs should also consider utilising at least one Saturday for this training. All JCs were requested to ensure that by the end of April each practitioner would have been trained on the Child Justice Act. It was noted that the course to train JC trainers will be held on 6/7 April and 8/9 April i.e. two sessions.	JCEs ROEs	Soonest Soonest

SECTION D – FOR COMMENT AND NOTING

11.	**Legal services delivery – Increasing access**		
11.1.	**Criminal Courts** Coverage		
11.1.1.	**Tracking of Prisoner Letters** Summary: The report was noted.		
11.1.2.	**High Court Review** Stats: The report was noted.		
11.2.	**Children's Matters**		
11.2.1.	**Children's Matters** – Criminal: **Al stats on** legal aid **in criminal matters:** The report was noted.		
11.2.2.	**Children's Matters** – Civil: **Al stats on** legal aid **in civil matters granted:** The report was noted. RR was requested to look into why estates are not included in children's civil stats.	RR	Next meeting
11.3.	**Appropriate Staffing Levels Maintained**		
11.3.1.	**% Recruitment** Status 28 February 2010: Report not yet available.		
11.3.2.	**Recruitment Stats as at** end of February 2010: Report not yet available		
11.3.3.	**Conversion of PA to** SPA – SO FY09/10: Report not yet available		
11.4.	**Justice Centre Productivity**		
11.4.1	**JC Pending Matter** Stats – Internal February 2010: The report was noted. ROEs were requested to monitor actively, and ensure numbers come down.	ROEs	Soonest
11.5	**Delivery Infrastructure**		

Vacancies at Legal Aid South Africa

Apply for position: SENIOR LITIGATOR - MTHATHA JUSTICE CENTRE

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

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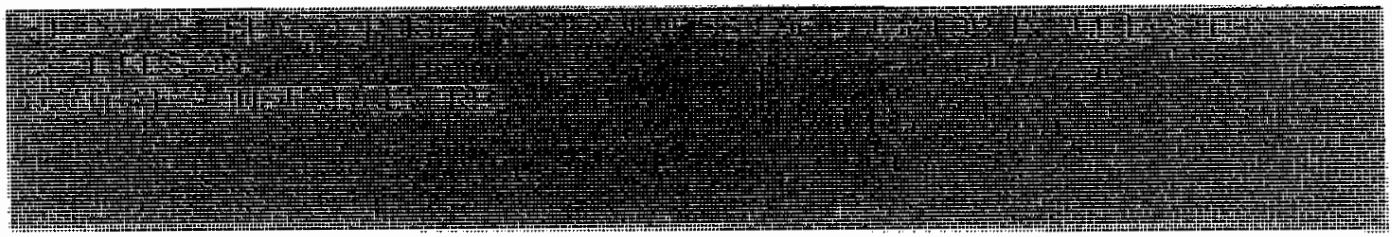
TO: **HUMAN RESOURCES EXECUTIVE**

FROM: **Thenjiwe Magazi**

DATE: **24 May 2010**



1. PURPOSE

The purpose of this recruitment process is to fill the vacancy of the Senior Litigator Position in Mthatha Justice Centre in the Eastern Cape region, taking into consideration the Employment Equity status of the region.

2. BACKGROUND

2.1 The above-mentioned position was advertised internally and externally and 11 applicants were received and 5 applicants were short listed and were considered for the interviews as they met the minimum requirements of the position. One (1) candidate did not show up for the session.

2.2 The incumbent must be able to show the following:

- Admitted as an Attorney/Advocate
- B Proc or LLB degree with right of Appearance in the High Court
- At Least 10 years post qualification, litigation experience (both criminal and civil) of which 5 years must be high court experience.

The following dimensions were considered when assessing the candidates, experience in trials, court procedure, ability to lead and delegate, ability to take decisions, knowledge and application of the law, culture fit and demonstrated by practical experience, communication ability and administrative ability.

Five (5) candidates were interviewed by the panel which consisted of the following members from Eastern Cape Region.

Thembile Mtati	-	Regional Operations Executive
Thenjiwe Magazi	-	HRM
Lynette Franklin	-	Justice Centre Executive

3. **THE INTERVIEWS PROCEEDED AS FOLLOWS:**

The selection panel conducted the interviews by using the standard interview questionnaires. The score was out of 55.

The results are shown in the table below

NAME OF CANDIDATE	TVM	LF	TLM	Percentage
Nzame Skibi	41	32.5	40	68

4. **THE RESPONSES ARE AS FOLLOWS:**

4.1 Nzame Skibi:

Nzame posses an LLB and B Juris Degree, he was admitted as an advocate in 1999. He has been in the legal field for 11 years and is currently employed as a Senior Litigator in Mafikeng JC. He is familiar with the requirements of the job and managed to articulately apply his mind when responding to questions posed to him as he occasionally substantiated his responses with relevant examples. He has appeared in the SCA on a number of occasions. He is recommended for this position.

[redacted]

[redacted]

4.4 [redacted]

5 **RECOMMENDATION**

Nzame Skibi came across as a strongest candidate as compared to others in terms of the knowledge, experience and the understanding of what the job entails. He has the advantage as he is currently occupying the same position. He has the most court experience as compared to other candidates and has appeared at the SCA on a numerous occasions. His appointment will also personally benefit him as he will be closer to his family in Bizana. He is recommended for this position.

Thembile Mtati – Regional Operations Executive

Thenjiwe Magazi- Regional HRM

Lynette Franklin – Justice Centre Executive

NAME	RECOMMENDATION ACCEPTED	NOT ACCEPTED	DATE
NOE : Brian Nair			
HRE: Amanda Clark			

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18 October 2010.

Adv Anthony Brink
25 Baker Road
Prestbury
Pietermaritzburg 3200

by Fax: 0866720776

Dear Advocate Brink,

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

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

1

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

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

2

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

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

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

(a) Any information held by the State; and

(b) Any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state".

3

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

a) Mandatory protection of the privacy of a third party who is a natural person.

b) Mandatory protection of certain confidential information of a third party.

c) Mandatory protection of records privileged from production in legal proceedings.

d) Mandatory protection of research information of a third party.

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

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

(a) the disclosure of the record would reveal evidence of—

a substantial contravention of, or failure to comply with, the law; or

an imminent and serious public safety or environmental risk; and

(b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question."

5

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

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

6

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

6.1 A defined number of Senior Litigator positions were created linking to particular High Courts.

6.2 Noting the seniority of these positions, it was decided to implement a two stage interview process in the appointment to these posts.

6.3 The first stage takes place at Regional Office level where an Interview Panel will make a recommendation for candidates to proceed to the second stage of interviews.

6.4 The second stage comprises an interview process by a national office panel, including the Chairperson of the Board, National Operations Executive (NOE), Legal Development Executive, Human Resource Executive and the Chief Operations Officer. This panel does not have to recommend for appointment any of the recommended candidates from the first phase interviews conducted by the region.

6.5 The recommendation of the second stage of interviews are finalised by the responsible executive in terms of section 8.2.2 (b) of the Legal Aid SA Approval Framework. As per this Approval Framework, the relevant Regional Operations Executive (ROE), in the case of the Durban and Pietermaritzburg positions the ROE for KwaZulu-Natal together with the NOE and CEO approve the final appointment. The Approval Framework is approved by the Board of Legal Aid SA from time to time, and was last approved on 27 February 2010. The relevant extract of the approval framework is hereby made available and attached for ease of reference.

6.6 The NOE, as the executive responsible for operations may also motivate a change in the organisational structure, including the freezing of positions, for discussion and finalisation with the CEO (refer S.8.1.2 (b) of the Legal Aid SA Approval Framework).

6.7 Due to the effects of the recession, anticipated funding for the 2010/11 financial year did not materialise. This had the effect of cutting our baseline funding by a significant amount. It was accepted that this required a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall. Since early this year, management has had to identify positions which could be frozen. In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.

7

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

7.1 You were interviewed together with other candidates in the first round of interviews.

7.2 You were recommended together with other candidates, for the second round of interviews. As explained above that however was not a guarantee that you would get the position. We have instances in the past when our nationally constituted panel has not recommended for appointment any of the recommended candidates from the first phase interviews conducted by the region.

7.3 The NOE and CEO took the decision that all senior litigator posts that were vacant would be frozen. Therefore, the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.

7.4 You were sent a final letter of regret from our Regional Operations Executive dated 23 August 2010 indicating that Legal Aid SA will not be proceeding with the filling of the Senior Litigator post. A copy of the aforementioned letter is also attached for your reference.

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

8

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

Yours faithfully,

V. N. Vedalankar

Ms Vidhu Vedalankar

CEO & Information Officer

Legal Aid South Africa

Your voice. For justice.

LEGAL AID SOUTH AFRICA : APPROVAL FRAMEWORK

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

Key to Levels

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

Key to Other

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

Key

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

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

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

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes
8	**HR MATTERS**	5								
8.1	**Personnel Structure**									
8.1.1	Approval and periodic revision of grading policy		A	C	C	C		E(HRE)	C/RC	
8.1.2	(a) Establishment of new positions, regrading existing positions and abolition of posts at executive senior managerial & within budget (levels 14-16)		A		B	C		E C (HRE)	C/RC	
	(b) Levels (11-13) & OSD - CM -1 ; OSD - LP - 9 & 10 and MR - 5				A	B		E C (HRE)		
8.1.3	Establishment of other new positions, regrading existing positions and abolition of posts within existing structure & within budget (levels 1-10) and OSD - SU - 1 & 2 and OSD - LP 1 - 8				B	A		E C (HRE)		
8.2	**Appointments**	17 & 21								
8.2.1	**(a) CEO (Level 16)**		A/E						C/RC	
	(b) COO or NOE (Level 15.3)		A		B/E				C/RC	
8.2.2	(a) Executive (other than the CEO, COO & NOE),		C B/Exco		A/E	B/E			D/RC	
	(b) Senior Management and Senior Professional staff (levels 11-13, OSD - CM -1 and OSD - LP - 9&10, OSD - MR - 5)				B	B		E A	D/RC HRE (17)	
	(c) OSD - SU - 1 & 2 and OSD - LP-8					B		A/E (ROE)	HRE (17)	
	(d) Other permanent staff (below level 11 and OSD - LP - 1 to 7)							A Incl JCE		

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By Email

28 January 2011

Adv A Brink

25 Baker Road

Prestbury

Pietermaritzburg, 3201

Email: arbrink@iafrica.com

Dear Adv. Anthony Brink,

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

1. I acknowledge your letter of 15 December 2010 in which you request access to information in Legal Aid SA's possession in terms of the Promotion of Access to Information Act, Act 2 of 2000 ("PAIA"). I have also considered your recent letters dated 30 November 2010 sent to the Chairperson of the Board of Legal Aid SA, Judge President Dunstan Mlambo ("Mlambo JP") and to the Board of Directors ("Board") dated 24 January 2011.

2. Legal Aid SA promotes and complies with the constitutional precepts of accountability; openness; transparency and respect for human and related rights including your right to access information in its possession. This recognition should set the tone for the answer that follows herein below.

3. In your letter to Mlambo JP, you made serious and malicious accusations which can in effect be separated into two groups. Firstly, you accuse Mr Brian Nair ("Nair"), the Legal Aid SA's National Operations Executive ("NOE"), and me of unlawfully misrepresenting information (mainly financial management issues) to Parliament's Portfolio Committee on Justice and Constitutional Development and of concocting unlawful excuses and reasons, all with malicious intent to freezing a post of Senior Litigator, Pietermaritzburg ("PMB") for which you were singly selected and recommended for appointment subject to your final interview with Mlambo JP.

4. Secondly, you accuse Mr Nair and I or even the Legal Aid SA of singling you out for differential treatment which is, according to you, unlawful and unconstitutional, because of your race and of your conscience and belief. As a result of the aforegoing conclusions, you grounded your application for access to information on section 46 of PAIA in seeking access to information from the Legal Aid SA. It is common cause that section 46 provides that:

> *"Despite other provisions of this Chapter, the information officer of a public body must grant a request for access to record of the body contemplated in section 34 (1)... if –*
>
> > *The disclosure of the record would reveal evidence of –*
> > *a substantial contravention of, failure to comply with, the law; or*
> > *...*
> > *the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question."*

5. At the outset, I wish to record my strongest rejection of your accusations which you levelled against me as the Chief Executive Officer of Legal Aid SA; members of the Executives (both individually and collectively) including but not limited to Mr Nair; Ms Amanda Clark ("Ms Clark") and the Board members including its chairperson, Mlambo JP; and its secretary Ms B Schoeman. Your views are unfounded; wrong and outright defamatory. My and my organisations' rights are strictly reserved to deal therewith at a later stage and/or an appropriate forum.

6. As I will show herein below, the premise you have chosen in seeking access to information you seek herein is baseless. This wrong assumption, which I will disprove herein below, led you to reject my answers to your request for access to our records. You continued with these malicious accusations to the Parliamentary Portfolio Committee on Justice and Constitutional Development; to the Ministry of Justice and Constitutional Development; to the Board; and to other institutions of your choice.

7. As I will demonstrate to you herein below, your assumptions in taking this route are far from the truth and are misinformed. I must however advise you, that the explanation furnished by me to you on 18 October 2010 remains valid and will be added to and clarified where possible as indicated herein below.

8. Despite the above accusations and assumptions, which I completely reject, I provide you with further information and reasons that led to the freezing of the Senior Litigator posts in Durban, Pietermaritzburg and Mthatha, in addition to the reasons furnished to you on 18 October 2010.

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

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

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

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

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

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

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

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

11. As to your requests 1 and 2: I wish to refer you to the Legal Aid SA's Policy Document read with the Approval Framework.

12. As regard your request number 3 and 4: Mr Nair relied on the Approval Framework especially at 8.2.2(c) where, you will note, he has to approve the appointment of senior staff. However, he was not the person in charge of or managing the process of recruiting a Senior Litigator. This process is managed by the relevant Regional Human Resources Manager if it is a regional post; and a HRE if it is a senior national appointment. Mr Nair is the line executive/manager responsible for the appointment of Senior Litigators.

13. Seeing that the posts of Senior Litigator's post was a senior post, second round interviews were to proceed to the national level with national executives and was to be coordinated and managed by the HRE. The relevant regional HR officer was responsible, at all times, together with the KZN ROE Mr Mdaka who managed and compiled the recommendation of the panel after the first round of interviews as attached in the above table.

14. I reject your allegations in your request number 5 and 6: I dispute your argumentative conclusion premised, of course on misguided facts and

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

15. As to request 7: I refer you to the Approval Framework annexed hereto.

16. As to requests 8 and 9 : I refuse to grant you access to this information on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA's Policy on Recruitment Checks.

17. As to request 10: No time limit was set to finalise the recruitment process.

18. As to requests 3 and 4 (both in Part A and B of the request document): there are no such communications that I am aware of. I am willing to provide you with an email from Ms Clark dated 30 April 2010 which you already have in your possession and which you have referred to in your letter to Mlambo JP on or about 30 November 2010. This was blind copied to the ROE of KZN Mr Mdaka and Brijal.

19. For your requests 11; 12; 13 (PART A); 13 (PART B); 14 (PART A); 14 (PART B); 15 (PART B): please refer to the correspondence on costs-cutting measures, read with the Legal Aid SA's Approval Framework.

20. As for your request 15: The disparity on the advertised salary between Mthatha and Durban/Pietermaritzburg Senior Litigator position, is as a result of cost of living expense which was effected on 23 October 2009. You would have noted that the difference between the two advertisements is a period of over nine months.

21. As for your request 16: I am not aware of any of the Executives discussing you and/or your candidacy for the above-mentioned post save the edited and blacked out recommendation for the next round of interviews. This is attached hereto as part of the bundle in the table above.

22. As to the regional panel members' individual assessment notes; scores; deliberations; submissions and assessment reports on you, I, having considered your request, refuse to grant you access thereto as these documents and information relating thereto were compiled from the Legal Aid SA's panel's deliberative process of decision-making in the assessment and interview of candidates, including you, for vacant posts in the Legal Aid SA. I am entitled to refuse to grant you this information in terms of section 44(1) and (2) of PAIA.

23. I have decided, notwithstanding the above position, and after I have exercised my discretion, to grant you access to an edited/blacked out version of the final recommendation of the panel to show you what its decision was.

AS TO PART B "OTHER RECORDS"

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

25. As to requests 3; and 4: Please refer to above.

26. As for requests 5; 6; 7; 8; 9; and 10: I am able to inform you that there is no recorded explanation for what you refer to as 'the delay'. I reject that there were any delays in dealing with any post. As far as I can tell, there were no time frames within which these recruitment drives were to be conducted and completed. I however wish to state that the Legal Aid SA was, at the same time as it conducted the recruitment drives referred to herein above and as you would have noted from the above documents, in a parallel process of securing funding. It had in conducting these recruitment processes parallel with fund raising drive, acted under the impression that the DoJ &CD would honour its promise to extend OSD funding to it. Accordingly and naturally, the drive to secure funding took priority as you would have noted from the correspondence above that all those Executives that were engaged in the recruitment of the Senior Litigator posts were also engaged in costs-cutting discussions/processes including identifying the areas that could be sacrificed to keep Legal Aid SA in budget. Ms Clark's mail to you was to be and must be understood in this light.

27. Because Ms Clark would not have been involved in the Senior Litigator's recruitment process as the second round of interviews was not proceeded with (see her email of 14; 22 and 30 April 2010 which you already have in your possession), Baboo Brijal would have been provided with the same updates as included herein above regarding the costs-cutting mechanisms. Obviously by November 2010, after the Memorandum from the COO, it was evident that there would be no funding coming from the DoJ. In fact a shortfall was expected up to 2012. Brijal was to update you should anything change regarding the continuation or otherwise of the recruitment drive not anything more.

28. As for requests 11; and 12: Ms Clark, as a HRE, was involved with the cost-cutting processes and was not at liberty to inform you of the reasons why the posts were not being finalised. All she did and said to you is informed by the costs-cutting measures that appear in the above documents. She was privy thereto and she too, just like all of us, had to wait and see if the Department of Justice and Constitutional Development would allocate us budget to proceed with finalising the recruitment processes. It is on this basis that you should understand Ms Clark's communications to you regarding this process.

29. As to requests 13, 14 and 15: The decision to create or abolish a post is derived from the Approval Framework which is annexed herewith. All communication relating thereto is also attached. If for any reason, the e-mail or any form of communication is not attached, it would have been verbal, the authority of which derives from the aforementioned Approval Framework.

30. As to your requests 16; 19; 20; 21; 22; 23; 24; 26; and 27: I have exercised my discretion against granting you access to this information in terms of sections 43(1) as it relates to confidential correspondence with third parties.

31. I further refuse to grant you access on the same information and documents on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA's Policy on Recruitment Checks). I also refuse to provide access to this record as it relates to research or information gathering by third parties on behalf of Legal Aid SA as contemplated in section 43(1) and (2). It seems apparent to me that you already have document(s) that you seek in this regard.

32. As for your requests 17 and 18: There is no such discussion other than the documents provided to you.

33. As for your request 25: As this information would relate to the internal deliberations; opinions and views intended for Legal Aid SA to take certain decisions as contemplated in section 44(1) and (2), I have exercised my discretion against granting you access thereto. I therefore refuse to grant you access to this information or document.

34. As for your requests 33; and 34: Your attention is referred to the costs-cutting measures correspondence in which Nair was instrumental in identifying posts that should be cut; frozen etc. This was part of the Executive's mandate around that time. See especially the email and memo from COO to all Executives; ROEs; JCEs and 'All Staff' herein above wherein Cabinet also propagated the same mechanisms as Legal Aid SA.

35. As for request 35: To the best of knowledge there are no other electronic records relating to you.

IN CONCLUSION

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

37. In light of the above information given to you, it must further be apparent that your allegations of discrimination against you as an individual are baseless and misguided. Save for the documents and information delivered to you, I refuse to grant you access to the documents I have referred to.

38. Mlambo JP had an occasion to peruse and consider your long letter of 30 November 2010 wherein you seem relentless in your complaint and accusations against me; Nair and the Legal Aid SA and has essentially, after reviewing our processes regarding the cost-cutting measures including but not limited to the Senior Litigator posts, found no evidence to substantiate your claims. Of course you do not believe him and you ridicule his findings in your subsequent correspondence and your threatened court actions. I have, on my part, also tried, notwithstanding this answer from Mlambo JP, to answer your requests and avail certain documents to you, the contents of which, I wish to repeat, are private and confidential.

39. As indicated hereinabove, I have also had an occasion of reading your recent letter dated 24 January 2011 to Mlambo JP. I, and the Legal Aid SA under my watch, have never sought to make any decisions regarding the Senior Litigator posts on any ground other than the budget constraints which you have rejected.

40. You accuse us and persist with your baseless accusations of financial improprieties and misrepresentations to the Portfolio Committees etc. I challenge you to present your investigative results of Legal Aid SA's financial mismanagement; wasteful and fruitless expenditure to the Auditor General.

41. In conclusion, I note your threats of court actions cross examining me; officials of Legal Aid SA; now the Board members; and their secretary. Your threats of *mandamus* against the Legal Aid SA; of using independent judges; of probing our executives' affidavits; of your draft notice of motion and an accompanying founding affidavit, are unnecessary. Please refrain from your disparaging attacks on people's dignity on baseless assumptions.

42. Be advised that the Legal Aid SA will defend itself against any of the threats that you have made against its officials and Board members.

43. The Legal Aid SA's Board of Directors; its Executives and all of its staff country-wide are committed to complying with the laws and statutes of the country most importantly the Constitution of the country and its values of accountability and transparency. It is in that spirit, and despite your insulting and condescending tone of language to us, that I have responded fully to your requests for access to information regarding your non-appointment to the position of Senior Litigator, PMB.

44. We have exhausted our explanations to you and trust that this final letter to you shall put this matter to rest. Please be advised that no further correspondence on this matter will be responded to. Your cheque will be returned to you with the original of this letter.

Yours faithfully,

V. V. Vedalankar

Vidhu Vedalankar

CEO: Legal Aid South Africa

V 1

Legal Aid South Africa

Your voice. For justice.

LEGAL AID SOUTH AFRICA : APPROVAL FRAMEWORK

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

Key to Levels

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

Key to Other

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

Key

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

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

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes 17-Feb-10
1	STRATEGY AND PLANNING									
1.1	Strategic Plan		A	C	E				C/ All Committees	
1.2	Business Plan		C	A	B	E			C/All Committees	

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	
7.	AUDITORS									
7.1	Appointment and dismissal of LAB of agent of AG	4	D	D	D				D/AC	
7.2	Reports (non-routine audits)		D		E				D/AC	
7.3	Non-auditing consultancy fees	18	D		B		A	E	A/BAC	
7.4	Auditing fees		A	C	B	C	C		D/AC	
7.5	Interim and Final Audit Plans		A	C	B	C	C		C/AC	
8	HR MATTERS	5								
8.1	Personnel Structure									
8.1.1	Approval and periodic revision of grading policy		A	C	C	C		E(HRE)	C/RC	
8.1.2	(a) Establishment of new positions, regrading existing positions and abolition of posts at executive senior managerial & within budget (levels 14-16)		A		B	C		E C (HRE)	C/RC	
	(b) Levels (11-13) & OSD - CM - 1 ; OSD - LP - 9 & 10 and MR - 5				A	B		E C (HRE)		
8.1.3	Establishment of other new positions, regrading existing positions and abolition of posts within existing structure & within budget (levels 1-10) and OSD - SU - 1 & 2 and OSD - LP 1 - 8				B	A		E C (HRE)		
8.2	Appointments	17 & 21								
8.2.1	(a) CEO (Level 16)		A/E						C/RC	
	(b) COO or NOE (Level 15.5)		A		B/E				C/RC	
8.2.2	(a) Executive (other than the CEO, COO & NOE),		C B/Exco		A/E	B/E			D/RC	X
	(b) Senior Management and Senior Professional staff (levels 11-13, OSD - CM -1 and OSD - LP - 9&10, OSD - MR - 5)				B	B		E A	D/RC HRE (17)	
	(c) OSD - SU - 1 & 2 and OSD - LP-8					B		A/E (ROE)	HRE (17)	
	(d) Other permanent staff (below level 11 and OSD - LP - 1 to 7)							A incl JCE		

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	[illegible]

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

V2.

1. RECRUITMENT

1.1 Purpose and Objectives

1.1.1 Recruitment is a process of attracting and appointing the best possible candidates for employment into suitable positions within the Legal Aid Board with the purpose of enhancing high performance in the business. As a principle, the services rendered by the Legal Aid Board, especially taking into account the provision of access to justice for the poor and indigent should be taken into consideration.

1.1.2 This policy and procedure aims at ensuring that appropriate recruitment procedures are followed, in line with all relevant statutory legislation and business practices, so that the Legal Aid Board's operational needs and requirements are met adequately. The recruitment process must be fair, objective, transparent, and non-discriminatory.

1.1.3 This policy and procedure provides the Legal Aid Board with clear guidelines to be followed when a vacancy exists.

1.2 Recruitment Procedure

1.2.1 General

1.2.1.1 A request for the filling of a position (vacant or new) should be initiated on the Staff Requisition form. The Regional Operations Executive will approve the filling of vacancies for the relevant Justice Centres and the Departmental Executive responsible will approve the filling of vacancies at National Office.

1.2.1.2 New positions and position profiles will be only be created after it has been motivated and approved as per the LAB approval framework and signed off by Chief Operations Officer.

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

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

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

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

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

1.2.1.7 Either prior to or concurrent with the external and internal advertisement, an invitation for the internal referral of suitably qualified and culturally compatable candidates must be extended to LAB employees and Board members. This invitation must meet the requirements contained in (a)-(j) above.

1.2.1.8 In the case of an external advertisement in the local print media, once the draft in line with the provisions of (a)-(j) above has been completed, the Recruitment Officer/Administration Manager/ Regional Human Resources Manager will advise the advertising agency to draw up the final advertisement, and submit quotations for the publication thereof in the media as specified. In the case of advertisement in national print media, Recruitment Officer / Administration Manager / Regional Human Resources Manager shall refer the draft advert to the Human Resources Administration Supervisor for centralised placement and publication of the advert.

1.2.1.9 After the prescribed requisition procedures have been followed, the advertising agency must be instructed to place the advertisement.

1.2. 2. Selection Committee / Panel

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

1.2.2.2 It is the responsibility of the Human Resources Department and the relevant line manager to jointly ensure that a diverse and knowledgeable selection committee/ panel is appointed. As far as is reasonably practicable, the selection committee or panel should be suitably representative and diverse, provided, however, that the selection committee or panel should include at least one official who has been fully trained in recruitment and selection process and procedures of the organisation and whose function is to ensure that the interviewing process and the deliberations of the committee take place in a fair manner. A trained official must be included in the selection committee or panel irrespective of the level of the position.

1.2.2.4 Where only one (1) candidate meets the minimum requirements, the Human Resources Department should endeavour to source further CVs from employment agencies listed on the preferred suppliers database of Legal Aid Board or advertise externally via the media to ensure that the greatest number of potential candidates are informed and interviewed in the best interests of organisation.

1.2.2.5 Irrespective of the level of the position, the manager who would manage the incumbent filling the vacant position must also be on the selection committee or panel, since this manager would know the exact requirements of the job, the expectations attached to the position to be filled and the key performance areas that would attach to the incumbent filling the vacant post.

1.2.2.6 The selection committee shall consist of at least three (3) members who are employees of a grading equal to or higher than the grading of the post to be filled. For non-SMS posts, a union representative is to be invited as an observer. The union representative is additional to the minimum of three members.
NB. A document on the role of the trade union representative during an interview may be obtained from Human Resources Department.

1.2.2.7 For positions at level eleven (11) and above, the relevant department within the Legal Aid Board should be represented by the Executive or his/her nominee. For Professional Assistants, irrespective of level, the JCE should always form part of the panel.

1.2.2.8 Managers/employees of a lower grading than the grading of the post to be filled may record or provide advisory services during the selection process but shall not form part of the selection committee. Any issues relating to processes or interview itself, to be raised by a non-selection committee member should be addressed to the ROE concerned or the Human Resources Executive.

1.2.2.9 In the process of interviewing, the selection committee or panel must avoid irrelevant questions or questions that could be potentially discriminatory, including, but not limited to an employee's family status, religion, political or other beliefs, social status, family responsibilities, race, gender or sexual orientation. The interviewing process and subsequent deliberations of the committee or panel should focus on assessing whether the person being interviewed is suitable for the position or not.

1.2.2.10 Employees nominated to serve on a selection committee or panel should be informed, and, where necessary, trained in respect of the consequences of discrimination in the recruitment and selection process and ways to avoid hidden or latent discrimination in the recruitment processes.

1.2.2.11 Short listed candidates should be informed timeously before interviews take place.

1.2.2.12 Before interviewing applicants, all members of the selection committee or panel should be informed of the Legal Aid Board's employment equity and affirmative action policies and how these policies impact on the vacancy for which they are interviewing; interview panel members are obliged to keep the interview information confidential.

1.2. 3 Selection Criteria

1.2.3.1 The Human Resources Department will prepare criteria against which all applications for a specific post are to be evaluated consistent with and based on the inherent requirements of the post as listed in the advertisement.

1.2.3.2 Care must be taken to avoid the making of recruitment decisions on discriminatory grounds.

1.2.3.3 An internal candidate who qualifies for the post in terms of the advertised requirements will not automatically be appointed to the position but will be selected through the same process as an external candidate.

1.2.3.4 After the selection committee has identified the most suitable candidate for appointment in a post, procedures will be followed to appoint the individual into a position or a temporary one.

1.2.3.5 The selection committee may require certain short listed candidates undergo for psychometric assessment to supplement the interview results.

1.2.3.6 Before the final appointment is made, and only where the advertisement indicated that references were required, the referees as submitted by the applicant should be contacted and objectively verifiable information should be obtained from the referees. Objectively verifiable information includes the candidate's length of service, the capacity in which the referee knows the candidate and the position the candidate occupied (if appropriate).

1.2.3.7 Before any offer is made to any candidate, the candidate's personal particulars including but not limited to, qualifications, security checks, and credit checks must be verified in compliance with the LAB Recruitment Check Procedure.

NB: Motivation has to be signed off by all the members of the panel and the line executive before being forwarded to the HRE/ COO/CEO/ delegated for approval, appointment recommendations will be approve in line with the approval framework

1.3 Recruitment Check Procedure

1.3.1 Purpose

The purpose of the LAB-RC for the Legal- Aid Board is to :

1.3.1.1 ensure that the LAB will only consider the best suited candidates for positions in the organisation;

1.3.1.2 safe guard and limit the LAB's exposure to possible fraud; and

1.3.1.3 provide guidelines in terms of rehabilitation.

For the purpose of this procedure, reference to the existing Avalanche and MIE tests will be replaced by LAB-RC (Legal Aid Board recruitment check).

1.3.2 Authorisation

1.3.2.1 Regional Appointments

The responsibility of authorising this test will vest in the ROE, who in turn can delegate it to the Regional Human Resources Manager. When authorising this test the ROE or his/her nominated representative should consider the parameters of this procedure.

1.3.2.2 Central Office Appointments

The responsibility of authorising this test will vest in the relevant executive. When authorising this test the Executive should consider the parameters of this procedure.

1.3.3 Consent to Recruitment Check

The candidate must consent in writing to the recruitment check and should the candidate refuse to grant such consent, they may not be employed.

V3

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Legal Aid
South Africa

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18 March 2010

The Director-General
Department of Justice and Constitutional Development
Private Bag X81
PRETORIA
0001

Dear Ms Msomi

LEGAL AID SA 2010/11 BUDGET & EFFECT OF OSD FUNDING

1. Government introduced an Occupational Specific Dispensation (OSD) for legal professionals effective from July 2007. The Minister of Justice and Constitutional Development has since extended the OSD to Legal Aid South Africa.

2. The OSD implementation was intended to be implemented in two phases with funding provided by the Department of Justice and Constitutional Development (DoJ &CD). Legal Aid SA has implemented OSD phase 1 in full after the DG of DoJ&CD made a written commitment to provide for the OSD funding and thus effect MTEF budget baseline adjustments for Legal Aid SA. Contrary to a commitment made, OSD phase 1 is being funded from DoJ &CD budget savings and Legal Aid SA's MTEF allocations continue to show a budget shortfall.

3. In January 2010 a joint meeting of DoJ, NPA and Legal Aid SA delegations met to resolve the outstanding funding shortfall on OSD phase 1 and implementation of OSD phase 2. Subsequent to the meeting the 25 January DoJ ManExco considered the agreed position by the joint meeting. The DDG Corporate Services of DoJ, Mr Vuso Shabalala, later confirmed that the DoJ Exco had endorsed the adjustments as agreed in the joint meeting of January.

4. The funding shortfall is as follows:

OSD area	2009/10	2010/11 and MTEF
OSD phase 1		R23,8 million
OSD phase 2	R42 Million (including back payments from July 2007)	R30 million
TOTAL		**R53.8 million**

5. Legal Aid SA has since received a letter from National Treasury confirming approval to transfer an amount of R42 Million from DoJ& CD budget 2009/10 to Legal Aid SA. This amount is not yet received by Legal Aid SA. The DoJ&CD or National Treasury did not advise any further on the 2010/11 budget & MTEF baseline adjustments.

6. On Wednesday, 10 March 2010, in response to Legal Aid SA's request a copy of the OSD letter of DoJ to National Treasury (sent to NT in February 2010) was received. Contrary to confirmed reports by DoJ&CD, the Department did not recommend a budget baseline adjustment for MTEF 2010/13 for Legal Aid SA.

7. This situation will result in a budget deficit for Legal Aid SA in its 2010/11 MTEF cycle.

8. It should be noted that if Legal Aid SA pays the OSD Phase 2 funds in the 2009/10 financial year, it will be committing to payment of OSD Phase 2 salary adjustments for subsequent years. However if the DoJ&CD does not commit to an adjusted baseline Legal Aid SA will in effect be budgeting for a deficit. In terms of the Section 53(3) of the PFMA –"*A public entity which must submit a budget in terms of subsection (1), may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the National Treasury has been obtained.*"

9. Legal Aid SA is therefore unable to begin paying the OSD Phase 2 salary adjustments for 2009/10 and previous financial years until the future funding for it has been secured.

10. Of the total R53,8million shortfall for 2010/11, R23,8million shortfall is for OSD Phase I.

11. It is noted that despite the DoJ&CD committing to funding for OSD Phase I, in 2009/10 and now in 2010/11 Legal Aid SA faces a shortfall because an adjustment to the MTEF baseline has not been effected. Legal Aid SA cannot further

exacerbate this by paying the first installment of OSD Phase 2 to staff and adding to the budget deficit.

12. Your office is requested to confirm allocations of OSD shortfall funding to the amount of R53,8million in the 2010/11 budget allocation, and that such amounts will be added to the MTEF budget baseline going forward.

13. You are advised that in case DoJ & CD is unable to respond and confirm the budget and MTEF allocations in writing,
    13.1. Legal Aid SA will not be able to pay OSD phase 2 by end March 2010 as intended;
    13.2. When we receive the R42 million, we shall retain it (OSD Phase 2 for 2009/10 and back pay) pending National Treasury approval as a rollover to 2010/11;
    13.3. We will only effect the OSD phase 2 adjustment and payments once the DoJ&CD and National Treasury have, in writing, approved the adjustment to budget & MTEF 2010/11 going forward.

Your urgent response to this matter will be appreciated.

Regards

V. N. Vedalankar

Ms Vidhu Vedalankar
Chief Executive Officer

Legal Aid South Africa

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V4

13 April 2010

The Director General
Department of Justice and Constitutional Development
Private Bag X81
PRETORIA
0001

Fax: 086 644 6406

Dear Ms Msomi

RE: LEGAL AID SOUTH AFRICA BUDGET 2010 & EFFECT OF OSD FUNDING

My letter dated 18 March 2010 has reference. I have to date not received an acknowledgement or response to my letter.

As raised in my letter of 18 March 2010, in terms of Section 3(3) of the PFMA, Legal Aid South Africa as a public entity may not budget for a deficit unless the prior written approval of the National Treasury has been obtained. In my letter I indicated the deficit for OSD Phase I for 2010/11 to be R23,8million. For ease of reference I attach a copy of a letter from the DG:DoJ&CD dated 05.02.2009 in which, in the last paragraph, he committed 'to adjust the baseline of the LAB in the Adjustment Budget with R69,6million subject to periodic reporting of the LAB on projected personnel expenditure...". Despite this commitment to adjusting the baseline we have only seen an adjustment to our baseline by R50million. The R69,6million for 2009/10 amounts to R73million for 2010/11. The adjustment of the baseline by R50million leaves us with a shortfall of R23million for 2010/11. This is unfortunate because we have already budgeted for 2010/11 on the basis of the DG's commitment. Please note that funding these amounts from your savings, as and when they become available, is contrary to the intent of the Medium Term Expenditure Framework and leaves us in a very precarious position. Please will you indicate how you intend to abide by this commitment?

If you are unable to abide by this commitment we will be forced to effect the necessary adjustments to our 2010/11 Budget so as to accommodate the R23 million budget shortfall of OSD phase 1. The primary impact of that will unfortunately have to be on service delivery at courts including increased

delays and backlogs as a result of us reducing the number of practitioners that we can make available at courts.

As per my letter dated, 18 March 2010 the funding for OSD Phase II also remains outstanding. As indicated we are unable to implement OSD Phase II unless we have a commitment to a change in our budget baseline by the amounts indicated in the letter. Discontent amongst staff on the non finalisation of OSD Phase II remains a challenge.

May I request your urgent response to the issues raised above as well as to my letter of 18 March 2010?

With Kind Regards

V.N. Vedalankar

Ms Vidhu Vedalankar
Chief Executive Officer
LEGAL AID SOUTH AFRICA

V5

From: Brian Nair
Sent: 15 July 2010 04:54 PM
To: Jerry Makokoane
Cc: Amanda Clark; Rebecca Hlabatau; Vidhu Vedalankar
Subject: Budget cuts - Reduction in Criminal Court Coverage - July 2010.xlsx

Hi Jerry

Please find my first cut of 56 practitioner posts at JCs. I have not looked for paralegal and admin positions at JCs as yet. This amounts to a potential savings of R16m which is much lower than what is required.

In terms of this cut, I have ensured that DC will not be lower than 80% coverage whilst RCs will not be lower than 90% coverage. If we need to find more savings from practitioner positions, then we will need to agree to lower coverage levels for District and Regional courts.

Kindly note that I have not consulted ROEs on these cuts. I will need to engage them once we are sure that these cuts will be necessary.

Thanks

Brian

V6

From: Jerry Makokoane
Sent: Thursday, September 30, 2010 3:07 PM
To: Andile M. Mbatyoti; Rebecca Hlabatau; Amanda Clark; Thembile Mtati; Mpho Phasha
Cc: Solly Sekgota; Oscar Maripane
Subject: Consideration of cost cutting measures in Legal Aid SA
Importance: High

Day All

The attached memo from my office refers.

Please ensure that all staff in your department are given an opportunity to consider this issue. Further, a staff meeting should be held where suggestions from your staff can be discussed and finalised.

In order to facilitate the consolidation of information from Departments, a web page has been developed to record your input on the line items in our budget which could be considered for cutting. Please access this web page from our National Operations reporting site under Ad Hoc reports. This web page is called *Budget Savings*.

Kindly note that ROEs and JCEs have been send a separate communication. You only have to fill information for your function. If you want to also use the Functional committee it is also ok.

Kindly note the deadline for the provision of your reports on this matter ie 15th October 2010.

Thanks

Regards

Jerry Makokoane
Chief Operations Officer

Legal Aid
South Africa

Legal Aid South Africa

Your voice. For justice.

To:

National Executives
ROEs
JCEs
All Staff

Consideration for effecting cost–cutting measures in Legal Aid SA

1. With the current economic recession showing a slow recovery while pressure of service delivery by state institutions remain a point of focus, Cabinet has on the 18th August 2010 indicated that it is to finalise proposals for cost-cutting measures across the state departments. These cost-cutting measures are intended to reduce financial wastage and redundancies, and thus assist in availing funds to priority areas such as salary costs.

2. Legal Aid SA is as a result not expecting new or additional funding from the National Treasury during the next MTEF period. We currently face a deficit of more than R23.8mil in our Budget 2010/11 due to a cut in funds from the DoJ. The wage settlement for COLI will add further to the deficit since it is at a higher level than the grant provided by National Treasury. This will carry through into our 2011/12 budget. We have a further cut of about R34mil in the 2012/13 government grant allocation. This means that we are compelled to introduce some cost-cutting measures and efficiency measures as required by government. The cost-cutting and efficiency measure proposed by the Cabinet are the following:

    1. freezing of all vacant posts;
    2. a moratorium on purchasing of furniture;
    3. rationalization of overseas trips;
    4. cancelling performance bonuses for the 2010/11 financial year;
    5. using government facilities for meetings (instead of Hotels);
    6. no team building exercises and Christmas parties;
    7. reduction of cell phone expenditures;
    8. limiting business class travel to Members of the Executive Council (MEC's) and Head Of Departments (HOD's)

3. As you already know, more than 68% of our budget is committed to salaries and related benefits, a further 7% goes to contractual services such as Office Lease, municipal service, Insurance fees, cleaning and security services, etc. The anticipated cost-cutting measures are bound to affect service delivery and internal business operations of Legal Aid SA.

4. In preparation of this eventuality, each cost center is herewith advised to provide inputs on the nature and extent of budget cuts the Legal Aid SA is to consider, effective from quarter 3 of 2010/11 financial year through the next MTEF period.

5. All inputs to be canvassed through staff meetings. The inputs must therefore be a product of the staff meeting recommendations.

6. The required inputs are to be stated in each budget line area hereunder:

(*Your statements of Suggested Actions are to be: Short, Realistic, and Actionable)*

Name of Cost Center:	**(Department / Regional Office / Justice Centre)**
Budget line	**Suggested action**
Salaries and related benefits	e.g. freezing of all vacant posts
Other Direct Expenditure Judicare	
Operating Budget -Congress and Seminars -Education & Training -Refreshments -Staff bursaries -Telephone & Fax -Tools & Equipments -Travel & Subsistence -Workshops	e.g. reduction of telephone expenditures
Capital Budget -Computer Hardware (PCs & laptops) -Furniture & Equipments -Motor Vehicles	e.g. a moratorium on purchasing of furniture

7. In considering inputs, Management Exco will be sensitive to all relevant aspects which could regress progress made in our business operations.

Kindly let me have your inputs by 15 October 2010.

Chief Operations Officer

Legal Aid South Africa

TO	NDE
FROM	ROE (KZN)
DATE	06th NOVEMBER 2009

SENIOR LITIGATOR INTERVIEWS
RECOMMENDATION FOR NEXT ROUND INTERVIEWS

1. **PURPOSE**

To recommend the following candidates for the next round of interviews:-

- Mr Anthony Brink
- Mr Bongani Mngadi

2. **BACKGROUND**

The above-mentioned position was advertised internally and externally a few times to give employees within the organisation and external candidates an opportunity to apply. Candidates must possess the following:

- Admitted Attorney / Advocate.
- B Proc or LLB degree, with right of Appearance in the High Court.
- A LLM will be an advantage.
- At least 12 years post qualification legal experience of which 10 years must be high court experience. Must be performing at least 80% active court litigation.
- Valid code 08 drivers licence.
- Excellent leadership & people development skills with a track record in training.
- Experience in budget preparation & management thereof.
- Advanced computer skills (MS Word, Excel, Outlook, PowerPoint & Ad infinitum).
- Strong communication, problem solving & interpersonal skills.
- Innovative, creative & analytical thinking skills. Strong research skills.
- Ability to interpret & apply policies.

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

From the applications received 4 candidates were short listed for interviews for this position. Candidates were invited to an interview held on the 05-11-2009.

The selection panel consisted of the following members:

Mr Vela Mdaka	-	ROE (KZN)
Mr Baboo Brijlal	-	Reg. HR Manager (KZN Region)
Mr Kishore Mehta	-	JCE (Durban JC)
Mr Bertus Appel	-	JCE (PmBurg JC)
Mr Julian Butler	-	HCU Manager (PmBurg JC)
Mr Vis Nair	-	JCE (Pinetown JC)

3. THE INTERVIEWS PROCEEDED AS FOLLOWS:

The selection panel conducted the interviews by using the standard interview assessment form and guidelines. The results of the interview are shown in the table below:-

NAME OF CANDIDATE	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	AVERAGE & PERCENTAGE
Mr Mzochithwayo Ngcamu	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mr Anthony Brink	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mr Johannes van Wyk	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mr Bongani Mngadi	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Notes:-
All scoring out of a maximum score of 50 (5 questions X 10 points each).

4. SUMMARY OF CANDIDATES

[redacted]

2

Legal Aid South Africa

[redacted]

Mr Anthony Brink

Mr Brink has a BA & LLB degrees. He is an admitted Advocate (April 1983). Candidate is currently employed at a public interest NGO (last 5 years) with limited litigation primarily involved in advocacy work. Previously candidate worked as Prosecutor (5 years), Civil Magistrate (4 years) & Private Practice (8 years). Candidate has ±8 years experience in the High Court (2 years short of the minimum requirements as per advert). Candidate has also trained pupil advocates. Candidate had 2 matters in the SCA (1 argued & 1 settled) and 1 matter (*pro amico*) for the Constitutional Court (drafted papers). Candidate demonstrated his capability to undertake high level research. He also sufficiently demonstrated his ability to conduct training. Candidate has a good grasp of law. Candidate is a prolific writer/author with many commendations cited on his CV. After having considered the candidate's overall presentation to the panel, candidate is recommended for next round of interviews.

[redacted]

[redacted]

3

[redacted]

5. **EMPLOYMENT EQUITY STATUS**

The Durban JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	23	10	33
2. Whites	2	3	5
3. Indians	10	17	27
4. Coloureds	1	2	3
TOTAL	36	32	68

Equity Stats as at 06.11.2009.

The PmBurg JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	19	11	30
2. Whites	6	3	9
3. Indians	12	12	24
4. Coloureds	2	1	3
TOTAL	39	27	66

Equity Stats as at 06.11.2009.

6. **RECOMMENDATION**

The panel recommends the following candidates for the next round of interviews:-

- Mr Anthony Brink - External Candidate
- Mr Bongani Mngadi - Internal Candidate

Legal Aid South Africa

We certify that the Employment Equity targets for the JCs have been taken into account and that this recommendation meets the Employment Equity targets.

Baboo Brijlal
Reg. HR Manager (KZN Region)

Vis Nair
JCE (Pinetown) 23/11/2009

Kishore Mehta
JCE (Durban JC) 17/11/09

Sortus Appiah
JCE (PmBurg JC) 23/11/09.

Stefan Bester
HEU Manager (PmBurg JC)
23/11/2009

Vela Mdaka
ROE (KZN Region)

NEXT ROUND INTERVIEW APPROVAL

NAME	RECOMMENDATION: ACCEPTED	RECOMMENDATION: NOT ACCEPTED	DATE
BRIAN NAIR HOE			

Transcript of audio recording of CEO Vidhu Vedalankar's address to the Portfolio Committee for Justice and Constitutional Development on 12 October 2010 during LASA's briefing on its Annual and First Quarter Reports (audio recording: http://www.pmg.org.za/node/23447 ; transcript made by Adv Brink)

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

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

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

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

Legal Aid South Africa

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CONFIDENTIAL

23 August 2010

Mr Anthony Brink
25 Baker Road
Pietermaritzburg
3200

Dear Mr Brink

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

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

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

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

Yours sincerely

LEGAL AID SOUTH AFRICA

VELA MDAKA
REGIONAL OPERATIONS EXECUTIVE
KZN REGION

Your voice. For justice.

	ACTIONS/DECISIONS	Responsible Person	Due date
1.	**WELCOME AND APOLOGIES**		
1.1	The Chairperson declared the meeting open and welcomed all present.		
1.2	The following apologies were noted • Ms S Monaledi • Mr V Jarana		
2.	**REGISTER OF INTERESTS** The Register of Interests was circulated and duly noted by all members present.		
3.	**MINUTES**		
3.1	**Minutes of the previous meeting** The minutes of the previous meeting held on 29 May 2010 were adopted.		
3.2	**Matters Arising Schedule** The Matters Arising Schedule was noted.		
4.	**MATTERS FOR APPROVAL** **<u>ALL COMMITTEES</u>**		
4.1	**Draft Annual Report 2009/10 including Annual Financial Statements** The Board approved the Draft Annual Report 2009/10 subject to the following amendments: • p16 that the designation of the person be placed next to their names in the same format as the name; • That the qualification (**CA(SA)**) be added to Ms Luthuli's credentials; • p78 under Mr Ramdas' name; 'City of Johannesburg; • P 76 that Judge Mlambo and Mr Makume's details be updated to reflect their new positions; The Board commended management on a comprehensive Annual Report that made good reading.	BS	31.08.10
4.2	**MTEF 2011/14 CONSOLIDATED** The Board approved the recommendations as contained in clause 8 of the document: *8.1 The Board approve the MTEF for the period ending 2011/12-2013/14.* *8.2 The Board approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of Annexure I.*	CFO CEO	30.09.10 01.11.10

Legal Aid South Africa

ANNEXURE I

REPORT TO BOARD

16 July 2010

Impact of OSD funding shortfall on budget 2010/11

1. Background

1.1. The 2010/11 budget includes the outstanding OSD funding of R53.8million. This amount constitutes:

OSD Phase	Amount	Status
OSD Phase 1	R23.8 million	Implemented
OSD Phase 2	R30million	Not yet implemented
OSD Phase 2 back payment	R42million	Not yet implemented

1.2. On the 14 July 2010 Legal Aid SA COO met with both DoJ DDG, Mr Vuso Shabalala , as well as Adv Pieter du Rand, Legal Aid SA board member in order to clarify the position of DoJ regarding the outstanding OSD funding of R53.8 million for the 2010/11 budget period, as well as its effect to the MTEF baseline.

1.3. DoJ has indicated that they do not have funds to cover for the R53.8 million OSD shortfall. The Executive Authority has however in a meeting with the Legal Aid SA Board Chairperson expressed his wish to have Legal Aid SA service delivery maintained and that DoJ should make funds available to cover the OSD shortfall through the mid-year budget adjustments in September/October 2010.

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2. 2010/11 Budget period

2.1. In the event DoJ is unable to secure funds to cover the OSD Phase 1 shortfall, Legal Aid SA will have a deficit of R23.8 million in the 2010/11 Budget. Salaries for 2010/11 are budgeted at 97% with recruitment currently being at about 94%.

2.2. In order to mitigate the probable deficit, the following measures are proposed:

a) Court coverage is currently approximately 90% at Distric Courts and 100% at Regional Courts. For the remaining of the 2010/11 budget period, District Courts will be progressively reduced to no lower than 80% coverage whilst Regional Courts will be progressively reduced to no lower than 90% coverage. About R16 million will be saved from this measure, though its effect will be a reduction in the number of days that we are able to cover District Courts and Regional Courts. This has a direct negative impact on service delivery. Any further reduction on filled legal practitioner positions will result in a further percentage reduction in court coverage
b) The recruitment process will be reviewed, centralizing the decision on filling of posts at Executive level, with due regard to the need to prioritise critical positions;
c) Any savings derived during the financial year be reserved to cover part of the anticipated OSD shortfall.

2.3. In the event DoJ is unable to secure the OSD Phase 2 funding, the result will be that,

a) a potential labour unrest within Legal Aid SA will increase;
b) Legal Aid SA legal practitioners will be paid less than their counterparts in DoJ (who have already implemented OSD Phase 2), and those in NPA (in the event NPA finalise payments of OSD Phase 2).

3. MTEF 2011/12 onwards

Should DoJ not secure OSD funding in full, Legal Aid SA will have to revise its MTEF 2011/12 onwards. With the current macro increase on budget allocation received from National Treasury, Legal Aid SA salaries will continue to impact negatively on the Operational and Capital budget unless posts are either frozen or abolished. This will have a significant negative impact on service delivery and good progress Legal Aid SA has already achieved in providing legal representation to many indigent persons in the country.

4. Recommendation

To provide for the anticipated OSD shortfall funding of R23.8 million, it is recommended that:

I. Savings from the 2010/11 financial year be used to fund the OSD shortfall;
II. District Court coverage be approximately no lower than 80% coverage, while Regional Court coverage is reduced to no lower than 90% coverage, for the remaining part of the 2010/11 budget period. This will derive a saving of about R16million to cover the shortfall.

EVII

Legal Aid South Africa

Your voice. For Justice.

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

Senior Litigator

Ref: 2009/06/25/kzn

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

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

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

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

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

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

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

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

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

For more vacancies visit www.legal-aid.co.za

From: Amanda Clark
Sent: Wednesday, September 08, 2010 11:00 AM
To: Thembile Mtati
Subject: FW: SENIOR LITIGATOR INTERVIEWS

From: Amanda Clark
Sent: 30 April 2010 04:24 PM
To: Anthony Brink
Subject: RE: SENIOR LITIGATOR INTERVIEWS

Hi Anthony

The process is where it is. It is your decision as to whether you wish to wait to allow us to complete the process or whether you wish to withdraw. Our process has nothing to do with your personal choices with regard to visits to Italy or the World Cup or your partner whom you refer to a "sweetie".

At this stage it is not even clear which applicants will be considered in the second round or if indeed we will proceed with a second round.

Applying for a job is done at the applicants own risk. Being called to an interview is not a guarantee of being appointed to the position.

I think you should allow us to complete our process at the pace we have decided. It is also not proper to obtain inside information from your brother and then to stand on whatever you have been told by him.

If we require further information or follow-up from yourself, our organisation will contact you.

Amanda Clark
Human Resources Executive

Legal Aid South Africa

Tel: 011 877 2026
Fax: 011 877 2222
www.legal-aid.co.za
Legal Aid SA Culture - Live the Values !!!

From: Anthony Brink [mailto:arbrink@iafrica.com]
Sent: 22 April 2010 02:58 PM

The Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Constitutional Development on the performance of the Department of Justice and Constitutional Development for the 2009/10 financial year, dated 26 October 2010.

The Portfolio Committee on Justice and Constitutional Development, having considered the performance of the Department of Justice and Constitutional Development, National Prosecuting Authority, Legal Aid South Africa, South African Human Rights Commission and Public Protector, reports as follows:

1. Introduction

1.1. The Committee oversees the activities of the Department of Justice and Constitutional Development and various other institutions, all of which receive their allocation under the Justice and Constitutional Development Vote. These include the National Prosecuting Authority (NPA); Legal Aid South Africa (LASA); South African Human Rights Commission (SAHRC) and Public Protector (PP).

1.2. Each year, as part of its oversight function, the Committee considers the annual reports of the Department of Justice and Constitutional Development and other institutions that it oversees. The recently promulgated Money Bills Procedures and Related Matters Amendment Act, (Act 9 of 2009), sets out the process allowing Parliament to make recommendations to the Minister of Finance to amend the budget of a national Department. As part of this process, Portfolio Committees must compile Budgetary Review and Recommendation Reports (BRRR) in October of each year, containing recommendations relating to funding allocations for the departments and other institutions that account to them. The BRRR are also a source document for the Standing Committee on Finance when it makes recommendations to the National Assembly on the Medium-Term Budget Policy Statement (MTBPS). The annual review and analysis of performance (entailing both financial and non-financial performance indicators) forms part of this process.

1.3. This is the first year that the Committee is undertaking the BRRR process. The Committee believes its engagement with the Justice Department, NPA, LASA, SAHRC and PP was robust and, given the time constraints and the quality of the information provided, its evaluation of the information presented fair. The Committee is of the view that continuous engagement with the Department and institutions on their performance is critical, and has already committed to meeting with the Department and other institutions it oversees quarterly. It intends to refine this quarterly reporting process by developing tools that will strengthen its oversight capacity.

1.4. The Committee was briefed on the annual performance for 2009/10 of the Department of Justice and Constitutional Development, NPA, LASA, SAHRC and PP. The briefings took place from 12 – 15 October 2010. Copies of the presentations are available from the committee secretary, Mr V Ramaano. The Committee has already considered and reported on the respective strategic plans and budget proposals of the Justice Department, NPA, LASA, SAHRC and PP for 2010/11 and, as mentioned above, has reviewed their performance for the first quarter of 2010/11.

1.5. This Report comprises four parts:

- An increase in conviction rates was also recorded.

4.4.2. Key challenges arising during 2009/10

- Qualified audit opinion (for tangible assets; irregular expenditure; prepayments and advances; fruitless and wasteful expenditure). (There has, however, been some improvement from 2007/08 when the NPA received a disclaimer).
- The vacancy rate within the prosecutorial component (16%)
- Case-flow-related problems and the absence of key role-players
- Lack of promotion of the use of other languages
- Prosecutorial and investigative capacities in the NPA and SAPS
- The NPA reported a growing number of cases resolved by informal mediation.
- The conviction rates for sexual offences are low (in the 60% range); significantly lower than for other types of cases. (The conviction rates in the dedicated courts and the Thuthuzela Care Centre's (TCCs) far outreach that of ordinary courts when dealing with sexual offence matters).

4.5. Programme 5 Auxiliary and Related Services

This programme includes the South African Human Rights Commission and Public Protector, as well as Legal Aid South Africa. Each institution is discussed in Part 3 and, therefore, only a high level summary of acheivements and challenegs is provided.

Table 6: Budget allocation and Audit opinion 2009/10

Institution	**Audit opinion**	**Budget allocation 2009/10 millions (R)**	**Budget allocation 2010/11 millions (R)**
South African Human Rights Commision	Unqualified	70.1	73.5
Public Protector	Unqualified	108.9	112.8
Legal Aid South Africa	Unqualified	848.4	991.9

4.5.1. Selected achievements, as reported, for each institution for 2009/10 included:

Legal Aid South Africa:

- Provided services at all criminal courts in the country through a national footprint of 64 Justice Centres and 63 Satellite Offices
- Delivered quality legal services in 419 149 new legal matters
- Provided legal assistance in 29 028 civil legal matters. 211 874 clients received general legal advice
- Assisted 59 266 children
- Reported that its practioners are exceeding their legal quality targets
- Implemented agency agreements to serve rural courts
- Exceeded its legal training targets
- Established civil units at 13 Justice Centres
- Ensured a recruitment level of 94%
- Sucessfully implemented its Leadership Development Programme
- Spent 99.5% of the allocated budget for 2009/10
- Successfully rolled out the new Legal Aid South Africa brand

Legal Aid South Africa

Recruitment Stats - National Summary - December 2010

		Eastern Cape				Free State & North West				Gauteng				Kwazulu Natal				Limpopo & Mpumalanga				Western Cape & Northern Cape				Grand Total			
		Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%	Filled	Vacant	Budget	%
Service Delivery	CA	89	2	91	98 %	87	1	88	99 %	131	6	137	96 %	113	6	119	95 %	66	3	69	96 %	116	2	118	98 %	602	20	622	97 %
	CA - Civil	5		5	100 %	5		5	100 %	4	1	5	80 %	5		5	100 %	3	1	4	75 %	5	1	6	83 %	27	3	30	90 %
	HCU Manager	4		4	100 %	1	1	2	50 %	2		2	100 %	2		2	100 %	1		1	100 %	2		2	100 %	12	1	13	92 %
	JCE	8	1	9	89 %	13		13	100 %	8		8	100 %	8		8	100 %	9		9	100 %	10		10	100 %	56	1	57	98 %
	JCE 2	1		1	100 %			0	-	2		2	100 %	2		2	100 %			0	-	2		2	100 %	7	0	7	100 %
	PA - Children Civil	5		5	100 %	2	1	3	67 %	4	1	5	80 %	4		4	100 %	2		2	100 %	2		2	100 %	19	2	21	90 %
	PA - Children Criminal	3		3	100 %	2		2	100 %	2		2	100 %	2		2	100 %			0	-	4	1	5	80 %	13	1	14	93 %
	PA - Civil	13		13	100 %	14	1	15	93 %	14		14	100 %	10	1	11	91 %	8	3	11	73 %	14	2	16	88 %	73	7	80	91 %
	PA - Commercial Crime	1		1	100 %	1		1	100 %	5		5	100 %	1		1	100 %			0	-	1		1	100 %	9	0	9	100 %
	PA - DC	4		4	100 %	5		5	100 %	3		3	100 %	3		3	100 %	12	1	13	92 %			0	-	27	1	28	96 %
	PA - Estates Children			0	-	1		1	100 %			0	-			0	-			0	-			0	-	1	0	1	100 %
	PA - HCU	18		18	100 %	11		11	100 %	18	2	20	90 %	9	2	11	82 %	7	1	8	88 %	14	2	16	88 %	77	7	84	92 %
	PA - HCU Civil	3		3	100 %	1		1	100 %	1		1	100 %	2		2	100 %			0	-	1		1	100 %	8	0	8	100 %
	PA - Justice Centre	92	1	93	99 %	84	3	87	97 %	104	9	113	92 %	91	6	97	94 %	75	5	80	94 %	120	5	125	96 %	566	29	595	95 %
	PA - Labour	1		1	100 %			0	-	1		1	100 %	1		1	100 %			0	-	1		1	100 %	4	0	4	100 %
	Paralegal	23	1	24	96 %	23		23	100 %	23	3	26	88 %	21	1	22	95 %	26		26	100 %	29		29	100 %	145	5	150	97 %
	Paralegal - ATP	3		3	100 %	1		1	100 %	3		3	100 %	2		2	100 %	0	1	1	0 %	2		2	100 %	11	1	12	92 %
	Paralegal - HCU	3		3	100 %	2		2	100 %			0	-	1	1	2	50 %	1		1	100 %	1		1	100 %	8	1	9	89 %
	Principal Attorney	4		4	100 %	2		2	100 %	6		6	100 %	3		3	100 %	1		1	100 %	5	1	6	83 %	21	1	22	95 %
	Principal Attorney - Civil	2		2	100 %	2		2	100 %	2		2	100 %	2		2	100 %	2		2	100 %	3		3	100 %	13	0	13	100 %
	Senior Litigator	1		1	100 %	2		2	100 %	2		2	100 %	0	2	2	0 %			0	-	1	1	2	50 %	6	3	9	67 %
	SPA	14		14	100 %	18	2	20	90 %	20	1	21	95 %	13	5	18	72 %	15		15	100 %	19		19	100 %	99	8	107	93 %
	SPA HCU			0	-	1		1	100 %	1	1	2	50 %			0	-			0	-	1		1	100 %	3	1	4	75 %
	SPA SO	9		9	100 %	6		6	100 %	3	1	4	75 %	11		11	100 %	15	2	17	88 %	15		15	100 %	59	3	62	95 %
	Service Delivery Total	306	5	311	98 %	284	9	293	97 %	359	25	384	93 %	306	24	330	93 %	243	17	260	93 %	368	15	383	96 %	1866	95	1961	95 %

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HE LABOURT COURT OF SOUTH AFRICA, HELD AT DURBAN

Case No: D529/11

e matter between:

THONY BRINK Applicant

d

GAL AID SOUTH AFRICA Respondent

STATEMENT OF DEFENCE

RELIMINARY ISSUE

1. The Respondent will abide the decision of this Court on the question whether the referral of this matter was timeous. Should the Court decide that the referral was not timeous, the Respondent asks the Court to dismiss the matter with costs on the attorney and client scale. Costs should be on the punitive scale because the Applicant has gratuitously accused the Respondent, in

48.9. The aforegoing exercise ensures that (i) the critical position of High Court litigator is not abandoned and (ii) yet the costs involved in that process are dramatically saved.

48.10. The Respondent avers that even after the OSD funding was resolved it was still not feasible to fill the Senior Litigator posts. The Respondent had to relook at its critical vacant positions and fill them in the best possible and feasible manner. Furthermore, the Respondent is budgeting for the abovementioned 2012/2013's R34 million cut.

48.11. Accordingly, the Respondent denies that it and/or its officials lied to the Minister and the Portfolio Committee on any of these issues.

48.12. The Respondent denies the suggestions and speculative conclusions arrived at by the Applicant in the balance of these paragraphs.

49. **PARAGRAPHS 165. – 179.**

49.1. The Respondent denies these accusations.

49.2. The Respondent has demonstrated that by July 2010, the OSD shortfall was still being discussed and cost cutting measures being implemented. Not disputed.

49.3. The Respondent repeats the example made hereinabove on how it, *inter alia*, strategically aimed at realising the objectives mentioned in its Strategic Plan 2009 – 2012. In other words, the hiring of two or more

On 29 July 2010 Vedalankar then emailed Nair, summoning him to meet with her to discuss how to respond to the applicant's letter. (Bundle, page 389)

At their meeting Vedalankar instructed Nair to answer the applicant's letter and to tell him that the respondent had decided that it would not be filling its vacant Senior Litigator posts. (Bundle, page 19)

The meeting between Vedalankar and Nair was conducted off the record, and no minute exists of the discussion and decision.

57. At its meeting on 31 July 2010 the Board approved the national executive managers' 'Recommendation' in their 'Report to Board', as the minutes reflect: 'The Board approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of Annexure 1' – i.e. the twin proposal that 'to cover part of the anticipated OSD shortfall ... savings derived during the financial year be reserved' and that Junior Practitioner posts be reduced. (Bundle, page 251)

58. Notwithstanding the 'need to prioritise critical positions' for 'recruitment', noted by Vedalankar, Makokoane, Nair, and other national executive managers in their 'Report to Board' among their 'proposed ... measures ... to mitigate the probable deficit', Nair wrote to the applicant on 3 August 2010, as instructed by Vedalankar, alleging to him that 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [sic] put on hold due to various reasons. I can now confirm that we will not be proceeding with the filling of any of these posts.'

59. The candidate who had just been selected and recommended for appointment to the Mthatha Senior Litigator post in about July, was now told in August that the respondent would not be filling this critical position, which Vedalankar, Makokoane, Nair, and other national executive managers had just mentioned generically in their 'Report to Board', speaking of 'the need to prioritise critical positions' for 'recruitment' among their 'proposed ... measures ... to mitigate the probable deficit'.

60. No record exists of the decision taken by the respondent's national managers to abort the successful candidate's appointment to the critical Mthatha Senior Litigator post. This is because the decision was taken off the record.

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ITHONY, ROBIN BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

RESPONDENT'S REPLY TO APPLICANT'S PRE-TRIAL ISSUES RAISED AT A PRE-TRIAL CONFERENCE HELD ON 26 OCTOBER 2011

ISSUES THE RESPONDENT UNDERTOOK TO REVERT ON IN TERMS OF THE PRE-TRIAL MINUTE DATED 26 OCTOBER 2011

1. AD CONFIRMATION OF THE DATA AND PERCENTAGE CALCULATIONS OF LASA'S STAFF COMPLEMENT

1.1. The Applicant requested that the Respondent confirm or deny the correctness of a summary of data extracted from the 2009/2010 and 2011 Annual Reports relating to **'TOTAL ESTABLISHMENT AND**

Funding Budget Proposal (page 67 item 7) annexed hereto and marked **LA2**.

Para 5 of the PTA: Transfer of Northern Cape Senior Litigator Post to Mthatha

2.4. The Respondent annexes hereto an extract of a resolution of the meeting of the Legal Services Technical Committee dated 24 March 2010, (as annexure **LA3)**, read with the minutes thereof dated 24 March 2010 (page 4 item 4.1.7.) which resolved to transfer the Senior Litigator Post: Northern Cape to Mthatha.

Para 6 of the PTA: the budget for Senior Litigator posts both filled and vacant

2.5. The Respondent annexes a document indicating the Respondent's Budget allocation for the Senior Litigator posts both filled and vacant marked **LA4**.

2.6. The Respondent avers that there was no re-allocation of any budget between cost centres.

Para 7 of the PTA: the Salary of a Senior Junior Professional Assistant

2.7. The Respondent does not have the position of a Senior Junior Professional Assistant in its establishment.

31. **Ad Paragraph 31.**

31.1. Agreed.

31.2. It was Mr Nair who gave out the said instruction. This was, in any event, congruent with the cost cutting measures that the Respondent had begun including but not limited to the review of all recruitment processes.

32. **Ad Paragraphs 32 and 33.**

32.1. Agreed.

33. **Ad Paragraph 34.**

33.1. Disagreed.

33.2. The Respondent explained its silence regarding the entire process around that time and the decision to abort the recruitment was not taken a few weeks after the interviews in November 2009 but in July 2010 after the Board meeting.

34. **Ad Paragraphs 35 and 36.**

34.1. Agreed save that the recruitment process was not aborted a couple of weeks after the interviews.

34.2. The two persons referred to herein were eliminated early in the selection process and were not recommended for the second round of interviews. Accordingly, they were not entitled to any information that pertains to the second round of interviews.

46.1. Disagreed.

Ad Paragraph 53.

47.1. Agreed.

Ad Paragraph 54.

48.1. Disagreed.

48.2. The CEO only sought clarity as to the delay in handling the Applicant's application.

Ad Paragraph 55.

49.1. Disagreed.

49.2. The Applicant will have to prove this allegation.

Paragraph 56.

50.1. Agreed.

Paragraph 57.

51.1. Agreed save to clarify that District and Regional practitioner posts are not necessarily "Junior posts."

Paragraphs 58 and 59.

52.1. Agreed save to say that it was inherent in Brian Nair's responsibilities to inform candidates that the process has been aborted.

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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Medium Term Budget Policy Statement

2010

Speech

Pravin Gordhan

Minister of Finance

27 October 2010

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2594

I am pleased to be able to table a comprehensive *Adjusted Estimates of National Expenditure* to accompany the *Adjustments Appropriation Bill* and – for the first time – a *Division of Revenue Amendment Bill,* for the consideration of the House. I cannot deal with all the adjustments in detail, but let me highlight the main points.

In total, the adjusted expenditure level is R2.5 billion lower than the February budget estimate, which included an unallocated contingency reserve of R6 billion. Contributing to this decrease is a lower provision for state debt costs due to the current strength of the rand and the decrease in interest rates, and savings declared by departments amounting to almost R2 billion.

The main additional allocations in the Adjustments Appropriation are as follows:

1. R1.8 billion in roll-overs arising from commitments related to unspent balances in 2009/10;
2. R6.2 billion to cover higher remuneration costs;
3. R396 million for various self-funding department-specific activities;
4. R2.2 billion in unforeseeable and unavoidable expenditure adjustments recommended by the Treasury Committee this year, including
    a) R769 million to cover property rates due to municipalities on behalf of provinces, funded through the *devolution of property rate funds grant,*
    b) R320 million for occupation-specific dispensation salary adjustments in the Department of Justice and Constitutional Development, the National Prosecuting Authority and Legal Aid South Africa,

Adjusted Estimates of National Expenditure

2010

National Treasury

Republic of South Africa

October 2010

Vote 23

Justice and Constitutional Development

Adjusted budget summary

	2010/11			
R thousand	Main appropriation	Adjusted appropriation	Decrease	Increase
Amount to be appropriated	10 250 483	10 787 345	–	536 862
of which:				
Current payments	8 137 191	8 479 407	–	342 216
Transfers and subsidies	1 485 637	1 623 828	–	138 191
Payments for capital assets	627 655	683 650	–	55 995
Payments for financial assets	–	460	–	460
Direct charge against the National Revenue Fund	1 929 870	1 929 870	–	–
Executive authority	Minister of Justice and Constitutional Development			
Accounting officer	Director-General of Justice and Constitutional Development			
Website address	www.doj.gov.za			

Aim

The aim of the Department of Justice and Constitutional Development is to uphold and protect the Constitution and the rule of law, and render accessible, fair, speedy and cost effective administration of justice in the interests of a safer and more secure South Africa.

Mid-year performance status

Indicator	Programme	Outcome	Annual performance		
As published in the 2010 ENE	Programme linked to the indicator	Outcome the indicator is linked to (if relevant)	Projected for 2010/11 as published in the 2010 ENE	Achieved in the first five months of 2010/11 (April to August)[1]	Changed estimate for 2010/11
Outstanding court roll at end of each financial year	Court Services	All people in South Africa are and feel safe	232 243	209 650	–
Number of cases finalised[2]:	National Prosecuting Authority	All people in South Africa are and feel safe			
– including alternative dispute resolution mechanisms			412 313	195 413	482 491
– excluding alternative dispute resolution mechanisms			324 030	141 921	357 928
Conviction rate:	National Prosecuting Authority	All people in South Africa are and feel safe			
– high courts			87%	88%	–
– regional courts			74%	73%	–
– district courts			87%	91%	–
– sexual offences courts			66%	68%	–
– specialised commercial crime unit			94%	91%	–
Asset forfeiture unit:	National Prosecuting Authority	All people in South Africa are and feel safe			
– number of new completed forfeiture cases			300	136	–
– number of new freezing orders			310	175	–
– value of new freezing orders			R400m	R374m	R450m
– success rate			86%	96%	90%

1. Six months data only available after publication of AENE, this data are for five months.

2. The indicator "Number of new cases finalised" has been corrected to "Number of cases finalised", because it is not only new cases that are being finalised within the reporting period, but all cases on the court roll.

The estimates for the number of cases finalised, the value of new freezing orders (asset forfeiture unit) and the success rate (asset forfeiture unit) have been revised to align with targets set in the National Prosecuting Authority's 2010–15 strategic plan.

Programme 5: Auxiliary and Associated Services

Subprogramme	2010/11						
		Adjustments appropriation					
R thousand	Main appropriation	Roll-overs	Unforeseeable/ unavoidable	Virements and shifts	Other adjustments	Total adjustments appropriation	Adjusted appropriation
Office for the Control of Interception and Monitoring of Communication	603	–	–	(5)	12	7	610
South African Human Rights Commission	73 474	–	–	–	894	894	74 368
Special Investigating Unit	165 802	–	–	2 129	3 158	5 287	171 089
Legal Aid South Africa	991 895	–	96 000	24 200	10 544	130 744	1 122 639
Office of the Public Protector	112 816	–	–	–	1 266	1 266	114 082
Justice Modernisation	379 197	–	–	–	–	–	379 197
President's Fund	1	–	–	–	–	–	1
Represented Political Parties Fund	98 095	–	–	–	–	–	98 095
Total	1 821 883	–	96 000	26 324	15 874	138 198	1 960 081
Economic classification							
Current payments	359 932	–	–	(5)	12	7	359 939
Compensation of employees	508	–	–	–	12	12	520
Goods and services	359 424	–	–	(5)	–	(5)	359 419
Transfers and subsidies	1 442 083	–	96 000	26 329	15 862	138 191	1 580 274
Departmental agencies and accounts	1 442 083	–	96 000	26 329	15 862	138 191	1 580 274
Payments for capital assets	19 868	–	–	–	–	–	19 868
Machinery and equipment	19 868	–	–	–	–	–	19 868
Total	1 821 883	–	96 000	26 324	15 874	138 198	1 960 081

Details of adjustments to Estimates of National Expenditure 2010

Unforeseeable and unavoidable expenditure – R341.9 million

Programme 2: Court Services

An additional R26 million is allocated for phase 2 of the occupation specific dispensation for legally qualified professionals.

Programme 3: State Legal Services

An additional R21.9 million is allocated for the presidential project: United in Diversity.

Programme 4: National Prosecuting Authority

An additional R198 million is allocated for phase 2 of the occupation specific dispensation for legally qualified professionals.

Programme 5: Auxiliary and Associated Services

An additional R96 million is allocated for phase 2 of the occupation specific dispensation for legally qualified professionals at Legal Aid South Africa.

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JUSTICE & CONST DEV
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DATE: 14/12/2010
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TIME: 18:47:25
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PAYMENT MADE BY : NAT: DEPT JUSTICE & CONST DEV
(BASD28) DISBURSEMENT NO : 000325484
OFFICE : NAT: DEPT JUSTICE & CONST DEV
PAYMENT DATE : 15/12/2010
CONTACT PERSON : HELP DESK
PAYMENT METHOD : CREDIT TRANSFER
CONTACT TEL NO : 0860 800 904 OR 012 309 9001

PAYEE NAME : LEGAL AID BOARD
BANK NAME : FIRSTRAND BANK LIMITED
PAYMENT ADDRESS : PRIVATE BAG X76
BANK BRANCH : BRAAMFONTEIN 054
BRAAMFONTEIN
BRANCH NUMBER : 251905

ACCOUNT TYPE : CURRENT ACCOUNT

ACCOUNT NO : 62224831471
2017
DISBURSEMENT STATUS : PAID

MICR NUMBER : 0

SUPPLIER CONTACT DETAILS : LEGAL AID BOARD TELEPHONE NUMBER:

SOURCE DOC TYPE	SOURCE DOCUMENT NUMBER	PURCHASE ORDER NUMBER	PAYMENT NUMBER	PAYMENT DESCRIPTION		AMOUNT
SUNDRY	LAB/DECEMBER 2010	NOT APPLIC	00541218	LEGAL AID BOARD	R	89453000.00

TOTAL : R 89453000.00

**** END OF REPORT

DBBS07BS ****

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7.5 STATEMENT OF FINANCIAL PERFORMANCE

for the year ended 31 March 2011

	Notes	2011 R	2010 R
Revenue	**14**	**1,116,355,000**	**917,408,000**
Baseline allocation		1,001,439,000	895,808,000
Case backlog funding		25,000,000	20,000,000
Child Justice Act		10,000,000	1,600,000
Children's Act		3,000,000	-
FIFA World Cup Courts		4,916,000	-
Occupational Specific Dispensation		72,000,000	-
Expenses		**(1,105,553,939)**	**(940,598,906)**
Personnel		(767,981,310)	(658,925,782)
Administrative	**15**	(149,122,225)	(111,920,652)
Other expenses	**15.1**	(154,537,513)	(143,152,390)
Depreciation and amortisation	**16**	(33,436,556)	(25,460,167)
Finance Costs	**10.1**	(476,335)	(1,139,915)
Surplus/(Deficit) from operations		10,801,061	(23,190,906)
Other income	**17**	4,431,043	4,295,948
Interest income	**17.1**	16,510,225	17,025,347
Surplus/(Deficit) for the year		**31,742,328**	**(1,869,611)**

7.6 STATEMENT OF CHANGES IN NET ASSETS

for the year ended 31 March 2011

	Notes	R
Balance at 31 March 2009		**164,899,464**
Net deficit for the year ended 31 March 2010		(1,869,611)
Balance at 31 March 2010		163,029,853
Net surplus for the year ended 31 March 2011		31,742,328
Balance at 31 March 2011		**194,772,181**

9. NOTES TO CASH FLOW STATEMENT

9.1 CASH GENERATED BY OPERATING ACTIVITIES

	2010 R	2009 R
Net deficit/surplus	(1 869 611)	21 231 359
Non-cash movement		
Depreciation	25 371 627	16 232 845
Amortisation	88 539	205 180
Decrease in provision	(8 985 474)	1 486 230
Increase in payables	11 349 436	(11 752 272)
(Gains)/losses on sale of property,plant and equipment	(778 105)	(3 414 223)
Increase in provision for doubtful debts	563 289	42 211
Increase in capital assets/tools adjustment	(3 066 585)	375 075
Decrease in receivables	218 694	(757 818)
Net cash flows from operating activities	22 891 810	23 648 587

9.2

a) Cash and cash equivalents

Cash and cash equivalents consist of cash on hand and balances with banks and investments in money market instruments. Cash and cash equivalents included in the cash flow statement comprise the following statement of amounts indicating financial position:

	2010 R	2009 R
Cash on hand and balances with banks	229 221 373	230 656 030
	229 221 373	230 656 030

b) Property,plant and equipment

During the period, the economic entity acquired property, plant and equipment with an aggregate of R31 599 120, of which R31 599 120 was acquired by means of capital grants by the national government. Cash payments of R31 599 120 were made to purchase property,plant and equipment.

TOTAL ESTABLISHMENT AND RECRUITMENT, AND LEGAL STAFF INCREASES FROM MARCH 2009 TO MARCH 2011

	2009 Mar	2009 Sept	2009 Dec	2010 Mar	2010 June	2010 Sept	2010 Dec	2011 Mar	Increase in 2009/10	Increase in 2010/11
Professional Assistants	753			781				807	3.7%	3.3%
Legal Managers	240			252				275	5.0%	9.1%
Total legal staff excluding CAs and temporary staff	993			1033				1082	4.0%	4.7%
Quarterly legal employment excluding CAs, including temporary[2]	1085	1136	1129	1147	1173	1193	1223	1206	5.7%	5.1%
Quarterly increase			0.0%	1.6%	2.3%	1.7%	2.5%	0.0%		
Total budgeted staff establishment[1]	2419[3]			2513	2595			2595	3.9%	3.3%
Total number of legal and support staff recruited	2281			2352	2434			2489	3.1%	5.8%
Total recruitment quarterly increase					3.5%					

NOTES

1.This table shows the changes in the total budgeted establishment and recruitment, and legal staff increases, as well as the changes in the total quarterly legal staff including temporary from March 2009 to March 2011.

2. Columns 10 and 11 show total permanent legal recruitment increasing by 4.7% in 2010/11 compared to 4% in 2009/10.

3. Row 6 shows a nil increase in total legal staff in the quarter September to December 2009, followed by 1.6% in January to March 2010, 2.3% in April to June 2010, 1.7% in July to September 2010, and 2.5% in October to December 2010.

4. These figures show that far from legal recruitment being 'put on hold', it progressively increased after December 2009, with increases continuing to the end of the year.

5. The total recruitment increase of 3.5% in the April to June 2010 first quarter is greater than the increase of 3.1% for the whole of 2009/10.

6. Columns 10 and 11 show total establishment budgeted posts increasing by 3.3% in the first quarter April to June 2010, almost equal to the 3.7% increase for the whole of 2009/10 – and this is after LASA was 'suddenly confronted' with 'budgetary issues' on 10 March 2010 when it learned that its OSD funding allocation hadn't yet come through as expected at the time.

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1. Annual report 2010/11, table 7, page 48. (Bundle addendum, page 693)
2. Annual report 2009/10, table 10, page 152; and annual report 2010/11, table 15, page 113. (Bundle addendum, pages 694 and 695)
3. First Quarter Report 2010/11, page 23. (Bundle addendum, page 696)

Portfolio Committee of Justice and Constitutional Development
14 April 2010
Briefing by the South African Human Rights Commission and South African Legal Aid on their Strategic Plans

Acting Chairperson: Mr M Gungubele (ANC)

Documents Handed Out:
South African Human Rights Commission (SAHRC) Chairperson's Report
South African Human Rights Commission Strategic Plan
South African Human Rights Commission Strategic Business Plan
Legal Aid South Africa Strategic Plan
Legal Aid South Africa Budget

Audio Recording

Summary
The South African Human Rights Commission was concerned about delivering on its strategic objectives with its very constrained budget. After accommodation and personnel costs were met, there would be R13 million this year with which to deliver on its mandate. The new Commissioners had been in place for only 90 days. The Chief Executive Officer and the Chief Financial Officer had both left just as the new Commissioners were appointed. Given the "current volatile situation in the country" as one MP termed it, the Commission in delivering on its constitutional mandate faced immense challenges.

There had recently been a big influx of complaints regarding hate speech and race elated matters. The main priority for the Commission was its monitoring function. This entailed the extent to which citizen's rights were protected and enjoyed. The budget was not enough to support all the operations of the Commission.

Despite this, the Committee complained about the lack of visibility of the Commission during the current events in the country. The Committee was also concerned that the work of the Commission itself was not visible. The strategic plan was not comprehensive enough in mapping out how the outputs would be achieved. The outputs themselves were deemed to be too many and unrealistic. A stakeholder meeting was proposed.

The main strategy of the Legal Aid South Africa was to increase access as well as focus on quality legal services. The legal quality assurance unit governed all aspects of quality control within the organisation. One of the goals of the organisation was to try and provide one practitioner per court. Legal Aid South Africa was concerned about the increasing insistence of legal aid by affluent individuals. What was more disturbing was that the courts were instructing Legal Aid to comply in these instances. The Committee was pleased with the quality of the report

Minutes
South African Human Rights Commission (SAHRC) Chairperson's Report
Advocate Lawrence Mushwana, Chairperson of the Human Rights Commission (SAHRC) informed the Committee that his document was based on the first impressions of the newly appointed SAHRC. The previous Chief Executive Officer (CEO) and Chief Financial Officer (CFO) both left when the new Commission was appointed. The financial auditors had already begun with auditing the SAHRC's books and there was confidence that the financial state of affairs was in good order. The staff had formally complained to the Speaker of Parliament prior the time the new Commission was appointed. This was not an easy matter to deal with. Staff morale was "down" but this was improving. The Speaker would receive a detailed report once the SAHRC was satisfied that the matter was dealt. There had been a steady decline in the number of public complaints and the SAHR was unsure as to why this was the case. There was a big influx of complaints regarding hate speech and race related matters.

The Chairperson interrupted Adv Mushwana and said that when the Commission was dealing with

Annual Report contained some of the concerns that the Commission had regarding PAIA. The SAHRC had reports on the work done on farm workers, health and a whole range of very valuable investigations. The reports had been brought to Parliament. The key question was how was Parliament processing these reports and how was it ensuring that the recommendations were being implemented or effected. An information commissioner was needed in order to facilitate the practical accessing of information.

The Chairperson thanked the Commission and gave them two weeks to provide the Committee with written responses.

Legal Aid South Africa (LASA) Strategic Plan

Judge Dunstan Mlambo, Chairperson of LASA, referred to Slide 5 which indicated the approach that LASA had adopted in formulating the strategic plan. The four key components of the strategic plan were Financial, Customer, Learning and Growth as well as Internal Business Processes. The mandate of LASA came from the Constitution and the Legal Aid Act. LASA had to consider the context of the environment in which it operated when it crafted the strategic plan. LASA had considered health, living conditions, poverty and the economic situation. The legal and justice sector was also analysed. LASA considered children awaiting crime, case backlogs, prisoners awaiting trial, the number of violent crimes and the inequality that existed in South African life.

Slide 23 identified four outcomes: for there to be an efficient and effective justice sector; justice for all focusing on the poor and vulnerable; a sustainable and efficient organisation; for citizens and communities to live by the rights enshrined in the Constitution. LASA was sought out throughout the continent and internationally. LASA had 17 strategies, the main strategy was to increase access as well as focus on quality legal services.

Ms Vidhu Vedelankar, CEO, continued that LASA's methodology in its plan was to ensure that there was focus on all aspects of the business. The bottom line was to ensure there was delivery of quality legal services. The client, community aspects as well as the finance and affordability aspects were considered as externally focused aspects. The internal business process and employee and organisational aspects were internal, focused aspects. The client and community components were at the core of the business. The strategies were incorporated into programmes where LASA wanted to ensure that it was client focused and that it increased access. It was also important to focus on expanding the brand of the organisation in order to reach many more South Africans. The finance and governance issues were monitored as well as quality. The legal quality assurance unit undertook this. Organisational capacity referred to the national footprint of LASA via its nationwide offices.

Judge Mlambo in closing said that LASA was aiming for one practitioner per court but the budgetary constraints were preventing this. The regional courts were the busiest and LASA wanted to meet the demand. Courts had now started to order LASA to provide legal aid to affluent individuals. In the *Gary Porritt* case the judge had ordered LASA to provide legal aid at senior counsel rates. This was despite the fact that the defendants flew to court cases. LASA was challenging the ruling but this was a trend. The trials were expensive and if this trend continued, it would have a serious effect on the budget. In the *Boeremag* case LASA fought the matter right up until the Appeal Court and lost there. The Constitution had to add its voice to this matter.

Discussion

Mr G Ndabandaba (ANC) thanked LASA for an excellent report. He asked how did LASA select lawyers from Judicare and what did they do to those who provided shoddy work.

Mr Jeffery congratulated LASA on an excellent report. Why had LASA requested more money for the implementation of the Child Justice Act, as the Act did not require the presence of lawyers at the preliminary stage of an inquiry? What was the budget for legal aid during the World Cup as there would be special courts running? What was the progress of the civil litigation claims for farm workers?

Ms Smuts asked on what grounds did the Supreme Court of Appeal turn down LASA in the *Boeremag* case?

Judge Mlambo replied that the initial number of accused in the *Boeremag* case were 23. Some of the accused did not pass the means test. The court had said that the case was extraordinary and would take a long time. The funds of the accused would probably run out before the trial ended. The Legal Aid Board then decided that they would represent the accused once their funds ran out. Usually lawyers were not appointed by the accused, instead Legal Aid appointed a lawyer. If someone fired the appointed lawyer for no good reason then LASA would no longer assist that person. However in the *Boeremag* case, LASA was instructed to provide lawyers for the accused, this enabled them to choose their own lawyers and they duly did so. LASA lost the case not to represent the accused because it was deemed unconstitutional for an accused to be unrepresented in a criminal law case, it was not in the interests of justice. In the *Garry Porritt* case the accused refused to disclose his wealth in order for a means test to be applied. The judge instructed LASA to provide advocates to represent the accused and the judge also instructed LASA to provide a certain number of advocates. The pre-trial costs would thus be in the region of R60 million for this case. The problem was that the Constitution was often relied upon by the accused who did not want to spend his own money in court. The civil claims for farm workers was outsourced by the Department of Land Affairs and the cost was probably twice as much as what Legal Aid would charge. LASA had an accreditation list for lawyers and this was based on the BEE status of lawyers. Individuals or firms had to put themselves on this list. Those practitioners who provided shoddy services were removed from the accreditation list and banned.

Mr Brian Nair, National Operations Executive for LASA, said that the necessary cost for the Child Justice Act was providing a lawyer in each case as Magistrates were requiring the presence of a lawyer during the pre-trial inquiry. LASA was actively involved in World Cup preparations and had already included a budget for its plans. It had drawn up contracts for extra staff that would work during that period and once the final budget was approved they would sign their contracts. LASA had been engaging with the Department of Land Affairs but it was unlikely that LASA would be used by the department. Land Affairs had said that it would renew the contract of the outsourced firm.

Mr Swart asked how much it cost the Department of Land Affairs to outsource to a private firm.

Mr Jeffery said that it would be unfair to burden LASA with providing this information. The Committee should rather ask the Portfolio Committee dealing with Land Affairs to obtain the information and then provide it to the Committee.

Mr Landers said that the Committee should just ask the Minister of Land Affairs directly.

Mr Ndabandaba asked of the 48.5 million people that were serviced by Legal Aid, what percentage was from the rural areas.

Mr Nair replied that 92% of cases were criminal cases. Civil legal aid was provided in mostly rural areas, the demand was bigger there.

The Chairperson commended LASA for their excellent report as it had measurable outputs, objectives as well as a commitment to targets.

Meeting adjourned.

ADV. BRINK

HE IS AN ADVOCATE, HE APPLIED TO LASA (LEGAL AID) FOR SNE ADVISORY POSITION 2 WERE AVAILABLE. HE WAS SHORTLISTE W/ 4 OTHER CANDIDATES. ONE CANDIDATE GOT 1 DURBAN POST, AND SOMEHOW HE WAS OF 1 IMPRESSION HE HAD GOTTEN 1 PIETERMERITZBURG POST. 1 2 OTHER CANDIDATES RECIEVED REGRET LETTERS. ADV BRINK RECIEVED A LETTER NOT EXPLAINING WHY HE WAS REJECTED.

- HE REQ REJECT LETTERS SENT 2 OTHER CANDIDATES
- RECRUITMENT POLICY DOCUMENT.
- HE HAS A CASE AT LABOUR CT AGAINST LASA FOR UNFAIR DISCRIMINATION.
- 10 - VEDAVANKAR - DIC - NAIR
- ADV. BRINK TOOK PROVINCIAL OFFICE TO INTERNAL APPEAL FOR LOOSING HIS FILE ON 1 VIEW THAT IT FELL OUTSIDE 1 SCOPE OF 1 COMMISSION.

Legal Aid South Africa

Your voice. For justice.

LEGAL AID SOUTH AFRICA : APPROVAL FRAMEWORK

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

Key to Levels

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

Key to Other

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

Key

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

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

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes 27-Feb-18
1	**STRATEGY AND PLANNING**									
1.1	Strategic Plan		A	C	E				C/ All Committees	
1.2	Business Plan		C	A	B	E			C/All Committees	
2	**BUDGET**									
2.1	**Within Treasury allocation and approved surplus**	1	A	C	C	C	E	C	C/ All Committees	
2.2	**Deficit Budget**	2	B	C	C	C	E		A/ National Treasury	
2.3	**Reallocation of budget - Operational Expenditure & Capital Expenditure (only within operational or capital) (Except Contingency)**									
2.3.1	Reallocation of budget between line items within a cost centre subject to an aggregate of 8% of cost centre					C (excl JCE)	D	E A	E (JCE)	
2.3.2	Reallocation of budget <R200,000 across cost centres subject to an aggregate of 1% of the total budget					B	A	E C		
2.3.3	Reallocation of budget <R350,000 across cost centres subject to an aggregate of 4% of the total budget					A	C	E C		
2.3.4	Reallocation of budget between cost centres subject to a maximum of 8% of total budget				A	B	C	E C		
2.3.5	Reallocation of budget in excess of 8% between cost centres		A		B	C	C	C		

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes 27-Feb-10
2.4	Transfers between operational expenditure and capital expenditure or vice versa									
2.4.1	**Transfers ≤R500,000**					A	C	E		
2.4.2	Transfers ≤R1,000,000				A	C	C	E		
2.4.3	**Transfers > R1,000,000**		A		**C**		D	E		
3	**EXPENDITURE**									
3.1	**Expenditure (Operating & Capital) including salaries, wages, allowances**	24								
3.1.1	Expenditure within budget <R50,000	3						A/E		
3.1.2	Expenditure within budget R50,000 – R250,000							A/E		
3.1.3	Expenditure within budget R250,000 - R500,000	13 & 16				A		E	C/AC	
3.1.4	Expenditure within budget >R500,000	13 & 16			A			E	B/BAC C/AC	
3.1.5	Tenders > R10million	13 & 16	A		**D**	**D**		E	**B/**BAC C/AC	
3.2	**Write off and disposal of assets – depreciated value**									
3.2.1	≤R1million								authority as per 3.1	
3.2.2	>R1million		A		B	C		E		
3.3	**Write off of bad debts in any one year**									
3.3.1	< R50,000		D				B	A/E		
3.3.2	R50,000 – R200,000		D		C	A	C	E		
3.3.3	≤R1million				A	C	C	E		
3.3.4	>R1million		A	C		C	E	C	C/AC	
4	**ACCOUNTING AND REPORTING**									
4.1	Establishment of policy		A	C	C	C	C		B/AC	
4.2	Deviation in application of policy		A	C	C	C	C		B/AC	
4.3	Statutory Accounts		A	C	C	C	C		B/AC	
4.4	Annual Report		A	C	C	C	C		B/AC	
4.5	Valuation of properties and portfolio		A	C	C	C	C		B/AC	
5	**INTERNAL CONTROLS**									
5.1	**Establishment of controls and changes thereto**									
5.1.1	Approval framework		A	C	B			E(CSE)		
5.1.2	Procedure manual			C		A		C/E		
5.1.3	Corporate Governance, including Code of Ethics		A	C		C		E (BS)		
5.2	**Internal auditors**	14								
5.2.1	terms of reference (3 year Rolling Plan)		A		C			E (IA)	B/AC	
5.2.2	appointment/dismissal of external consultants			C	A		C	E (IA)	C/AC	
6	**BANKING**									
6.1	Setting of overall policy on banking relationships and spread of banking services		A	C	C	C	E			
6.2	Change of main bankers		A	C	C	C	E	D	C/AC/B/BAC	
6.3	Approval of signing procedures and signatures “A” and “B” signatories		D	C	A	C	E			
6.4	Periodic negotiation and acceptance of banking facilities		D	C	A	C	E			

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes 27-Feb-10
7	**AUDITORS**									
7.1	Appointment and dismissal at LAB of agent of AG	4	D	D	D				D/AC	
7.2	Reports (non-routine audits)		D		E				D/AC	
7.3	Non-auditing consultancy fees	18	D		B		A	E	A/BAC	
7.4	Auditing fees		A	C	B	C	C		D/AC	
7.5	Interim and Final Audit Plans		A	C	B	C	C		C/AC	
8	**HR MATTERS**	5								
8.1	**Personnel Structure**									
8.1.1	Approval and periodic revision of grading policy		A	C	C	C		E(HRE)	C/RC	
8.1.2	(a) Establishment of new positions, regrading existing positions and abolition of posts at executive senior managerial & within budget (levels 14-16)		A		B	C		E C (HRE)	C/RC	
	(b) Levels (11-13) & OSD - CM -1 ; OSD - LP - 9 & 10 and MR - 5				A	B		E C (HRE)		
8.1.3	Establishment of other new positions, regrading existing positions and abolition of posts within existing structure & within budget (levels 1-10) and OSD - SU - 1 & 2 and OSD - LP 1 - 8				B	A		E C (HRE)		
8.2	**Appointments**	17 & 21								
8.2.1	**(a)** CEO (Level 16)		A/E						C/RC	
	(b) COO or NOE (Level 15.5)		**A**		**B/E**				**C/RC**	
8.2.2	(a) Executive (other than the CEO, COO & NOE),		C B/Exco		A/E	B/E			D/RC	X
	(b) Senior Management and Senior Professional staff (levels 11-13, OSD - CM -1 and OSD - LP - 9&10, OSD - MR - 5)				**B**	**B**		E A	D/RC HRE (17)	
	(c) OSD - SU - 1 & 2 and OSD - LP-8					**B**		A/E **(ROE)**	HRE (17)	
	(d) Other permanent staff (below level 11 and OSD - LP - 1 to 7)							A **incl JCE**		
8.2.3	Temporary staff - including OSD-CP-1									
	(a) Up to 3 months (maternity leave 4 months)							A	C (HRE - to facilitate SAP)	
	(b) More than 3 months					A		E	C (HRE - to facilitate SAP)	
8.3	**Remuneration: Fixed Packages**									
8.3.1	Annual review and adjustments		A	C				E (HRE)	C/RC	
8.3.2	Interim adjustments (Professional, management and administrations)		A	C				E (HRE)		
8.3.3	Annual Performance Bonus All staff including modifiers		A					E	C/RC	
8.4	**Changes to conditions of employment**									
8.4.1	Changes to general terms and conditions of employment		A	**C**	B	B		**E**(HRE)	D/RC	
8.4.2	Changes to the conditions of employment restricted to an office or a department of the national office					A **(COO)**		B(HRE)		
8.4.3	Changes to the conditions of employment restricted to a single employee							A(HRE)		

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes 27-Feb-10
11.2	**Destruction of Documents**									
11.2.1	Destruction of documents converted to electronic images							A(JCE)		
11.2.2	Destruction of Documents not converted to electronic images (not to take place until 7 years after last payment/3 years after last action if no payment)							A/EXEC	A/CFO (for all financial records)	
11.2.3	Transfer of records to National Archives (board agendas, board minutes and annual reports)					A		E/Board Secretary		
12	**OTHER**									
12.1	Any member of Management Exco may delegate their authority, be it in terms of this approval framework or their authority to sign contracts, to any other employee if the Executive will be absent from work or out of the country				A A			E		
12.2	The CEO may further delegate any authority delegated to her				A					

General Note

Failure to comply with the provisions of this approval framework may lead to:

- Disciplinary proceedings. In the event of very serious transgressions dismissal may result.
- Consequences in terms of the Public Finance Management Act and the regulations thereunder, including both criminal and civil liability.
- Personal liability in the event of the non compliance resulting in the LAB suffering damages.

NOTES:

1	See section 53(1) of the Public Finance Management Act No. 29 of 1999.	
2	See section 53(3) of the PFMA	
3	May be delegated to manager by the CEO and the EXEC jointly. May be delegated below R20 000 by the EXEC. Justice Centre Executives, the Special Projects Manager, the Board Secretary, and all Finance Managers reporting directly to the CFO are delegated to approve expenditure up to R50 000 except in respect of capital expenditure. Further delegations must be in writing. Any delegation may be terminated either by written withdrawal or by cessation of employment. For purposes of this document a "Manager" is a person reporting directly to a member of Man/Exco and responsible for the management of staff or resources.	
4	Auditor General approval required in addition. Should take place every five years. Initiated by A - G.	
5	Subject to Section 8 of the Legal Aid Act No. 22 of 1969.	
6	See also Section 4 of the Legal Aid Act No. 22 of 1969.	
7	In conjunction with the Minister of the Public Service and Administration.	
8	Except that additions to the schedule of an existing policy or renewal of an existing policy, provided within budget, may be notified after the event.	
9	See also Section 3 of the Legal Aid Act No. 22 of 1969.	
10	The CEO may delegate the approval of press releases and presentations including media interviews not related to changes of policy to any Executive.	
11	All amounts set out in the approval framework are inclusive of VAT. Approval limits relate to the expenditure which may be authorised in any one financial year.	
12	EXEC includes Regional Operations Executive, and the Board Secretary but excludes Justice Centre Executives.	
13	All expenditure >R500 000 is to be made in terms of the Supply Chain Management Policy by tender. If a Tender approved by the Bid Adjudication Committee is not the lowest in terms of price, the decision of the Bid Adjudication Committee must be ratified by the Management Executive Committee. If the party selected by the Bid Adjudication Committee is the party offering the lowest price the CEO or COO (in accordance with the Approval Framework) may conclude the contract after approval by the Bid Adjudication Committee without prior approval by the MAN/EXCO. Payments for all expenditure approved by the Board to be authorised by the CEO.	
14	The CEO is entitled to require the Internal Audit Department to initiate audits and/or investigations but is not entitled to terminate or curtail audits and/or investigations once approved by the Board, the Board Executive Committee or the Audit Committee.	
15	Notwithstanding anything contained in this paragraph 10.3 the CEO, LDE or CSE are authorised to do whatsoever may be necessary to protect the Board and/or a client's rights, prevent default judgment, avoid prescription or comply with any statute or Rule of Court pending any necessary decision by Board Exco. All litigation on behalf of the LAB is to be conducted under the control of the Corporate Services Department.	
16	Applicable only to audit matters where the Audit Committee is to be consulted in advance by report to the Audit Committee.	

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes 27-Feb-10
17	It is the responsibility of the **line function Executive** to ensure that such is provided for in the budget and MTEF **and that a vacancy exists in respect of the post concerned. The HRE to confirm budget and vacancy and EE statistics with regard to JC/region/dept.**									
18	This relates to the performance of non-auditing consultancy work by any firm which is either the agent of the Auditor-General in respect of the external audit or an internal audit service provider.									
19	No employee may approve his/her own travel, subsistence and/or accommodation. No subordinate may approve an employee's travel, subsistence and/or accommodation. The CEO may expend funds on her/his travel, subsistence and/or accommodation within the budget allocated to the CEO in the annual budget approved by the Board.									
20	When Board Exco are not available international travel, accommodation and subsistence may be approved by the chairperson and the CEO jointly subject to such being tabled at the next Board Exco meeting.									
21	All appointments are to be in accordance with the standard letter(s) of appointment to be found on the U Drive.									
22	Where the disposal of assets or the write off of bad debts is originated by the CFO he/she must act in conjunction with the CEO.									
23	In respect of Impact Services, amounts not greater than R500 000 for any one matter in any one financial year are committed by decision of the Legal Services Technical Committee and require the agreement of the CEO. The CEO, NOE and LDE may jointly commit to expenditure up to R50 000 in any one matter.									
24	Certain agents (e.g. insurance brokers) receive an income from commission. It is necessary to ensure such commissions are disclosed. In considering whether you have authority to approve a contract you must consider: ▪ The amount to be paid by the LAB in any one financial year ▪ The amount to be received by the agent as commission in any one financial year									
25	To approve a contract you must be permitted to approve the greater of the payments to be made by the LAB or the commission to be earned.									
26	Contracts <R50 000.00 per annum can be signed by Justice Centre Executive without vetting by the Corporate Legal Section. All other contracts >R50 000.00 per annum to be vetted by the Corporate Legal Unit before sign off									
27	The contracts of the Impact Litigation Unit are to be prepared/be vetted by the Impact Litigation Uit and signed as per the Approval Framework.									
28	Where the payments in terms of the proposed contract are over not more than 36 months and fall within the budget in respect of current financial year and/or the MTEF. An exception is made in respect of leases of immovable property where a maximum duration of 60 months is permitted and only the first 36 months fall within the budget in respect of current financial year and/or the MTEF. Where a contract continues over more than one financial year and where the payments vary during the duration of the contract, the aggregate expenditure in the financial year in which payments are highest will determine the authority level required for approval.									
29	All authority as per this column is reserved for the Board, unless otherwise specified as delegated to Board Exco, It is further noted that as per Clause 3.1 of the approved Board Exco Charter - "The Exco is conferred with all the powers conferred upon the Board by the Legal Aid Act No. 22 of 1969 that may be delegated and the Exco shall be responsible for: • ... • ... • decisions on any matter requiring decision by the Board between Board meetings:"									
30	On 24 November 2007 the Board adopted the following Resolution: "Having noted the provisions of section 56 of the Public Finance Management Act, 1999, in its capacity as accounting authority in terms of section 49 of the Act, the Board hereby delegates to the Chief Executive Officer of the Legal Aid Board all of the powers entrusted or delegated to the accounting authority in terms of the Act including the Treasury Regulations under the Act, without limitations or conditions and with the power of substitution. In doing so the Board notes that it is not divested of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty. The Board furthermore notes that it may confirm, vary or revoke any decision taken by the Chief Executive Officer as a result of this delegation, subject to any rights that may have become vested as a consequence of the decision."									
31	Delegation to the COO and NOE shall be in accordance with the functions each is responsible for ie all delegated authority to the COO will be for those functions and executives reporting to him/her and all delegated authority to the NOE shall be for those functions and executives reporting to him/her; It is noted that this delegation is not interchangeable ie The COO shall not have authority to approve matters relating to functions that are the responsibility of the NOE and vice versa.									
32	Matters of discipline in this regard exclude, verbal and written warnings.									X
33	In matters, which in the view of the CEO, need urgent and immediate action and wherein any delay in actioning the disciplinary proceedings will compromise the interests of Legal Aid South Africa, the CEO may act after consulting with the chairperson of the Board. The matter to be reported to the Board Exco by email as well at its next meeting. An example will be, and without limitation, suspension of an executive due to an allegation of fraud.									X

ANNEXURE A

On 24 November 2006 the Board adopted a resolution delegating the authority to litigate on behalf of the Legal Aid Board to the Chief Executive Officer and the Corporate Services Executive. Although that resolution is no longer duplicated in this Approval Framework it remains in force.

Legal Aid South Africa

29 De Beer Street
Braamfontein
Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

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

Tuesday, August 03, 2010

Anthony Brink
25 Baker Road
Prestbury
PIETERMARITZBURG
3200

E-mail: arbrink@iafrica.com

Dear Mr Brink

Senior Litigator Position: Pietermaritzburg

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

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

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

Yours faithfully

Brian Nair
National Operations Executive

State grilled over 'secret' Zimbabwe report

M&G REPORTER | JOHANNESBURG, SOUTH AFRICA - Nov 26 2010 00:00

Lawyers for President Jacob Zuma faced a barrage of questions from the judges of the Supreme Court of Appeal (SCA) on Monday, November 22, as they tried to justify the presidency's decision to keep secret a report on the constitutional and legal conditions surrounding Zimbabwe's controversial 2002 elections.

Presiding judge Robert Nugent repeatedly pressed Zuma's counsel, Marumo Moerane, over the failure of the presidency, following a Promotion of Access to Information (PAIA) request from the *Mail & Guardian*, to provide reasons for its failure to release the report, which was commissioned by then president Thabo Mbeki from judges Sisi Khampepe and Dikgang Moseneke.

The request was refused twice, first by Trevor Fowler in his capacity as presidency information officer, and later by then Minister in the Presidency Manto Tshabalala-Msimang. The *M&G* then took the case to the North Gauteng High Court, which ruled that Zuma must hand over the report. The presidency appealed that judgment in the SCA.

Moerane explained that on the basis of a reading of the report, Fowler had concluded that releasing it would be improper as it would breach the confidence afforded the judges as representatives of Mbeki by Zimbabwean officials, and would damage relations with that country.
"If Mr Fowler says, 'That's my opinion', then that is the end of the matter and the court must just accept it?" Nugent asked.

Judges Azhar Cachalia, Mandisa Maya and Belinda van Heerden all took a similar line, asking Moerane why no detailed information about the nature of the judges' mission had been provided, and pointing out contradictions in the version of events offered on affidavit as "personal knowledge" by Fowler and by Frank Chikane, the director general in the presidency.

Much of the discussion turned on the nature of the mission undertaken by the judges. Were they sent by Mbeki to undertake an independent inquiry into the "constitutional and legal" environment surrounding the elections, which were widely seen as rigged? Or were they, as Chikane and Fowler claimed, acting as "envoys" of the South African state? Was it something uncomfortably in between?

If Khampepe and Moseneke were operating independently, the case for keeping the information secret is greatly weakened as no state-to-state confidentiality would apply. If they went as quasi-diplomats, then serious constitutional concerns would arise, because undertaking such a role would breach the separation of powers between judiciary and executive, and be in violation of the Constitutional Court's "Heath" judgment, which banned judges from taking on what amounts to government work.

"Surely", Cachalia told Moerane, "there's a letter of appointment, there's a note, there's a minute. Government does not operate like a glorified spaza shop … In the absence of any paper trail must we just accept that [Chikane and Fowler] are people of standing and they will never mislead, just like [then United States secretary of state] Colin Powell never misled the security council [over Saddam Hussein's possession of weapons of mass destruction]."

"It is unlikely they would just be called into the president's office and told 'off you go'," added Van Heerden.

"We have no affidavit from the former president and no affidavit from the former judges," Nugent added. "All we have is bald allegation."

Both Nugent and Cachalia expressed concern over the constitutional implications of the mission.
"I have great, great difficulty accepting that judges would turn themselves into diplomats," Nugent said.

Cachalia put it more strongly: "I'm troubled … that this was an executive function being performed. If it is not distinguishable from [the Heath judgment] then it is unconstitutional and illegal … I'd want to hear why it did not offend the separation of powers and, if it does, why would any legal protection attach itself to the report?"

Pressed to say whether the trip had been an executive or an independent one given his insistence that the two travelled as diplomats, Moerane said, "I don't want to give it a name. Give a dog a name, and you hang it."

"You gave the dog the name," Cachalia replied.

The judges also hammered Moerane about factual divergences between Chikane's and Fowler's versions of events.

Jeremy Gauntlett, counsel for the *M&G,* also pressed this point, "the two deponents drew their guns and shot one another", he told the court.

"In what shambolic state is the presidency that it puts up as its main affidavit [an account] by someone who says he started working there two years after the events in question?"

As the hearing closed Nugent reminded Moerane that in a democratic South Africa the government officials have to justify their decisions on the basis of facts.

"In the old days you used to get these affidavits that said 'I've locked up Mr Cachalia because it's in the public interest'. Boom. 'Court, I don't care what you think'… The point is we've now moved beyond that."

Judgment on the matter was reserved.

Source: Mail & Guardian Online
Web Address: http://www.mg.co.za/article/2010-11-26-state-grilled-over-secret-zimbabwe-report

If employees become aware of any evidence that LEGAL AID BOARD funds or property may have been used in a fraudulent or improper manner they should immediately and confidentially advise LEGAL AID BOARD as set out in the contravention of the code section of this document.

12. LEGAL AID BOARD's Records

Accurate and reliable records of many kinds are necessary to meet the LEGAL AID BOARD's legal and financial obligations and to manage the affairs of the LEGAL AID BOARD.

The LEGAL AID BOARD's books and records should reflect all business transactions in an accurate and timely manner. Undisclosed or unrecorded revenues, expenses, assets or liabilities are not permissible, and the employees responsible for accounting and record-keeping functions are expected to be diligent in enforcing proper practices.

13. Dealing with outside persons and organisations

13.1 Prompt Communications

LEGAL AID BOARD strives to achieve complete, accurate and timely communications with all parties with whom it conducts business, as well as government authorities and the public. In addition, prompt and effective internal communication is encouraged.

A prompt, courteous and accurate response should be made to all reasonable requests for information and other client communications. Any complaints should be dealt with in accordance with internal procedures established by various operating areas of the LEGAL AID BOARD and applicable laws.

13.2 Media Relations

In addition to everyday communications with outside persons and organisations, the LEGAL AID BOARD will, on occasion, be asked to express its views to the media on certain issues.

When communicating publicly on matters that involve the LEGAL AID BOARD business, employees must not presume to speak for the LEGAL AID BOARD on any matter, unless they are certain that the views they express are those of the LEGAL AID BOARD and it is the LEGAL AID BOARD's desire that such views be publicly disseminated. Employees approached by the media should immediately contact the department or

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

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

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number:

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

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

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

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

The Information Officer/Deputy Information Officer:

…… (CEO Ms Vidhu Vedalankar entered in manuscript)

Legal Aid South Africa
Private Bag X76
Braamfontein 2017
Johannesburg

B. Particulars of person requesting access to the record

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

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

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

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

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

N/A

C. Particulars of person on whose behalf request is made

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

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

D. Particulars of record

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

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

1. Description of record or relevant part of the record:

2. Reference number, if available:

3. Any further particulars of record:

See annexure

G. Notice of decision regarding request for access

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

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

Signed at Pietermaritzburg on this 23rd day of August 2010

……..
SIGNATURE OF REQUESTER

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

11. All and any email or notes to Clark, founding her statements in her second email to Brink on 30 April 2010, two weeks after her first, that 'the process is where it is' and remained to be completed (i.e. had not yet been 'put on hold' as Nair alleged in his letter to Brink on 3 August 2010): 'It is your decision as to whether you wish to wait to allow us to complete the process or whether you wish to withdraw' and 'I think you should allow us to complete our process at the pace we have decided', five and a half months since the professional selection board had interviewed its shortlisted applicants and selected a suitably qualified and experienced senior legal professional for appointment as Senior Litigator at the Pietermaritzburg Justice Centre (– quoted in paragraph 25 of Brink's letter to Vedalankar).

12. All and any email or notes to Clark, founding her emailed statement to Brink on 30 April 2010 that 'At this stage it is not even clear which applicants will be considered in the second round or if indeed we will proceed with a second round' (– quoted in paragraph 28 of Brink's letter to Vedalankar).

13. All records, including but not limited to email, reports and notes, pertaining to the decision to 'put on hold … the recruitment process to finalize the appointments for all vacant Senior Litigator posts' (– per Nair's letter to Brink).

14. All records, including but not limited to email, reports and notes, pertaining to the decision to finally abort the 'recruitment process' and 'not be proceeding with the filling of any of these posts' (– per Nair's letter to Brink).

Signed: Adv AR Brink

Supplementary PAIA Request

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

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

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number:

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

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

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

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

The Information Officer
CEO Ms Vidhu Vedalankar
Legal Aid South Africa
Private Bag X76
Braamfontein 2017
Johannesburg

B. Particulars of person requesting access to the record

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

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

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

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

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

N/A

C. Particulars of person on whose behalf request is made

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

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

D. Particulars of record

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

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

1. Description of record or relevant part of the record:

2. Reference number, if available:

3. Any further particulars of record:

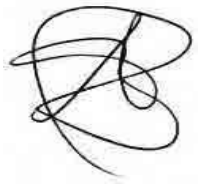
See annexure headed 'SUPPLEMENTARY PAIA RECORDS REQUEST: ANNEXURE TO FORM A'

G. Notice of decision regarding request for access

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

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

Signed at Pietermaritzburg on this 15th day of December 2010



……..
SIGNATURE OF REQUESTER

6. Minutes of 'management' meetings held 'Since early this year' recording its discussion that 'a reduction to our staff establishment' was 'required … in order to meet this shortfall' in 'funding' that was lower than 'anticipated' by a 'significant' amount.

7. Minutes of 'management' meetings held 'Since early this year' recording the work 'management … had' to perform 'to identify positions which could be frozen … in order to meet this shortfall' in 'funding' that was lower than 'anticipated' by a 'significant' amount.

8. Minutes and/or notes kept/made 'Since early this year' in which the 'positions which could be frozen' were 'identif[ied]' by 'management'.

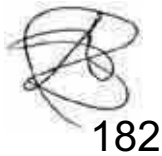
9. Minutes reflecting COO Makokoane's agreement, in terms of section 8.1.2 (b) of the Approval Framework, with NOE Nair and CEO Vedalankar's 'decision that all vacant senior litigator posts that were vacant would be immediately frozen'.

10. The resolution passed by 'management' in terms of section 8.1.2 (b) of the Approval Framework, following consultation with HRE Clark and with COO Makokoane's agreement, in relation to the claim: 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen.'

11. Written notification of the Board Executive Committee of the 'decision … the NOE and CEO took … In July 2010 … that all senior litigator posts that were vacant would immediately be frozen'.

12. Email to Durban Justice Centre attorney Bongani Mngadi (he says 'in April/May') notifying him that the Durban Senior Litigator post for which he'd applied wasn't going to be filled.

Signed: Adv AR Brink



PART ONE

COMPLAINT TO THE AUDITOR-GENERAL REGARDING MAJOR ONGOING BREACHES OF THE PUBLIC FINANCE MANAGEMENT ACT INVOLVING MANY MILLIONS OF RANDS AND OTHER MATERIAL IRREGULARITIES INCLUDING CRIMES COMMITTED IN A CORRUPTION COVER-UP BY PAST AND CURRENT HIGH OFFICERS OF LEGAL AID SOUTH AFRICA

I, Anthony Robin Brink, affirm:

1. I am an adult male, 60, an advocate of the High Court of South Africa, admitted to practice on 12 April 1983, and a former magistrate of the District- and Regional Courts, specialising in civil law. I reside at 36 Pearson Street, Eshowe, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 083 779 4174.

EXECUTIVE SUMMARY

2. This complaint identifies major ongoing contraventions of the Public Finance Management Act 1 of 1999 ('PFMA'), some criminal, committed in a cover-up of top-level recruitment corruption at Legal Aid South Africa ('LASA') entailing unauthorised expenditure of around thirty million rands since 2010, hitherto undetected and unreported by LASA's external auditor PWC.

3. The complaint further identifies multiple instances of 'material irregularity' as defined by section 1 of the Public Audit Act 25 of 2004 ('PAA'), some criminal, committed by LASA's top officers prior to and in the course of the cover-up, in which the express wishes of both Parliament and the Justice Minister were defied, to the massive detriment of critical service delivery to the country's indigent.

4. Part Two and other parts of this complaint to follow will detail further material irregularities in the form of procedural and ethical corruption of staff

recruitment at LASA, and further ethical and criminal misconduct in covering it up.

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CRIMINAL AND OTHER CAPITAL CONTRAVENTIONS OF SECTIONS 53(3), 53(4), 55(1)(a) & 55(2)(a) OF THE PFMA, READ WITH SECTION 86 'OFFENCES AND PENALTIES'; AND CRIMINAL CONTRAVENTIONS OF SECTION 17(2) OF THE POWERS, PRIVILEGES AND IMMUNITIES OF PARLIAMENT AND PROVINCIAL LEGISLATURES ACT 4 OF 2004 IN FALSELY REPORTING TO MISLEAD THE JUSTICE PORTFOLIO COMMITTEE	75–106
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The supporting documents referenced herein are accessible online in PDF at illegal-aid.co.za/AG. For easy copying, reprinting, transmission by email, and reading on a portable device, copies of this complaint are available in PDF, MS Word, and HTML at the same site.

INTRODUCTION

5. The 'biggest law firm on the African continent', as its internet website bills it, LASA enjoys a sterling reputation as a model of good practice and probity in corporate governance, management and financial administration in South Africa, and it is officially lauded as the standard for emulation by other public entities. Then Deputy Minister of Justice and Constitutional Development Andries Nel enthused in 2011: 'The world would be a better place if it were run by Legal Aid'.[1] and Minister of Justice and Correctional Services Ronald Lamola

[1] *Business Day*, 12 January 2011.

recently crooned in tune: 'This is one of the best-run entities of government. We have had clean audits for the past 18 years. There is a well-established culture [of proper corporate governance at LASA]. … So it is an institution of best practice, not only in SA but in the whole world'.[2]

6. The Auditor-General's 'clean audits for the past 18 years' have generated the universal impression that LASA is 'squeaky clean'[3] and have served to 'beatify' it and give it a 'saintly status'.[4] In fact, as this complaint will demonstrate, LASA is profoundly corrupt. Under the stewardship of former Board chairperson Dunstan Mlambo JP and former CEO Vidhu Vedalankar (both of whom retired in 2019)[5] and with the active complicity of Chief Legal Executive Patrick Hundermark (now also a Board member), National Operations Executive Brian Nair (now also a Board member), and Human Resources Executive Amanda Clark, proper corporate governance and the rule of law at LASA seriously broke down, with criminal lawlessness becoming the norm.

7. Chief Operations Executive Jerry Makokoane (now also a Board member) and Chief Financial Officer Rebecca Hlabatau turned a blind eye to the corruption called to their attention, as did Board member Pieter du Rand,[6] then and still representing the Department of Justice and Correctional Services ('the Department') on the Board, thus betraying his fiduciary duty to LASA and his watching brief from the Department. Board Secretary Langa Lethiba failed to

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[2] News24, 1 August 2019.
[3] The phrase Chief Justice Mogoeng Mogoeng used ironically in paragraph 104 of *Public Protector v South African Reserve Bank* [2019] ZACC 29 (22 July 2019) in relation to the Reserve Bank as it operated during apartheid.
[4] Against which general danger Mogoeng CJ warned in a talk quoted by *The Mercury* on 18 July 2019: 'We have got to make it our business not to beatify others at the expense of others, not to make others untouchable, and not to allow anybody, including me, to be awarded an undeserved saintly status.'
[5] Although Mlambo JP and Vedalankar have been succeeded by new chairperson Makume J and new CEO Kola, *brevitas causa* they'll continue to be cited in this complaint as chairperson and CEO respectively.
[6] Thus all breaching section 15.1.5 of LASA's Code of Conduct and Ethics (Bundle 2, page 780): 'All employees must ... report any harmful activity they observe in the workplace'. The correspondence they disregarded will be put up with and treated in another part of this complaint to follow.

inform the Board of the illegalities brought to his attention, thereby preventing it from acting to remedy them.[7]

8. The wholesale corruption at LASA addressed in this complaint[8] had its beginning in non-executive[9] Board chairperson Mlambo JP's illegal intrusion into and interference with senior professional staff recruitment[10] – in so doing, lawlessly disregarding and flouting LASA's internal regulations precisely governing job candidate selection[11] and approval,[12] which give him zero role or say in such operations and decision-making[13] – and then in participating in an elaborate criminal cover-up of a particular case of ethical recruitment corruption[14] in which he was centrally involved, escalated to the Minister of Justice and Constitutional Development (now the Minister of Justice and Correctional Services, 'the Minister'), to the National Assembly, and to the courts,[15] in a classic instance of the multiplying dynamic of a disintegrating

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[7] See note 7 above.
[8] Given the egregious corruption and ethical turpitude at LASA reported in this complaint, uncovered by a limited investigation only of recruitment corruption and its cover-up, a comprehensive general forensic audit of LASA is likely to uncover much more.
[9] LASA's annual report 2010/11 explains: 'Legal Aid South Africa is governed by a Board of non-executive members commonly referred to as the Board of Directors. ... COMPOSITION OF THE BOARD AS AT 31ST MARCH 2010: JUDGE DUNSTAN MLAMBO ... Chairperson of the Board of Directors for Legal Aid South Africa since October 2002.' Bundle 2, page 756. LASA's annual report 2011/12 sets out the 'Role and Function of the Board of Directors': 'The Board ... is responsible for providing strategic direction and leadership, ensuring good corporate governance and ethics, determining policy, agreeing on performance criteria and delegating the detailed planning and implementation of policy to the Management Executive Committee.' Bundle 2, page 1053, section 2.2.3. As chairperson Mlambo JP explained in LASA's annual report 2010/11, the Board of non-executive directors plays an 'oversight role'. Bundle 2, page 1056.
[10] President Cyril Ramaphosa deplored this common evil at public entities in his State of the Nation Address on 16 February 2018: 'We have found ... that board members get involved in operational measures. ... We will remove board members from any role in [them].'
[11] Per LASA's Policies and Procedures on Recruitment, Induction, Probation and Relocation. Bundle 1, pages 228–34.
[12] Per LASA's Approval Framework. Bundle 1, pages 225–7.
[13] Besides approving the appointment of LASA's CEO, COO and NOE, in committee with the rest of the Board. Bundle, page 226, section 8.2.1.
[14] In favour of a professional colleague of his – to be canvassed in another part of this complaint to follow.
[15] The Judicial Conduct Committee ('JCC') of the Judicial Service Commission (JSC') is currently seized with eight gross misconduct complaints made under section 14 of the Judicial Service Commission Act 9 of 1994 against Board chairperson Mlambo JP concerning *inter alia* (a) his active collusion in and connivance at CEO and information officer Vedalankar's (nominal, actually Hundermark's) persistent illegal and unconstitutional suppression of records duly requested under section 18 of the Promotion of Access to Information Act 2 of 2000 ('PAIA') since 2010, and (b) his dishonest and deceptive false 'confidential' written report to the Minister and then to the Justice Portfolio Committee to successfully pervert their separately and

cover-up, starting with lies and eventually spiralling out into the commission of crimes. All this will be closely detailed with reference to supporting documents in this and other parts of this complaint to follow.[16]

9. Over the past decade, LASA's top officers have determinedly obstructed the investigation and exposure of their procedural, ethical and criminal corruption by scorning LASA's information transparency obligations imposed by section 32 of the Constitution, and by repeatedly falsely reporting[17] to evade being held to account for it;[18] and then, as this passive obstruction strategy was failing, by endeavouring to end the investigation with a multi-pronged attack to neutralise this investigator by moving to destroy him professionally, strangle him financially, and have him deprived of his essential basic civil rights guaranteed

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independently instituted enquiries (i) into the top-level recruitment corruption at LASA in question, in which report he advanced demonstrably objectively false reasons for the abortion of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments (one false reason later retracted after being refuted and exposed, the other substituted with novel contradictory reasons); and (ii) into the said illegal and unconstitutional suppression of records exposing this corruption – later forced out of LASA through multiple pre-trial document discovery processes and multiple applications to court under section 78 of PAIA, the first five of them conceded by LASA at court. The complaints, Mlambo JP's response to them, and the complainant's invited comments on it can be accessed online at illegal-aid.co.za/JSC. Further complaints to the JCC against Mlambo JP will be lodged upon LASA's release, under court order, of other duly requested documents that Hundermark has illegally and unconstitutionally refused, initially in the name of his former immediate subordinate, Legal Executive Thembile Mtati, and others, but more recently, since Mtati's resignation, by Hundermark directly and personally.

[16] The submission of this complaint, commenced years ago, has long been delayed by Hundermark's determined concealment of incriminating records needed to complete it, followed by meritless, dilatory opposition to numerous necessary applications to court brought to compel their production, and by corruptly-motivated litigation he unsuccessfully brought to derail an application to compel full and proper compliance with his surrender treaty recording his total capitulation to the said first five applications – to be detailed in a another part of this complaint to follow, regarding irregular, fruitless and wasteful expenditure. Several further High Court applications to compel Hundermark's surrender of subsequently requested records are pending in the High Court. To avoid further delay, this complaint will be presented in separate parts, as and when the illegally and unconstitutionally withheld documents are disgorged by court order.

[17] Annually to the South African Human Rights Commission ('SAHRC') under section 32 of PAIA, for the misinformation of the SAHRC's annual section 84 reports to the National Assembly on public body compliance with PAIA, and in a special confidential report submitted to the Justice Portfolio Committee in June 2011. In this fraudulent manner, LASA has misinformed the National Assembly about its compliance or otherwise with PAIA requests, and has defeated its constitutional oversight function, thereby evading being held to account for hiding information illegally and unconstitutionally. All this is comprehensively dealt with in a 'Special Report' on LASA's chronic PAIA delinquency filed with the SAHRC in late 2016, and is further described in court papers in litigation subsequently launched under PAIA to compel LASA's delivery of duly requested records. The 'Special Report' and the said court papers are accessible online at illegal-aid.co.za/PAIA.

[18] As then Board member Ela Gandhi put it appositely in *The Mercury* on 23 November 2011, 'It's only when people have something they are not proud of that they try to hide things.'

and entrenched by sections 32 and 34 of the Constitution, i.e. to access information held by the state and to approach the courts to compel its production when in a corruption cover-up it's illegally and unconstitutionally suppressed.[19]

10. Detailed and vouched in this complaint, the continuing pervasive, systemic corruption in LASA's top echelons has metastasized through virtually the entire governing- and national management structures, with audacious, confident, high-toned, practised lawyerly mendacity having become normal in engagement with their executive and oversight authorities, evincing a complete collapse of ethical standards among them. Indeed, detailed separately in a complaint currently pending before the Judicial Service Commission, LASA's most senior officers' brazen corruption and contempt for the law has reached such gross proportions that it has even polluted the judiciary.[20]

PROVISIONS OF THE PFMA, THE PAA, AND THE CONSTITUTION GENERALLY RELEVANT TO THE COMPLAINT

11. Section 3(1)(b) of the PFMA provides that the Act 'applies to ... public entities listed in Schedule ... 3',[21] including '49. Legal Aid Board' (now LASA); and section 2(1) of the Legal Aid South Africa Act 39 of 2014 accordingly describes LASA as 'a national public entity as provided for in the Public Finance Management Act'.

12. Section 2 of the PFMA states that 'The object of this Act is to secure transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to which this Act applies.'

13. Under section 1 of the PFMA, '**"executive authority"** ... (c) in relation to a national public entity, means the Cabinet member who is accountable to Parliament for that public entity or in whose portfolio it falls' – *in casu*, the Minister.

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[19] All this will be detailed in another part of this complaint to follow.
[20] Supported by the hard written evidence of this discovered in a court file, the complaint to the JSC about it, the judge's response, and the complainant's invited comments on it, identifying the likely perpetrator on the probabilities, can all be accessed online at illegal-aid.co.za/JSC.
[21] Here, as elsewhere in this complaint, ellipsis in quotation is the complainant's.

14. Section 4 of the PAA, 'Constitutional functions', provides in subsection (3):

> The Auditor-General may audit and report on the accounts, financial statements and financial management of–
>
> (a) any public entity listed in the Public Finance Management Act[.]

15. Under section 1 of the PAA, 'Definitions',

> **"material irregularity"** means any non-compliance with, or contravention of, legislation, fraud, ... or a breach of fiduciary duty identified during an audit performed under this Act that resulted in or is likely to result in ... the misuse ... of a public resource or substantial harm to a public sector institution or the general public[.]

16. Section 5(1A) of the PAA provides:

> The Auditor-General may, as prescribed, refer any suspected material irregularity identified during an audit performed under this Act to a relevant public body for investigation, and the relevant public body must keep the Auditor-General informed of the progress and final outcome of the investigation.

17. Section 5(1B) provides:

> The Auditor-General has the power to–
>
> (a) take any appropriate remedial action[.]

18. Section 5(3) of the PAA provides:

> The Auditor-General may, in the public interest, report on any matter within the functions of the Auditor-General and submit such a report to the relevant legislature and to any other organs of state with a direct interest in the matter.

19. Section 5A of the PAA requires:

The Auditor-General must, within a reasonable time after the issuing of an audit report in terms of section 20, follow up on whether the accounting officer or accounting authority has implemented the recommendations contained in the audit report relating to any material irregularity, within the time-frame stipulated in the audit report.

20. Section 11 of the PAA prescribes that 'Part 3: Accountability' 'applies to all audits of auditees which the Auditor-General – ... (b) opts to perform in terms of section 4(3).

21. Section 15 of the PAA provides:

When performing an audit under section 11, the Auditor-General or an authorised auditor has at all reasonable times full and unrestricted access to–

(a) any document, book or written or electronic record or information of the auditee which or which reflects or may elucidate the business, financial results, financial position or performance of the auditee;

(b) ... or

(c) any staff member or representative of the auditee.

22. Section 20 of the PAA provides:

(1) The Auditor-General must in respect of each audit referred to in section 11 prepare a report on the audit.

(2) An audit report must reflect ... an opinion, conclusion or findings on–

(a) ...

(b) compliance with any applicable legislation relating to financial matters, financial management and other related matters; and

(c) reported performance of the auditee against its predetermined objectives.

(3) In addition, the Auditor-General may report on whether the auditee's resources were procured economically and utilised efficiently and effectively.

23. Section 216 of the Constitution, 'Treasury control', provides in subsection (2):

> The national treasury must enforce compliance with the measures established in terms of subsection (1), and may stop the transfer of funds to an organ of state if that organ of state commits a serious or persistent material breach of those measures.

The 'measures established in terms of subsection (1)' mentioned in subsection (2) are *inter alia* 'uniform treasury norms and standards.'

24. LASA's 'serious [and] persistent material breach' over the past decade of 'uniform treasury norms and standards', some criminal, will be particularised with reference to specific contraventions of the PFMA cited and quoted below. A multitude of unlawful material irregularities within the purview of section 1 of the PAA, some criminal, will likewise be detailed in this first part of the complaint and in other parts to follow.

LASA'S CREATION OF ITS SENIOR LITIGATOR POSTS, AND ITS REASON FOR DOING SO

25. In November 2006, LASA CEO Vedalankar, NOE Nair and their Management Executive Committee colleagues submitted a 'Report to Board' in which they proposed 'Increasing Senior Litigation capacity' 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.[22]

[22] Bundle 2, pages 990–1, paragraph 2.7.

26. Nine such Senior Litigator posts were proposed,[23] for which the motivation recorded there was 'Funding available'.[24]

27. On 24 November 2006, the Board approved the proposal,[25] and the posts were duly created and subsequently advertised.[26]

28. In view of their high population densities and corresponding greater need for them, KwaZulu-Natal and Gauteng were allocated two Senior Litigator posts each.[27] Particularly relevant to the KwaZulu-Natal posts, NOE Nair has pointed out that it's in the 'rural areas' that the 'demand [for] civil legal aid … was bigger';[28] and chairperson Mlambo JP has 'agreed that there was still much to be done in reaching the rural poor'.[29]

29. At grade LP10[30] (formerly 'level 13'),[31] Senior Litigators are the most 'Senior Professional staff'[32] in LASA's legal professional staff establishment;[33] and LASA classifies a Senior Litigator post as a 'critical position'[34] accordingly.

30. Section 53 of the PFMA provides:

> (1) The accounting authority for a public entity listed in Schedule 3 which is not a government business enterprise must submit to the executive authority responsible for that public entity, at least six months before

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[23] Bundle 2, page 992, item 7.
[24] *Ibid*: page 992, item 7. 'Funding available' noted in the right margin; page 989, second paragraph; and pages 704–6.
[25] Bundle 2, page 702. In paragraph 4.1 of its answer to a pre-trial conference agenda listing facts for formal admission in case LC D529/11, LASA confirmed in October 2011 that 'the Senior Litigator positions were created by Management and approved by the Board'. (More accurately, they were 'proposed' by management. Bundle 2, page 990, paragraph 2.7.)
[26] Bundle 1, page 537.
[27] Bundle 2, page 690.
[28] Bundle 1, page 433, penultimate paragraph.
[29] Bundle 1, page 441, thirteenth paragraph.
[30] Bundle 2, page 1021, paragraph 16.
[31] Bundle 2, page 690.
[32] Bundle 2, page 1036, section 8.2.2 (b).
[33] Bundle 2, page 733: 'through positions such as senior litigator' for 'employees to advance into'.
[34] Bundle 1, page 253. Paragraph 2.2.b of this 'Report to Board' distinguished between 'critical positions' and LASA's many public defender posts serving the lower criminal 'District Courts and Regional Courts.' Paragraph 48.9 of LASA's original response (plea) to the original statement of claim in case LC D529/11 referred in to 'the critical position of High Court [senior] litigator'. In paragraph 43.1 of its answer to the facts listed for admission in the pre-trial conference agenda, LASA 'Agreed' the proposition that 'The Pietermaritzburg Senior Litigator post is "a critical position"'.

> the start of the financial year of the department designated in terms of subsection (2) ..., a budget of estimated revenue and expenditure for that financial year, for approval by the executive authority.
>
> (2) The budget must be submitted to the executive authority through the accounting officer for a department designated by the executive authority, who may make recommendations to the executive authority with regard to the approval or amendment of the budget.

31. In due compliance with section 53(1) of the PFMA, LASA specifically budgets for salaries for all nine of its Senior Litigator posts,[35] and provision in LASA's budgets for the employment of nine Senior Litigators has from inception to date been (i) annually approved by the Minister on the advice of the Department's accounting officer, (ii) voted by the National Assembly, and (iii) received by LASA from the Treasury via the Department's Third Party Funds Directorate.[36]

32. In short, LASA's nine Senior Litigator posts have always been and remain funded; which is to say in plain terms that LASA has always had and still has the money to employ nine Senior Litigators at seats of the High Court around the country.

THE JUSTICE PORTFOLIO COMMITTEE'S REPEATEDLY EXPRESSED CONCERN ABOUT INADEQUATE LEGAL EXPERTISE AVAILABLE TO THE PUBLIC AT LASA; LASA'S REPEATED CONCESSION OF THE

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[35] Bundle 3, pages 1073–92: These documents are LASA's consolidated budget applications and its specific budget applications for Senior Litigator salaries over the period February 2010 to October 2013. Duly requested under PAIA, other such budget applications for other years have been illegally and unconstitutionally suppressed by Hundermark to obstruct this corruption investigation, and litigation is pending in the Pietermaritzburg High Court to compel their production (case 5239/18P). Meanwhile the Auditor-General has 'full and unrestricted access to' these further financial records under section 15 of the PAA.

[36] Bundle 3, page 1093. These employment statistics show LASA's employment of six Senior Litigators as at March 2012. (The falsity of the 'frozen' entry for the Durban, Pietermaritzburg and Kimberley Senior Litigator posts is discussed below.) Hundermark is also hiding payment vouchers reflecting the Department's transfer to LASA of its baseline budgets, and High Court litigation is pending to compel their production (case 5239/18P). As said, under section 15 of the PAA the Auditor-General can readily access these records to confirm that all nine of LASA's Senior Litigator posts have always been and still are funded by the Treasury via the Department's Third Party Funds directorate .

PROBLEM; AND THE JUSTICE PORTFOLIO'S SPECIFIC CONCERN THAT LASA EMPLOY SENIOR LITIGATORS TO REMEDY IT

33. Six months after the Board resolved to create its new Senior Litigator posts, but before they were advertised, LASA's parliamentary oversight authority at the time, the National Assembly's Select Committee on Safety and Security,[37] pertinently enquired at its meeting with Board chairperson Mlambo JP and CEO Vedalankar on 30 May 2007 'if the LAB [the Legal Aid Board, now LASA] 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'. Mlambo JP responded by admitting, 'The LAB was aware of constant criticism that they employed inexperienced lawyers to do the work.'[38]

34. Again the Justice Portfolio Committee raised its concern about the quality of legal expertise available at LASA when on 5 August 2009 it 'asked if the Board [i.e. LASA] was working on improving public perceptions about itself.'[39] Mlambo JP responded by again conceding that LASA bore 'a legacy' of 'bad public perceptions'.[40] (Mentioned in paragraph 27 above, LASA resolved to create nine new Senior Litigator posts three months later.)

35. Again at its meeting with LASA on 11 October 2010,[41] 'The Committee wanted to know about the experience levels of Legal Aid South Africa practitioners as well as their ability to compete with lawyers from … private practice'.[42]

36. Again on 3 November 2010, the 'Chairperson [of the Portfolio Committee] remarked that public perceptions of Legal Aid SA were important.' Then Legal Development Executive, now CLE Hundermark repeated Mlambo JP's

[37] This Select Committee was the precursor of the Portfolio Committee on Justice and Constitutional Development, now named the Portfolio Committee on Justice and Correctional Services.
[38] Bundle 2, page 816.
[39] Bundle 2, page 1048, penultimate paragraph.
[40] Bundle 2, page 1049, first paragraph.
[41] Reported on 12 October 2010.
[42] Bundle 2, pages 960 and 962.

concession that there were still 'remnants' of 'the perception' of poor legal service delivery by LASA.[43]

37. Again in its pleadings in the Durban Labour Court in 2013, LASA conceded that its 'public image … has, for the most part, been negative due to a perception of incompetence and lack of vital court skills.'[44]

38. Again in its Strategic Plan 2012–17, LASA identified among its 'strategic risks' the 'Quality of legal services offered by Legal Aid SA' and the 'Attraction and retention of expertise and specialist skills'.[45]

39. Again in its current Strategic Plan 2015–20, LASA confessed this real problem – as well as other serious problems germane to this complaint – now in the most direct and frank terms to date:

> The organisation has assessed the strategic risks that have to be mitigated during the strategic plan period and these are as follows: ... Lack of capacity to deliver on the demand for legal services. ... Poor quality of the legal services provided by the Justice Centres ... Unethical, corrupt or fraudulent practices or acts. ... Lack of engagement with the organisational values and culture by employees.[46]

40. 'Lack of capacity to deliver on the demand for legal services' and 'Poor quality of the legal services provided by the Justice Centres' as a result of 'Unethical, corrupt or fraudulent practices or acts' by LASA's top officers named in paragraph 6 above, and their 'Lack of engagement with the organisational values' of LASA – ethical, legal, and constitutional – prescribed by LASA's Code of Conduct and Ethics[47] – a lack displayed also by the officers named in paragraph 7 – is precisely the subject of this complaint.

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[43] Bundle 2, page 1003.
[44] Paragraph 9 of LASA's original response to the original statement of claim in LC D529/11.
[45] Bundle 3, page 1108.
[46] Bundle 3, page 1110.
[47] Bundle 2, pages 770–80.

THE JUSTICE PORTFOLIO COMMITTEE'S REPEATEDLY EXPRESSED CONCERN THAT VACANT POSTS IN THE JUSTICE CLUSTER BE FILLED, ESPECIALLY CRITICAL POSTS

41. On 4 May 2010, the Justice Portfolio Committee raised the fact that it:

> has several times previously expressed its concern about the negative consequences that vacancies can have for the delivery of justice services. Also, the committee believes that although the use of savings from vacant posts to fund other projects (such as the implementation of the OSD) may be understandable, the practice is potentially risky as it may discourage the filling of posts. … 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.[48]

THE JUSTICE MINISTER'S SPECIFIC CONCERN STATED TO LASA'S CHAIRPERSON THAT LASA SHOULD FILL ITS VACANT POSTS AND NOT FREEZE ANY, AND THAT IT SHOULD MAINTAIN ITS DELIVERY OF LEGAL SERVICES AS PLANNED

42. On 16 July 2010, COO Makokoane[49] submitted a 'Report to Board'[50] recording that:

> the Executive Authority [i.e. the Minister] has … in a meeting with the Legal Aid SA Board Chairperson expressed his wish to have Legal Aid SA service delivery maintained and that DoJ should make funds available to cover the OSD shortfall through the mid-year budget adjustments in September/October 2010.[51]

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[48] Bundle 2, page 820.
[49] LASA volunteered that it was 'a report by the COO to the Board' in paragraph 17 of its original response to the original statement of claim in case LC D529/11.
[50] Bundle 1, pages 253, paragraph 2.2.(a); and page 254, paragraph 4.II.
[51] Bundle 1, page 252, paragraph 1.2.

43. COO Makokoane was referring to the fact that funding for salary increases for legal staff under Phase 1 of the Occupational Special Dispensation (OSD) scheme hadn't been included in LASA's baseline budget for 2010/11, as LASA learned in March 2010;[52] but as undertaken by the Minister to chairperson Mlambo JP, provision for this additional funding was indeed made[53] in the national mid-term budget in October 2010[54] and it was paid to LASA on 15 December 2010.[55]

44. Addressing the Justice Portfolio Committee on 11 October 2010 and informing it that the OSD funding issue had just been resolved with the Minister's assistance by including provision for it in the national mid-term budget, CEO Vedalankar reported the Minister's wishes, originally stated to Mlambo JP, that he 'didn't want' LASA to 'freeze ... posts' and that he'd 'said that we needed to continue with the business'[56] of providing legal services to the country's indigent in accordance with LASA's Strategic Plan2009–12 by filling LASA's budgeted and funded vacant legal posts.

THE EMPLOYMENT OF SENIOR LITIGATORS AS A KEY COMPONENT OF LASA'S STRATEGIC PLAN 2009–12

45. As LASA explains in various documents, the Board 'is responsible for providing strategic direction … and delegating the detailed planning and implementation of policy to the Management Executive Committee.'[57] This 'strategic direction' and 'policy' is set out in the Board's Strategic Plan for LASA's future operations; and LASA's annual Business Plan ('also referred to as …the Annual Performance Plan'),[58] based on the Strategic Plan,[59] sets out the

[52] Bundle 1, page 236, paragraph 6.
[53] Bundle 2, page 849, last paragraph.
[54] Bundle 2, page 847.
[55] Bundle 2, page 713.
[56] Bundle 1, page 184.
[57] Bundle 2, page 1053.
[58] Bundle 1, page 435, last paragraph.
[59] Bundle 2, page 452, second point.

'detailed planning and implementation of policy [by] the Management Executive Committee.'[60]

46. The National Treasury states in its 'Framework for Strategic Plans and Annual Performance Plans':

> Strategic Plans identify strategically important outcomes-orientated goals and objectives against which public institutions' medium-term results can be measured and evaluated by Parliament ... and the public.[61]

47. LASA states consistently: The 'Strategic Plan sets a clear Vision and Mission as well as Outcomes and Strategies that the organisation aims to achieve.' It's 'key to Legal Aid South Africa's operations' and 'complies with National Treasury Regulations', requiring it to 'outline how it will use its resources optimally to achieve its vision and outcomes.'[62]

48. Section 3.2.1.a of the Charter of LASA's Board Executive Committee stipulates that 'approval of the strategy, business plans and annual budgets and any subsequent changes in strategic direction or material deviations in business plans' at LASA are 'reserved for Board decision'.[63]

49. Chaired by NOE Nair,[64] LASA's Legal Services Technical Committee has (per the Legal Aid Guide) the 'collective responsibility' for 'managing the legal services delivery programme' and 'the execution of all Board strategy, policies, programmes and plans relating to the legal services delivery programme of the Legal Aid South Africa'.[65]

50. In CEO Vedalankar's parliamentary presentation titled 'Briefing of Justice Portfolio Committee 5 August 2009',[66] a couple of months before she and her fellow management executives proposed that LASA's Board approve the creation of the new Senior Litigator posts, she mentioned among LASA's 'Legal Delivery

[60] Bundle 2, page 1053.
[61] Bundle 3, page 1113.
[62] Bundle 3, page 1107.
[63] Bundle 3, page 1101.
[64] Bundle 2, page 767, section 2.3.
[65] Bundle 2, page 767–8.
[66] Bundle 1, page 427.

Challenges' its 'Limited capacity to render civil legal aid services'[67] – hence the organisation's resolution in its 'Way Forward' to 'Increase Legal Aid SA's capacity to render civil legal aid services.'[68]

51. LASA elaborated more specifically its lack of capacity to undertake complex, high-level litigation in its draft 'Strategic Plan 2009–2012', issued about a year earlier on 5 September 2008,[69] namely its 'Lack of specialised legal skills' and 'Lack of capacity to provide impact litigation'[70] – which is why the Strategic Plan 2009–12 stated that 'the Legal Aid Board should capacitate for specialised skills'.[71]

52. Accordingly, the objects of LASA's Strategic Plan 2009–2012 in this regard were:

- 'To develop a full appreciation of the civil justice needs of the poor and provide more civil representation';[72]
- 'To undertake targeted impact litigation';[73]
- 'To improve access to justice through impact litigation';[74]
- To 'recruit specialist skills';[75]
- To effect 'increased capacity of LAB ie more legal specialists';[76] and,
- To 'capacitate civil units ie more staff and more supervision'.[77]

53. In September 2009,[78] LASA's Strategic Plan 2009–2012 was presented to the Minister, being LASA's 'executive authority' under section 1 of the PFMA; and on 13 April 2010[79] to the Justice Portfolio Committee, LASA's oversight authority under section 55(2)(b)(ii) of the Constitution.

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[67] Bundle 1, page 426, penultimate paragraph.
[68] Bundle 1, page 429.
[69] Bundle 1, page 444.
[70] Bundle 1, page 445, sections III and IV.
[71] Bundle 1, page 445, section XIV.
[72] Bundle 1, page 446, 'Client & Community'.
[73] *Ibid*.
[74] Bundle 1, page 447, Programme P5.
[75] Bundle 1, page 450, Programme P23.
[76] Bundle 1, page 450, Programme P24.
[77] *Ibid*.
[78] Bundle 1, page 452.
[79] Bundle 1, page 431; and bundle 2, page 821.

54. The Strategic Plan 2009–12 doesn't mention Senior Litigator posts by name, but LASA has expressly acknowledged that the engagement of Senior Litigators was integral to the plan to develop and increase LASA's capacity to deliver expert litigation services to indigent litigants by creating a pool of specialist professionals to attend to complex matters in specialist and High Courts, including the Supreme Court of Appeal and the Constitutional Court.[80]

55. LASA's current Strategic Plan 2015–20 puts a point on it:

> To give content to the Constitution through impact litigation – which is able to address Constitutional rights and socio-economic rights and develop jurisprudence on social justice matters.[81]

56. LASA's several advertisements for Senior Litigators in the period 2007–2010 precisely envisaged their conduct of such 'specialised, complex or impact'[82] litigation, and stated LASA's aim to 'Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff', that is, to 'provide support for practitioners in more complex matters',[83] as LASA's annual report for 2009/10 puts it, and, as announced in a press release in March 2012, for 'protecting the rights of women and children' in accordance with LASA's, 'vision as an organisation … for the implementation of a child-centred justice strategy that ensures the best interests of the child in all legal matters. … In very complex matters, our Senior Litigators provide support and advice to practitioners that need it.'[84]

57. In their Foreword to LASA's current Strategic Plan 2015–20, Mlambo JP and Vedalankar likewise emphasised 'Priority to civil legal aid assistance in Constitutional rights related matters'[85] – exactly the province of 'professional staff that are senior enough to take on … cases of a highly complex nature',

[80] Bundle 2, page 898, section 3; and paragraphs 2.2–3 of LASA's response to paragraph 3.2 of first amended statement of claim in case LC D529/11.
[81] Bundle 3, page 1111, section S4, P4.
[82] Bundle 1, pages 43, 45, 46, and 537; and Bundle 2, page 732.
[83] Bundle 1, page 142, paragraph 153.
[84] Bundle 2, pages 825–6.
[85] Bundle 3, page 1109.

namely 'senior litigators … able to undertake more complex work'[86] as Vedalankar and her executive management colleagues envisaged in their motivation for the creation of the nine Senior Litigation posts, approved by Mlambo JP and the rest of the Board.

58. Quoted below, LASA would repeatedly vaunt the employment of Senior Litigators as a key achievement in its 'Report on Completion of Strategic Plan 2009–2012', both in the Board's 'Annual Performance Report 2011–12' and in Vedalankar's CEO report for that year.

THE CONCEALED ILLEGAL ABORTION OF LASA'S STRATEGIC PLAN 2009–12 IN REGARD TO THE EMPLOYMENT OF SENIOR LITIGATORS BEFORE IT WAS COMPLETED, UNLAWFULLY LEAVING A THIRD OF THESE CRITICAL BUDGETED AND FUNDED POSTS VACANT, IN CONTRAVENTION OF THE PFMA, AS THE CONSTITUTIONAL COURT HAS NOTED

59. In October 2007, four months after Parliament enquired whether LASA 'employed senior litigators',[87] LASA advertised to recruit applicants for appointment to its nine newly created Senior Litigator posts,[88] after which the candidates selected for the Johannesburg, Pretoria, Cape Town and Port Elizabeth posts were approved on 8 December 2008[89] and appointed.[90] The Bloemfontein and Mahikeng posts were filled later on.[91] No appointments were

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[86] Bundle 2, pages 990–1, paragraph 2.7.
[87] Bundle 2, page 816.
[88] Bundle 1, page 537.
[89] Bundle 3, pages 1094 and 1097. Material irregularities in the approval process will be canvassed in another part of this complaint to follow.
[90] Bundle 3, page 1093.
[91] Bundle 3, pages 1073 and especially 1076 compared with pages 1077 and especially 1080. These two budget applications show five Senior Litigator posts were vacant in February 2010, and that the vacancies dropped to three in February 2012, which means two of them were filled after February 2010 (at Bloemfontein and Mahikeng). To obstruct the complainant's investigation and determination of the date(s) on which these latter two appointments were made (sometime after February 2010, well after the irregular abortion of the Pietermaritzburg and Durban recruitments in November 2009; see paragraphs 67 and 68), Hundermark is hiding the records of 'All six Senior Litigator appointments'. These were duly requested on 1 August 2016 under section 18 of PAIA, and after they were illegally and unconstitutionally refused in September, were sued for, along with other documents, two weeks later in October 2016 under section 78 of PAIA (case 11187/16P). The case was eventually argued in the Pietermaritzburg High Court on 30 August 2019, nearly three years later, after being repeatedly held up by

made to the Pietermaritzburg, Durban and Kimberley posts pursuant to the initial advertisement and recruitment process, and LASA readvertised the three posts in 2009.[92]

60. The re-advertisement of the Kimberley post in May 2009[93] failed to attract a suitable applicant,[94] and on 24 March 2010, LASA's Legal Services Technical Committee accepted that the vacant post was 'redundant'[95] since there'd 'never been a demand for' it[96] and resolved to abolish it and transfer its budget to a second Senior Litigator post to be created for the Eastern Cape at Mthatha,[97] on the basis cogently argued by the Regional Operations Executive for the region[98] that 'We currently have one Senior Litigator who is stationed at Port Elizabeth. It is a huge challenge for this one person to provide support to the whole Region' with its 'four High Court seats [at] Port Elizabeth, Grahamstown, Bhisho and Mthatha',[99] the latter three many kilometres distant from Port Elizabeth.

61. The two vacant Pietermaritzburg and Durban posts in KwaZulu-Natal were simultaneously readvertised in June 2009[100] and again two months later in August.[101]

62. Just as they'd done before the original advertisement of the nine Senior Litigator posts in 2007, LASA's responsible management executives duly 'determined [that] a "real" need exists for the position[s] to be filled before [the] process of recruitment [was] initiated'[102] before readvertising the Pietermaritzburg and Durban posts in 2009, in due compliance with their obligation to do so under section 3.1 of Chapter 2 on 'Recruitment' in the Senior

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various dilatory tactics, and reserved judgment is pending. Once they've been disgorged by order of court, the withheld documents will be used in support of further parts of this complaint to follow, concerning several instances of 'material irregularity' as defined by section 1 of the PFMA, including 'fraud'.

[92] Bundle 1, pages 43, 45, and 537; and Bundle 2, page 732.
[93] Bundle 2, page 732.
[94] Bundle 2, page 736, 'Background', second paragraph.
[95] Bundle 2, page 738, paragraph 1.
[96] Bundle 2, page 736, 'Background', first paragraph.
[97] Bundle 2, page 709, paragraph 4.1.7.
[98] Bundle 2, page 738, header; and page 740, final entry.
[99] Bundle 1, page 739, paragraph 2.2.
[100] Bundle 1, pages 43–44.
[101] Bundle 1, page 45.
[102] Bundle 2, page 789.

Management Services Public Service Handbook[103] ('SMS Handbook') issued by the Department of Public Service and Administration. LASA's own 'Policies and Procedures on Recruitment, Induction, Probation and Relocation'[104] ('Recruitment code') states its conformity with the SMS Handbook: 'This policy and procedure aims at ensuring that appropriate recruitment procedures are followed, in line with statutory legislation and business practices[105] … [It] provides the Legal Aid Board with clear guidelines to be followed when a vacancy exists.'[106]

63. Section 3.3 of the SMS Handbook requires that such responsible management executives ensure that 'the position is budgeted for'[107] and Note 17 of LASA's Approval Framework applicable at the time mandated consistently: 'It is the responsibility of the line function Executive to ensure that such [appointment] is provided for in the budget and MTEF and that a vacancy exists in respect of the post concerned.'[108]

64. The 'line function Executive'[109] in regard to Senior Litigator posts is NOE Nair, and before the recruitment processes for the Pietermaritzburg and Durban Senior Litigator were recommenced in 2009, he would have duly confirmed that the two posts had been budgeted for – as indeed LASA's recruitment/vacancy/budget statistics for November 2009[110] show they were.

65. Four of the candidates attracted by the re-advertisement of the Pietermaritzburg and Durban Senior Litigator posts in 2009 were shortlisted;[111] and on 12 November 2009[112] they were duly interviewed by a duly constituted selection panel of LASA's most senior lawyers in the region,[113] following which

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[103] Bundle 2, pages 787–801.
[104] Bundle 2, page 717.
[105] Bundle 1, page 228, section 1.1.2.
[106] Bundle 1, page 228, section 1.1.3.
[107] Ibid.
[108] Bundle 2, page 1040.
[109] Bundle 1, page 19.
[110] Bundle 2, pages 1028 and 1029: 'Vacant' and 'Budget' columns.
[111] Bundle 1, page 245.
[112] Bundle 1, page 244. The date of the interviews is incorrectly recorded on the recommendation report as 6 November 2009; in fact they were held on the 12th.
[113] Bundle 1, page 248.

two suitably qualified and experienced candidates were duly and unanimously selected and recommended by the panel, one for each of the Pietermaritzburg and Durban posts[114] for which they'd respectively applied.[115]

66. In sum, the selection and recommendation process was conducted impeccably properly in compliance with LASA's Recruitment code and with similar official codes of recruitment practice in the public sector observed by LASA.[116]

67. The two candidates duly recommended for the Pietermaritzburg and Durban posts were not appointed, however, and the approval process to finalize their recruitments governed by the Approval Framework[117] was silently aborted by national-level officers of LASA,[118] no reason initially given.[119]

68. In a confirmatory affidavit put up in legal proceedings for the true information of the trial judge, NOE Nair corroborated[120] then Corporate Services

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[114] Bundle 1, page 247, paragraph 6.
[115] Bundle 2, page 827.
[116] The irregular manner in which the selection panel framed its recommendations of the two candidates after duly selecting them will be discussed in another part of this complaint to follow, as will the many unlawful irregularities committed by LASA's national executives in the matter, *inter alia* by unlawfully gerrymandering the qualifying criteria for the posts in a failed attempt to bias the process in favour of one of the applicants, Ngcamu AJ (as he used to be), a long-time judicial colleague of LASA chairperson Mlambo JP, who was then head of the Labour- and Labour Appeal Courts, and who'd repeatedly got him appointed as an acting judge of the Labour Court over a period of about six years prior to the interviews. To be discussed in another part of this complaint to follow, this long suppressed, determinedly concealed, critically relevant information was finally forced out of LASA through PAIA litigation in April 2016, years after the trial of and judgment in the misconceived, correctly dismissed labour action mentioned above (LC D529/11), which had been wrongly founded on unfair discrimination.
[117] Bundle 2, page 1036. Under section 8.2.2.b of the Approval Framework, the NOE (Nair) has 'Final approval' authority, provided that the CEO (then Vedalankar) 'Must agree' with the appointment.
[118] To be identified in light of relevant documents in another part of this complaint to follow.
[119] Bundle 1, page 19. This is a letter by NOE Nair on 3 August 2011, under pressure of the complainant's enquiry more than seven months after the silent abortion of the Pietermaritzburg and Durban Senior Litigator recruitments, alleging that 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [*sic*] put on hold due to various reasons. I can now confirm we will not be proceeding with the filling of any of these posts.' The mendacity of Nair's first allegation will be exposed in another part of this complaint to follow. The mendacity of his second allegation is exposed in paragraph 88 below; in sum, Nair, Vedalankar and Clark have all admitted on oath that no record whatsoever exists to show that LASA duly took any such decision not to fill the posts. Discussed in paragraphs 83–5 below, such a decision would anyway have been *ipso facto* unlawful under the PFMA, as the Constitutional Court confirmed in the *Zungu* case.
[120] Annexure 'DM15' to Mtati's answering affidavit in the application to subpoena Mlambo JP for cross-examination at the trial of case LC D529/11. (LASA neglected to annex this confirmatory affidavit to the answering affidavit provided to the complainant, and only furnished it after the

Executive Thembile Mtati's truthful evidence on affidavit, given *qua* attorney on Mlambo JP's instructions, that the Pietermaritzburg and Durban 'recruitment ... was aborted immediately after the first round of interviews.'[121] In other words (LASA's words), it was 'immediately after the first round of interviews' that 'the decision to abort the recruitment of the Senior Litigator, Pietermaritzburg'[122] was taken, and with it the recruitment process for the Durban Senior Litigator post – off the record, without authority, and therefore unlawfully, as discussed below.

69. Many months later, under persistent, rising pressure to account – ultimately to the Minister and to the chairperson of the Portfolio Committee, both of whom had separately and independently instituted enquiries into the matter, and after that to several courts – LASA's top officers advanced a shambles of manifestly untruthful, shifting, vacillating, radically contradictory, mutually exclusive and destructive excuses, all objectively demonstrably false, for not completing the Pietermaritzburg and Durban Senior Litigator recruitments, and several months later for cancelling the transfer of the Mahikeng Senior Litigator to the new Mthatha Senior Litigator post, for which he'd been selected and recommended in May 2010. Another part of this complaint to follow will quote and refute, in light of LASA's own records, the profusion of chaotically inconsistent changing lies told by LASA's top officers to falsely justify the off-the-record, unauthorized, unlawful abortion of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments, and to cover ethical recruitment corruption (jobs for pals) in the case of the Pietermaritzburg post – starting with 'there was a funding shortage at the time that [the complainant] had applied for the Senior Litigator post',[123] i.e. on 2 October 2009,[124] which is to say 'there was no ... funding … to

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trial. So if it's not in the court file LASA will have a copy, otherwise the complainant can make his copy available.

[121] Paragraph 13.4 of Mtati's answering affidavit in the application to subpoena Mlambo JP in LC D529/11.

[122] Paragraph 28 of LASA's original response to the original statement of claim in LC D529/11.

[123] Paragraph 48.3.1 of LASA's original response in LC D529/11.

[124] Bundle 2, page 827.

fill the vacant posts'.[125] – which blatant lie was afterwards substituted with other completely different contradictory blatant lies.

70. The result of the illegal abortion of the three substantially complete recruitment operations for the Pietermaritzburg, Durban and Mthatha Senior Litigator posts, and the unlawful deliberate failure to complete LASA's Strategic Plan 2009–12 regarding the employment of Senior Litigators, is that these then and still budgeted and funded top critical specialist legal professional posts have unlawfully deliberately been left vacant for a decade since the due selection and recommendation of suitable candidates for the Pietermaritzburg and Durban posts in November 2009, and the irregular selection and recommendation of a suitable candidate for internal lateral transfer[126] and appointment[127] to the Mthatha post on 24 May 2010.[128]

71. LASA isn't a government department in the 'public service' according to the definition in sections 1 and 8 of the Public Service Act 103 of 1994, so neither the Public Service Regulations nor the SMS Handbook's 'Recruitment'[129] chapter applies directly to LASA as a public entity listed in Schedule 3 of the PFMA, but as quoted in paragraph 62 above, LASA's Recruitment code states that LASA's recruitment operations must be conducted in accordance with such regulations.

72. Official 'business practices'[130] for public sector recruitment prescribed by the Public Service Regulations, both in Part IV, section C.1A.2, of the former Regulations applicable in 2009 and 2010, and in section 65(7) of the new Regulations promulgated in 2016, with which LASA's Recruitment code is 'in line',[131] are: 'A funded vacant post ... shall be advertised within six months after becoming vacant and be filled within 12 months after becoming vacant.'[132] Indeed, LASA has acknowledged that 'the recruitment process for the senior

[125] Paragraph 49.6 of LASA's original response in LC D529/11.
[126] Paragraph 99.5 of Mtati's answering affidavit in the application to subpoena Mlambo JP in LC D529/11.
[127] Paragraph 92.1 of LASA's answer to pre-trial conference agenda in LC D529/11.
[128] Bundle 2, pages 994 and 996. The several material irregularities in the Mthatha recruitment will be addressed in another part of this complaint to follow.
[129] Bundle 2, pages 787–801.
[130] In the language of section 1.1.2 of LASA's Recruitment code. Bundle 1, page 228.
[131] Bundle 1, page 228, section 1.1.2.
[132] Bundle 3, pages 1115 and 1117.

litigator positions' was required to 'be completed within a reasonable time'[133] – in default of which, section C.1A.3 of the Regulations, applicable at the material time, required that 'the reasons for the non-compliance shall be recorded in writing.'[134] In breach of the Regulations, the Pietermaritzburg, Durban and Mthatha Senior Litigator posts were deliberately not filled 'within 12 months after becoming vacant' or at all, and no 'reasons for the non-compliance' were 'recorded in writing'.[135]

73. In unlawful contravention of official 'business practices' prescribed for the conduct of recruitment operations in the public sector – which LASA's Recruitment code, approved by the Board,[136] requires LASA's management executives to observe – three budgeted and funded Senior Litigator posts at LASA have been vacant since their creation in November 2006,[137] for over thirteen years now.

74. Very much more serious than unlawfully failing to comply with codified recruitment practice in the public service, and irrespective of the mess of contradictory lying excuses later forged and uttered by CLE Hundermark, CEO Vedalankar, NOE Nair and chairperson Mlambo JP under pressure to explain

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[133] Bundle 1, page 381, paragraph 15.
[134] Bundle 3, page 1115.
[135] In November 2011, two years after the abortion of the Pietermaritzburg and Durban Senior Litigator recruitment processes 'immediately' after the candidate recommendations were made in November 2009, followed by the abortion of the Mthatha recruitment several months later as CEO Vedalankar and NOE Nair came under pressure to finalise the Pietermaritzburg appointment – even as the Bloemfontein and Mahikeng Senior Litigator recruitments proceeded and were finalised with appointments made – NOE Nair made a 'Report to Board' (Bundle 2, page 869) alleging absolutely falsely that the three Senior Litigator posts at Pietermaritzburg, Durban and Mthatha 'have remained vacant due to recruitment challenges.' Nair compounded his lie to the Board by making up a second quite different, also absolutely false reason, unsupported by any records: 'We have since decided not to fill the remaining positions until we are satisfied that our objectives determined for this position [*sic*] is [*sic*] being achieved by the current incumbents.' Nair's lying spree continued with a third outright fabrication in which he absolutely falsely and slanderously alleged, contradicted by LASA's professional quality assessment reports, that LASA's incumbent six Senior Litigators were incompetent and underperforming and needed urgent professional auditing 'by a retired judge', which blatant lie he told about them Nair later retracted under oath in court. The several different lies Nair told the Board to justify not filling the Pietermaritzburg, Durban and Mthatha Senior Litigator posts, and his 'operational reasons' perjury in a subsequent affidavit, will be addressed and refuted with reference to material documents in another part of this complaint to follow.
[136] Bundle 1, page 228, footnote.
[137] As mentioned in paragraph 60 above, the original Kimberley Senior Litigator post was abolished and a new post created at Mthatha, with the budget for the former transferred to the latter.

why the selected and recommended candidates for the critical Pietermaritzburg, Durban and Mthatha Senior Litigator posts weren't appointed, LASA's deliberate failure to fill these budgeted and funded critical posts, and its failure to duly apply the salary revenue it budgets for the posts and receives for them from the Treasury via the Department, has unlawfully contravened and continues to unlawfully contravene the PFMA.

CRIMINAL AND OTHER CAPITAL CONTRAVENTIONS OF SECTIONS 53(3), 53(4), 55(1)(a) & 55(2)(a) OF THE PFMA, READ WITH SECTION 86 'OFFENCES AND PENALTIES'; AND CRIMINAL CONTRAVENTIONS OF SECTION 17(2) OF THE POWERS, PRIVILEGES AND IMMUNITIES OF PARLIAMENT AND PROVINCIAL LEGISLATURES ACT 4 OF 2004 IN FALSELY REPORTING TO MISLEAD THE JUSTICE PORTFOLIO COMMITTEE

75. Section 1 of the PFMA defines **'unauthorised expenditure'** *inter alia* as 'expenditure not in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the purpose of the main division'.

76. Presenting the then recently enacted PFMA to the Finance Portfolio Committee of the National Assembly on 19 March 2001, the Treasury explained the gravity of 'underexpenditure' as a form of unlawful 'unauthorised expenditure':

> [T]he definition of unauthorised expenditure is ... also not spending according to the programme description of the specific department. ... The Minister [of a Department; or, in the case of a public entity, its Board as accounting authority][138] must ensure budget is spent in accordance with the original budget plan. ... [N]o one is allowed to have unauthorised

[138] Quoted in paragraph 79 below, section 1 of the PFMA identifies the Board as LASA's 'accounting authority', and LASA stated accordingly in its annual report 2011/12: 'The Board is the accounting authority of Legal Aid South Africa under the Public Finance Management Act 1 of 1999 (as amended).' Bundle 2, page 1053, paragraph 2.2.3.

> expenditure. ... National Treasury ... will ... follow up should there be any indication of ... underexpenditure.[139]

77. When a member of the Portfolio Committee deplored that 'there are a few departments that repeatedly engage in underspending. This results in poor delivery', and he 'asked how the Act addresses this situation for the people on the ground who are suffering', the Treasury representative responded: 'The Minister must ensure that the budget is spent in accordance with the original budget plan. ... Should there be any underexpenditure, the Minister must report to the Cabinet.'[140]

78. LASA isn't a department of state, but the point is the same: 'underexpenditure' by a public entity like LASA and the failure of its Board to 'ensure that budget is spent in accordance with the original budget plan' is extraordinarily serious; indeed, shown below, it constitutes financial misconduct and a breach the PFMA. Aggravating this particular case, it 'results in poor delivery' and 'people on the ground who are suffering', namely the indigent in KwaZulu-Natal completely deprived, and in the Eastern Cape substantially deprived, of access to complex constitutional and other specialist litigation services pertinently envisaged by LASA's Strategic Plan 2009–12 and the two plans following it. The effect of this unlawful underexpenditure, as a result of corruption in LASA's top governing and executive ranks, is that these 'people on the ground ... are suffering' from 'poor delivery' of expert legal services, despite financial provision for them in LASA's annual budgets, met by the Treasury. Causing substantial harm to ... the general public' (per the definition of 'material irregularity' in section 1 of the PAA), LASA's corrupt and complicit officers named paragraphs 6 and 7 of this complaint have effectively denied any hope of 'social justice'[141] to these 'people on the ground who are suffering' when their

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[139] Bundle 3, page 1119. The transcript of the meeting doesn't identify which Portfolio Committee the Treasury representative addressed, but it looks certain to have been the Finance Committee.
[140] *Ibid*.
[141] Quoted in paragraph 55 above, LASA's Strategic Plan 2015–20 aims 'To give content to the Constitution through impact litigation – which is able to address Constitutional rights and socio-economic rights and develop jurisprudence on social justice matters.'

'Constitutional rights and socio-economic rights'[142] are violated, inasmuch as their state-funded access to the courts, which they can't themselves afford, has been practically blocked in furtherance of a cynical corruption cover-up.

79. Under section 1 of the PFMA, '**"accounting authority"** means a body or person mentioned in section 49', which section provides:

> (1) Every public entity must have an authority which must be accountable for the purposes of this Act.
>
> (2) If the public entity–
>
> (a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity[.]

80. Section 56(1)(a) of the PFMA provides: 'The accounting authority for a public entity may ... in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity'; and accordingly on 24 November 2007 the Board as LASA's accounting authority duly 'delegate[d] to the Chief Executive Officer all the powers entrusted or delegated to the accounting authority in terms of the Act'.[143]

81. Section 56(2)(c) of the PFMA provides that the delegation 'does not divest the accounting authority of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.' That is, the Board remains ultimately responsible for ensuring that the funds LASA receives from the Treasury are spent as budgeted, recommended, and approved.

82. Section 53 of the PFMA prescribes:

> ...
>
> (3) A public entity which must submit a budget in terms of subsection (1), may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the National Treasury has been obtained.

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[142] *Ibid*.
[143] Bundle 2, page 1040, Note 30.

(4) The accounting authority for such a public entity is responsible for ensuring that expenditure of that public entity is in accordance with the approved budget.

83. In contravention of section 53(3), LASA has been engaging in unauthorised expenditure in the form of underexpenditure, and in this manner accumulating millions of rands in unauthorised surplus over the past decade, by budgeting for nine Senior Litigator posts but only filling six of them with the salary budget received for them, and deliberately not filling its remaining three vacant Senior Litigator posts – following an unrecorded, unauthorised, backroom decision taken illegally (discussed below).

84. The Constitutional Court has unanimously affirmed in *Sibongile Zungu v Premier of the Province of KwaZulu-Natal and Others* [2018] ZACC 1 (22 January 2018) that deliberately not filling a budgeted and funded post in the public sector, and not spending the salary budget received for it on employing a suitable officer to fill it, contravenes the PFMA. Indeed, our apex court noted that this trite principle was beyond issue and common cause between the parties:

> [8] ... The Premier submitted that, had the position ... been left vacant, he would have been in breach of the provisions of the Public Finance Management Act (PFMA) which preclude him from leaving the position ... vacant. ...
>
> [9] ... The Labour Court further stated that the defence by the Premier that he was bound by the PFMA was not challenged by the applicant. ...

85. CEO Vedalankar's contravention of section 53(3) of the PFMA in not applying LASA's Senior Litigator budget to the employment of suitably qualified and experienced trial lawyers in its Pietermaritzburg, Durban and Mthatha Senior Litigator posts amounts to financial misconduct – for which Mlambo JP and the Board are ultimately responsible – in that section 83 of the PFMA provides:

(1) The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently–

(a) fails to comply with a requirement of section ... 53 ... or 55; or
(b) ...

(2) If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.

(3) An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.

(4) Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation.

86. Section 55(1)(a) of the PFMA prescribes:

> The accounting authority for a public entity ... must keep full and proper records of the financial affairs of the public entity.

87. Consistently with this provision, section 12 of LASA's Code of Conduct and Ethics requires:

> Accurate and reliable records of many kinds are necessary to meet the LEGAL AID BOARD's legal and financial obligations and to manage the affairs of the LEGAL AID BOARD. The LEGAL AID BOARD's books and records should reflect all business transactions ... and the employees responsible for accounting and record-keeping functions are expected to be diligent in enforcing proper practices.[144]

[144] Bundle 2, page 778, paragraph 12.

88. NOE Nair has repeatedly conceded,[145] and CEO Vedalankar[146] and HRE Clark[147] have likewise confirmed – all under oath – that no record whatsoever exists of any decision taken by any competent authority at LASA,[148] or indeed by anyone at all,[149] to abort LASA's substantially completed recruitment processes for its critical Senior Litigator posts at Pietermaritzburg, Durban and later on at Mthatha, for which suitable candidates had been selected and recommended, and to 'freeze'[150] the posts, for any reason.[151]

89. In sum, for ten years three budgeted and funded critical specialist legal professional posts have unlawfully deliberately been kept vacant without any record of any decision of this extraordinarily important financial and operational decision involving many millions of rands and hugely affecting critical service delivery.[152] Besides contravening section 12 of LASA's Code of Conduct and

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[145] Bundle 1, page 381, paragraphs 14, 15 and 16; page 382, paragraph 22; page 383, paragraph 29; page 385, paragraph 35.
[146] Bundle 1, pages 390–1.
[147] Bundle 1, pages 392–3.
[148] Annexure W to the Legal Aid Guide, titled 'Legal Services Technical Committee Terms of Reference', explains: 'The Board delegates authority to the CEO, the Management Exco [Management Executive Committee], LSTC ['Legal Services Technical Committee'], other committees and officials through its Approval Framework.' Bundle 2, page 767, section 3.2.3. Section 5 of the Guide specifies the 'Responsibilities of LSTC': 'The LSTC shall have collective responsibility for: … 5.3. the execution of Board strategy, policies, programmes and plans relating to the legal services delivery programme of the Legal Aid South Africa.' Bundle 2, pages 775–6. To be addressed in another part of this complaint to follow, a variety of false, contradictory claims have been made about who took the decision to abort the recruitments and to freeze the posts, and who was consulted about it. (About which no records exist.)
[149] To be discussed in another part of this complaint to follow, Vedalankar claimed (Hundermark almost certainly ghost-writing for her) that she and Nair decided this 'in July [2010]' – untruthfully and anyway *ultra vires* their powers and therefore illegally. *First*, as mentioned just above, the Legal Services Technical Committee is LASA's decision-making authority in regard to the implementation of Board policy to hire Senior Litigators – as illustrated by its abolition on 24 March 2010 of the Kimberley Senior Litigator post and its creation of the Mthatha one. *Second*, contradicting and refuting her (Hundermark's) claim that she was party to the original unrecorded, unauthorised decision to abort the Pietermaritzburg and Durban Senior Litigator recruitments, Vedalankar's email records show that by late July 2010 she wasn't even aware of the decision, not until October 2010, nearly a year later, when she wrote to the complainant (Hundermark almost certainly ghost-writing) alleging that she and Nair had taken this decision.
[150] *Ipso facto* illegal under the PFMA, as the Constitutional Court confirmed in *Zungu*.
[151] To be quoted and discussed in another part of this complaint to follow, the several untruthful, mutually contradictory and objectively contradicted, totally different reasons fabricated and advanced – including on affidavit, to the Minister, to the Portfolio Committee, and to the courts – have zigzagged wildly over time, ultimately criminally.
[152] Until the selection and recommendation of suitable candidates for appointment to the Pietermaritzburg and Durban Senior Litigator posts in November 2009, when the recruitment process was quietly halted, LASA had repeatedly tried filling the posts, as required by the PFMA and the Public Service Regulations, and had advertised them repeatedly: first in 2007 and twice

Ethics, this gross irregularity in not making and keeping a record of the decision to abort the recruitments and 'freeze' the posts (for wildly disparate reasons given much later under pressure to account) contravenes section 55(1)(a) of the PFMA and constitutes criminal financial misconduct under section 86(2):

> An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.

90. The unauthorised, off-the-record decision to abort the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments after the selection and recommendation of suitable candidates for appointment to the posts, and the indefinite and practically permanent 'freezing' of the top professional posts – for a decade now – was a major change to LASA's Strategic and Business Plans. Section 1.1 of the Approval Framework required the Board's 'Final approval'[153] for any change to LASA's 'Strategic Plan', and section 1.2 required that the Board 'Must be consulted (before)'[154] executive management changed the 'Business Plan'. But as NOE Nair confirmed on affidavit in April 2011: 'The Board was ... not informed of the decision'.[155] That is, the unrecorded decision was taken without necessary authority under the Approval Framework[156] (an internal regulation, a form of subordinate legislation) and was consequently illegal for that reason as well – and hence a 'material illegality' as defined by section 1 of the PAA and accordingly of concern to the Auditor-General.

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again in 2009 (Bundle 1, page 537, and pages 43 and 45). Created in March 2010 (Bundle 2, page 709, paragraph 4.1.7; and Bundle 3, page 1120), the Mthatha Senior Litigator post was advertised the following month in April (Bundle 3, page 1111: 'Closing date – 07 May 2010'), and after the short-listing of applicants in May (Bundle 3, pages 1122–3), interviews were held and a selection and recommendation made on 24 May (Bundle 3, page 1122; and Bundle 2, pages 994–7).

[153] Bundle 2, page 1034.

[154] Ibid.

[155] Bundle 1, page 385, paragraph 36.

[156] In November 2011, two years after the illegal, concealed abortion of the Pietermaritzburg and Durban Senior Litigator recruitments in November 2009, NOE Nair mentioned incidentally in a 'Report to Board' that the posts hadn't been filled – not because of lack of budget for them, as originally falsely alleged, but for other equally false reasons enumerated in footnote 135 above. All the chopping and changing excuses for not filling the three vacant posts will be treated in another part of this complaint to follow.

91. Section 55(2)(a) of the PFMA prescribes:

> The annual report and financial statements ... must ... fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned.

92. In its Annual Performance Report 2011–12 presented to the Portfolio Committee on 9 October 2012,[157] LASA's Board[158] misleadingly stated in its 'Report on Completion of Strategic Plan 2009–2012': 'Senior Litigators employed are working on complex matters and matters in higher courts'.[159] Vedalankar repeatedly made the same misleadingly allegation in her CEO Report included in LASA's Annual Report 2011/12, presented to the Portfolio Committee on the same day: 'Senior Litigators employed are working on complex matters in the higher courts.'[160] Again in her discussion of 'the completion of our three-year Strategic Plan period 2009–12', she claimed: 'To a large extent we were able to make the strategic shift that we mapped for the 2009–12 Strategic Plan (SP) period as indicated below ... We employed Senior Litigators who are working on complex matters and matters in higher courts.'[161]

93. These statements about the employment of Senior Litigators made by the Board in LASA's Annual Performance Report 2011/12, prefaced by Mlambo JP's chairperson's report, and by Vedalankar in her CEO report for 2011/12, were intended to imply to the Portfolio Committee and to induce it to believe that LASA's Strategic Plan 2009–12 regarding the recruitment of Senior Litigators to handle complex constitutional and other specialist litigation and to mentor LASA's legal staff in conducting it had been successfully implemented and completed. Indeed, Vedalankar's claim that 'Senior Litigators employed are working on complex matters in the higher courts'[162] was immediately preceded by the statement: 'Our specialist capacity to cover commercial crimes courts,

[157] Bundle 2, page 897.
[158] Bundle 3, paragraph 3.2.3.c.
[159] Bundle 2, page 897.
[160] Bundle 2, page 902.
[161] Bundle 2, page 1054.
[162] Bundle 2, page 902.

labour courts, sexual offences courts and children's matters is in place and practitioners are continuously trained in handling these specialist matters.'[163]

94. In truth and in fact, contrary to Vedalankar's false claim about this, such 'specialist capacity' wasn't 'in place', inasmuch as three of LASA's nine budgeted and funded Senior Litigator posts were still unfilled, then six years after the creation of the nine posts in 2006. As a result of recruitment corruption and a now disintegrated attempt to cover it up, KwaZulu-Natal had and still has no such 'specialist capacity' at all, and the Eastern Cape's 'specialist capacity' was and remains seriously constrained – ten years after the selection and recommendation of suitable candidates for appointment to the Pietermaritzburg, Durban and Mthatha Senior Litigator posts.

95. For the same reason, Vedalankar lied in her CEO Report in implying that in KwaZulu-Natal LASA's legal 'practitioners are continuously trained in handling these specialist matters', as in other provinces, because as a result of recruitment corruption and its fumbled cover-up, KwaZulu-Natal has no Senior Litigators at all to 'train' them, i.e. to 'Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff' as envisaged in the advertised job description;[164] to 'provide support for practitioners in more complex matters', as the respondent's Annual Report 2009/10 puts it;[165] and for 'protecting the rights of women and children ... In very complex matters, our Senior Litigators provide support and advice to practitioners that need it.'[166]

96. Mlambo JP and the Board well knew that these claims – that Senior Litigators had been employed in fulfilment of LASA's Strategic Plan 2009–12, and that specialist legal professional capacity was now in place for the conduct of complex litigation and for training LASA's practitioners – were false, because a year earlier in November 2011, NOE Nair presented a 'Report to Board' with the soporific title 'Senior Litigators Reporting Relationships and Job

[163] Ibid.
[164] Bundle 1, page 45.
[165] Bundle 1, page 142, paragraph 153.
[166] Bundle 2, pages 825–6.

Clarification',[167] in which he advanced new, quite different untruthful excuses (unsupported, contradicted and refuted by LASA's own records) having nothing whatsoever to do with the budgetary insufficiency story initially falsely alleged (also unsupported, contradicted and refuted by LASA's own records) to justify his failure (as chairperson of the Legal Services Technical Committee) to fill LASA's remaining three Senior Litigator posts with the candidates recommended for them by approving the selection panels' recommendations (his responsibility),[168] after the collapse, when tested and exposed, of the bogus financial insufficiency cover-story for 'freezing' the three vacant Senior Litigator posts at point that the recruitment processes had been completed. (All the different, clashing, chopping and changing cover-stories variously told in correspondence, on affidavit, to the Minister, to the Portfolio Committee, and in court will be quoted and treated in other parts of this complaint to follow.)

97. In short, in making their false annual report to the Minister and to the Portfolio Committee, Mlambo JP and the other members of the Board well knew, as CEO Vedalankar did, that their claims in it were substantially false and misleading, and accordingly they all contravened section 55(2)(a) of the PFMA (fully quoted above), requiring that their 'annual report and financial statements ... fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned.'

98. Section 83 of the PFMA (fully quoted above) provides that 'The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently ... fails to comply with a requirement of section ... 55' for which 'every ['board'] member is individually and severally liable[169] ... An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully

[167] Bundle 2, page 869.
[168] Under section 8.2.2.b of the Approval Framework, NOE Nair has 'Final approval' authority, subject to the assent of the CEO (then Vedalankar); she 'Must agree'. Bundle 2, page 1036.
[169] The Department's representative on the Board, Pieter du Rand, was then and is still a member.

or negligently fails to exercise that power or perform that duty. ... Financial misconduct is a ground for dismissal or suspension'.

99. Having since retired from LASA, Mlambo JP and Vedalankar can't be dismissed or suspended under section 83,[170] but they remain exposed to criminal prosecution under section 86 of the PFMA, 'Offences and penalties', subsection (2) of which provides:

> An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.

100. In sum, by dishonestly misrepresenting 'the state of affairs of [LASA], its business, its financial results, its performance against predetermined objectives [set out in its Strategic Plan 2009–12] and its financial position as at the end of the financial year concerned' in LASA's 'annual report and financial statements' for 2011/12, so as to mislead and defraud LASA's constitutional oversight authority, the Justice Portfolio of the National Assembly, and induce it to believe wrongly that (i) LASA's Strategic Plan 2009–12 regarding the employment of Senior Litigators had been implemented and that such specialist legal service delivery capacity was now in place, (ii) LASA had filled its vacant posts, especially its critical posts, and (iii) LASA was applying its Senior Litigator budget to the employment of Senior Litigators, Board chairperson Mlambo JP, his fellow directors in October 2012,[171] and CEO Vedalankar all committed financial misconduct and criminally contravened section 55 of the PFMA, for which they're liable to be jailed under section 86(2).

101. In deliberately falsely reporting to and misleading the Justice Portfolio Committee in LASA's annual report for 2011/12, prefaced with Vedalankar's CEO report, Mlambo JP, other members of the Board at the time and CEO Vedalankar furthermore criminally contravened section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of

[170] Du Rand can be.
[171] Including Du Rand.

2004 ('Powers, Privileges and Immunities Act'),[172] for which they're liable to be jailed:

> 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.

102. Mlambo JP's and the Board's and CEO Vedalankar's fraudulent deception of the Minister and the National Assembly regarding the employment of Senior Litigators and specialist legal professional capacity being in place additionally failed to comply with 'Strategy C4' of the respondent's Strategic Plan 2009–12, namely 'To timeously account to Parliament and the Executive Authority so they are well informed of Legal Aid South Africa strategy and programmes' – a material irregularity. 'Strategy C4' specifically required 'Timeous and Accurate … Interaction with Minister' and 'Accurate … Interaction with Parliamentary Committees'.[173] And section 1 of the PAA includes 'fraud' as a 'material irregularity' of concern to the Auditor-General.

103. Displaying a similar flagrant contempt for the truth[174] in her[175] entry in LASA's 'Business Plan 2011/12' in section P26–10 headed 'Talent acquisition and retention', HRE Clark dishonestly concealed from the Board, to which the plan was submitted for review,[176] that a third of LASA's critical Senior Litigator posts

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[172] Under section 1 of the PAA, a 'material irregularity' includes 'any ... contravention of ... legislation', and under section 5(1A) this statutory crime is of direct concern to the Auditor-General.
[173] Bundle 2, page 1058. More examples of their dishonestly false, criminal reporting to the Portfolio Committee on other occasions will be canvassed in other parts of this complaint to follow.
[174] Clark's deposition to conflicting false affidavits, a crime, will be treated in another part of this complaint to follow.
[175] Bundle 2, page 877, 'Responsible Executive': 'HRE'.
[176] Bundle 3, page 1104, paragraph 6.1.

had long been vacant since their creation in November 2006,[177] despite the selection and recommendation of suitable candidates for appointment to them in November 2009[178] and May 2010.[179] To the contrary, full well aware that the posts hadn't been filled, and in a fraud on the Board, and hence a 'material irregularity', Clark deliberately falsely claimed: 'No longstanding vacancies'.[180]

104. Profoundly aggravating Mlambo JP's and the Board's and CEO Vedalankar's criminal contraventions of the PFMA and of the Powers, Privileges and Immunities Act in their and their colleagues' fraudulent cover-up of ethical recruitment corruption (jobs for pals) gone wrong,[181] is their corrupt motive for dishonestly misleading the Portfolio Committee in their reports, namely to frustrate and defeat the National Assembly's constitutional oversight responsibility imposed by section 55(2)(b)(ii) of the Constitution 'to maintain oversight of ... organ[s] of state' like LASA, and to prevent the National Assembly holding them to account for unlawfully deliberately not filling LASA's three remaining Senior Litigator posts at Pietermaritzburg, Durban and Mthatha: (i) in contravention of the PFMA; (ii) in an illegal unauthorised deviation from LASA's Strategic Plan 2009–12 and Business Plans based on it; and (iii) in contemptuous disregard for both the Minister's and the Portfolio Committee's express wishes that LASA fill its vacant posts, especially critical posts, and that LASA hire Senior Litigators to ensure that the indigent have access to specialist litigation expertise and that LASA's lawyers have experienced litigation lawyers to mentor them.

105. Had chairperson Mlambo JP and the Board and CEO Vedalankar not criminally deceived and defrauded the Portfolio Committee it would have detected (i) their financial misconduct in unlawfully deliberately not filling LASA's three remaining vacant, budgeted and funded Senior Litigator posts, and

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[177] As mentioned in paragraph 60 above, in March 2010 the Kimberly post was abolished and a new post created at Mthatha, with the budget for the former transferred to the latter.
[178] Bundle 1, pages 244–8.
[179] Bundle 2, pages 994–7.
[180] Bundle 2, page 877. To be shown in another part of this complaint to follow, Clark mendaciously and later perjuriously participated in covering up the corrupt, illegal abortion of the Pietermaritzburg and Durban Senior Litigator recruitments.
[181] To be detailed with supporting documents in another part of this complaint to follow.

in not applying the budgeted revenue received for them to the employment of suitably senior lawyers to fill them, and (ii) the multitude of capital transgressions of the PFMA committed in corruptly and illegally cancelling – off the record and without authority – the substantially completed Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments after the selection and recommendation of suitable candidates for appointment to the posts.

106. Chairperson Mlambo JP's and the Board's and CEO Vedalankar's successful criminal fraud perpetrated on the National Assembly, by presenting to it a false and misleading annual report for 2011/12, constitutes a clear-cut 'material irregularity' on multiple scores within the definition given in section 1 of the PAA, including 'non-compliance with, or contravention of, legislation, fraud ... or a breach of fiduciary duty identified during an audit performed under this Act that resulted in or is likely to result in ... the misuse ... of a public resource or substantial harm to a public sector institution or the general public'.

CONCLUSION

107. In the language of section 20(2)(c) of the PAA, LASA's 'reported performance' repeatedly falsely described in its annual report for 2011/12 concerning the employment of Senior Litigators, in which it was alleged that LASA had completed its Strategic Plan 2009–12 and had put 'in place' its planned specialist litigation and professional mentoring capacity, is seriously at odds with 'its predetermined objectives' in this regard set out in the plan.

108. LASA's deliberate failure over the past ten years to fill its budgeted and funded Senior Litigator posts at Pietermaritzburg, Durban and Mthatha, created to provide expert constitutional and other specialist litigation services to the indigent, is a seriously unlawful dereliction of its obligation stipulated in section 20(3) of the PAA to ensure its 'resources [are] procured economically and utilised efficiently and effectively.'

109. This 'serious or persistent material breach of ... uniform treasury norms and standards', per section 216 of the Constitution, every year for the past

decade – 'compliance with' which 'norms and standards ... [t]he national treasury must enforce' – presents a constitutional basis for the Treasury to 'stop the transfer of funds to' LASA as a seriously and persistently delinquent 'organ of state'.

110. Section 5(3) of the PAA empowers the 'Auditor-General ... in the public interest [to] report on' Mlambo JP's, the Board's and Vedalankar's criminal and other contraventions both of the PFMA and of the Powers, Privileges and Immunities Act and to 'submit such a report to the relevant legislature', namely the National Assembly – specifically the Speaker and the Justice Portfolio Committee – 'and to any other organs of state with a direct interest in the matter', namely the Treasury; the Minister; the Department's Director: Third Party Funds; the Public Protector; the Judicial Service Commission; and the National Director of Public Prosecutions.

Signed at Eshowe on 19 February 2020

ANTHONY BRINK

Signed before me at Eshowe on 19 February 2020 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and who affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

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S. MSHALI CS

COMMISSIONER OF OATHS

Name: Siphiwe Mshali

Address: 73-79 Main Street

Capacity: Constable

SUPPORT SERVICE - SCM
2020 -02- 09
ESHOWE
KWAZULU-NATAL

2.4 REPORT BY CHIEF EXECUTIVE OFFICER
MS VIDHU VEDALANKAR

Legal Aid South Africa is proud to report on another year of high performance, delivering on our mandate and touching the lives of hundreds of thousands of South Africans by enabling them to access justice. We can report that, in this past year, we have achieved the objectives and targets we set in our Business Plan and were able to provide quality legal services to over four hundred thousand South Africans. We also maintained a strong governance platform and obtained a ninth year of unqualified audit report on our financial reports.

2009/2010 is the first year of our 2009-2012 Strategic Plan period. In our past strategic planning periods we established our National Footprint across the country and consolidated our systems and policies to ensure we are able to deliver on our mandate to provide quality legal services to indigent South Africans. Having consolidated our National Footprint our overall strategic shift for 2009-2012 is continuing high performance to become a mature organisation aiming for excellence in performance to reach many more South Africans. This will enable us to achieve our mission to be a leading provider of quality, professional legal services, ensuring effective access to justice for the poor and vulnerable, in an independent, efficient and caring manner.

Overall we are on target to make the strategic shift that we mapped for this period. In the 2009-2010 period, on the legal services delivery front we completed a 3-year expansion of our national footprint (6 new justice centres and 27 satellite offices), geared up to launch our client call c entre, the Legal Aid Advice Line, on 1 July 2010 and implemented a new delivery model through agency agreements with legal firms in rural areas. To support our legal practitioners in specialist matters we set up expert panels. Our practitioners exceeded their productivity level targets for new and finalised legal matters.

MS VIDHU VEDALANKAR
CHIEF EXECUTIVE OFFICER:
LEGAL AID SOUTH AFRICA

We also established our Legal Quality Assurance Unit which has completed the audit of files of 861 legal practitioners and audited performance of 230 practitioners in court in the 2009/10 year. Practitioner quality scores, as assessed by our Legal Quality Assurance Unit, were higher than target for all categories of practitioners. We have also significantly increased assistance on general legal advice matters. A revised civil legal aid strategy approved by the Board will restructure and increase, albeit in a limited way, our capacity to increase assistance in civil matters in the new financial year.

Our strategic shift also incorporated changes to our support platform to support the delivery of quality legal services. This ninth consecutive year of an unqualified audit by the Auditor-General attested to our strong financial management and governance record. This was further strengthened by a fifth consecutive year of no matters of emphasis. Our newly launched corporate identity and 'Legal Aid South Africa' brand was positively received. We successfully implemented matrix management to ensure a greater focus on legal matters by our legal managers while the administrative and non-legal responsibilities are attended to by our support managers. We also successfully implemented a risk based management approach to supervision and support of practitioners and managers to allow greater flexibility and align supervision and support to the level of risk of individual practitioners and managers. Our IT Platform was enhanced by upgrading our internet line to allow for greater use of technology in linking to clients and we also completed our Business Intelligence module which in the new year will allow online, real-time access to management information by managers and practitioners. Consolidation of our people development programmes allowed us to successfully accredit as a Best Employer.

Reporting in line with the components of the Balanced Scorecard used in our Strategic Plan, for our Client, Community and Stakeholder Strategies our priority continued to be increasing access to quality legal aid services. We continued a100% coverage of all criminal courts in the country. In the past year we expanded our national footprint by 2 justice centres (in Botshabelo and Malmesbury) to 64 justice centres and by 9 satellite offices (mostly in rural areas) to 64 satellite offices. In 2009/10 we provided legal assistance in 416,149 new legal matters and finalised 422,882 legal matters. Of the new legal matters 29,028 (7%) were civil legal matters. 93% of these new matters were delivered by our in-house lawyers based at our justice centres and satellite offices, 6% through outsourcing to private lawyers (judicare) and 1% through our co-operation partners (whose programmes are funded by us). 75% of the new legal matters we assisted in were in District Courts, 16% in Regional Courts, 2% in the High Courts and 6% in other courts. In addition to the new legal matters we also provided advice to 211,874 clients in the past year. Our programmes on legal quality contributed to all quality targets being achieved for all categories of practitioners.

Legal Aid South Africa participated in 44 backlog courts as part of the backlog project run by the Department of Justice. In addition to a general link to all awaiting trial prisoners through legal advice clinics at prisons and individual consultations, a special project focused on children awaiting trial continued as did the project focused on Awaiting Trial Prisoners who were in custody for more than two years. Our various interventions to reduce the number of unrepresented accused in courts contributed to a 17% reduction in automatic reviews in the past year. In the reporting period we assisted 59,266 children in criminal and civil legal matters. A pilot project with the Masters office in Bloemfontein working with the estates involving children was very successful. An improved networking with NGOs, CBOs and community advice offices is anticipated with the signing of a co-operation agreement with NADCAO, which has a presence in all the provinces.

This will allow a more effective link and support between community members seeking advice at advice offices and our legal professionals.

Despite these successes I am still concerned that limited funding is resulting in the practitioner per court ratio in criminal courts being insufficient to meet demand at courts. This results in high caseloads carried by practitioners in many justice centres and no relief capacity to replace staff who are away from the office. In this period of economic recession this is likely to continue. The lack of funding for civil legal matters has resulted in limited capacity to render civil legal aid services, impacting negatively on the number of clients assisted in civil legal matters as evident from the decline in number of persons assisted in civil matters. This limited capacity to undertake civil legal aid also results in a limited presence in rural areas making it difficult for clients in rural areas to access legal aid. The revised civil legal aid strategy mentioned above will to a certain extent increase capacity to assist clients in civil legal aid matters.

The Legal Aid Advice Line is also responding to this gap in reaching the poor and specifically the rural poor, by allowing them access to primary legal advice on the phone without having to travel to a justice centre or satellite office. The roll-out of a new corporate identity and brand resulted in partial delays to the branding of prisons, SAPS holding cells and Courts. This will be attended to in the new financial year.

Reporting on the second component of our Balanced Scorecard, in the Finance and Sustainability Strategies we continued our strong financial performance. Our ninth unqualified audit report went together with 99,5% of the budget being prudently spent. Payment of our creditors, including judicare practitioners, was within the 30 days target period. Compliance with our supply chain management policies and procedures also continued. A strong Legal Aid brand is part of our sustainability strategy and this was attended to through the successful roll-out of a new Legal Aid South Africa brand and advertising campaign reaching over 7 million households. This resulted in a 6% increase in awareness amongst the communities we serve, that is, lower LSM groups.

We ended the 2009/2010 year being affected by the global economic recession as were all other public sector departments and entities. The impact of the recession is significant for us, with no new government grants, cuts in our budget in real terms and an actual budget cut in the MTEF 2010-2013 cycle period. We have operated an economic budget with more than 99% of our budget being spent thus ensuring maximum delivery to our clients. These budget cuts will therefore affect our service delivery and our ability to continue to service our clients at the level we have done. Although we will make every effort to minimise the impact on delivery it remains unavoidable.

Having consolidated our delivery and support platforms we were able to successfully introduce and implement matrix management. This allowed for improved reporting and support relationships horizontally and vertically within the organisation, linking the function specific executives to managers at regional and local levels. This implementation of a matrix management approach increased management focus on legal matters with the responsibility of business unit managers at regional and local level being redefined to oversight of support roles and an increased responsibility for legal development and support within their regions and justice centres. This meant that support function executives at national level redefined and increased their responsibility for their functions and managers at regional and local level for example, for support functions like finance, human resources and communications.

The implementation of risk based management was also introduced and implemented in the past year. This introduced a more customised response to the managing of managers and of legal professionals based on their risk profile and the level of support each required. This allowed us to shift from a standard to a more customised response introducing increased flexibility and self-management for the more experienced and proficient managers and legal professionals. This resulted in management attention being focused on those staff in greater need of support. This is important for sustainability and long-term performance. Building and strengthening these approaches will continue in the next period.

We have placed a strong emphasis on accurate and timeous management information to inform our work. With the finalisation of Phase 1 of the Business Intelligence (BI) project in the past year our practitioners and managers will be able to access online real-time information on their performance and delivery data to assist them in self-management.

The staffing component of our national footprint grew only by 3% to 2,513 posts. At year end our staff recruitment was at 94% ensuring that our justice centres are capacitated to provide quality legal services to our clients. Our turnover rate, excluding our candidate attorneys who are employed on fixed-term contracts, was below 10% per annum. We finalised an employment equity audit to inform the Employment Equity Plan for 2010-2015. Overall we are achieving our targets for race and gender with the exception of the achievement of targets in respect of African females at the specialist technical and senior management levels and targets in respect of people with disabilities, which remained a challenge. These challenges continue to be addressed in our 2010-2015 Employment Equity Plan. The non-implementation of Phase 2 of the Occupation Specific Dispensation for our legal professionals due to lack of funds continues to impact negatively on staff morale.

Our people focused programmes were implemented to build a strong and positive organisational culture and brand. The programmes strive to create a work environment in which employees are engaged and satisfied thus choosing to remain with Legal Aid South Africa, as an employer of choice, and being motivated to deliver high quality services. The investment in our staff through our training and development programmes also continued with training for legal, non-legal and managerial staff being achieved. We re-energised our succession planning programme to create a talent pool able to succeed in key critical posts.

Having consolidated our performance and governance issues, the focus on developing our leadership to manage sustained performance year-on-year commenced with our leadership programme under the theme "from Compliance to Values Based Leadership". Our leadership programme extends from Executives, to JCEs, to Managers, to Principal Attorneys and SPAs. Through our Leadership Programme we aim to supplement our compliance approach with a values centred approach. Our Leadership Development Programme includes a Certificate Programme for Leadership Development which is run by one of the country's leading business schools. This allows for the training of 30 senior managers annually. It also includes assessments and self-development and training for each manager to assist them to embrace the values centred approach.

In the past few years we have become increasingly technology dependent and thus had to upgrade our IT Platform to support our business needs. The IT Investment plan approved by the Board for that purpose was implemented providing an upgraded VPN platform and increased bandwidth capacity. The high cost of technology however remains a challenge to optimising IT operational efficiencies and moving to a more integrated enterprise wide resource programme.

This is especially evident in the only issue that remains a challenge in the Auditor-General's report to management, namely the management and administration of leave. The migration to an electronic leave management system, a module within the HR-SAP application that we have implemented for HR payroll administration, remains unaffordable.

In reflecting on the past year and looking at the year ahead there is no doubt that the impact of the recession is the biggest factor looming over us and our continued performance. Our demonstrated capacity to deliver our business results and our financial results over the past year and the last few years will be tested in the period ahead. The major challenge will be minimising the cutting back of our services in response to the cuts in funding. Reduced funding will result in increased workload for our staff and inevitably a reduced service to our clients. While we will make every effort to minimise the impact it cannot be avoided.

Legal Aid South Africa is a successful high-performance organisation because of the efforts of our staff, the Legal Aid South Africa citizens. Legal Aid South Africa is a brand acknowledged for its performance generally but also for the quality of legal services delivered enabling many more South Africans to access justice. I would like to express my thanks to all Legal Aid South Africa citizens for your dedication and delivery of quality legal services, which contributes to upholding our constitutional values and rights. Thanks are also due to our Board and its Chairperson, Judge Mlambo for continuing to provide its oversight and support roles. I also want to acknowledge with appreciation the outstanding contribution of my management team across the country, who has unhesitatingly embraced a values based approach to leadership to ensure year-on-year of sustained performance.

Delivering quality legal aid services is part of protecting and defending the rights enshrined in our Constitution. We are pleased that our successful performance is able to give meaning to the Constitution and make it a living document for poor and vulnerable South Africans.

V. N. Vedalankar

Ms Vidhu Vedalankar
Chief Executive Officer:
Legal Aid South Africa.
19 August 2010

From: Vidhu Vedalankar [mailto:VidhuV@legal-aid.co.za]
Sent: 28 January 2011 02:25 PM
To: Anthony Brink
Cc: Justice Dunstan Mlambo; ckisoon@sahrc.org.za
Subject: PAIA: Brink - supplementary request for records

Dear Mr Brink

Please see attached a response to your letter.

Regards

Vidhu Vedalankar

CEO

www.legal-aid.co.za

Transcript of audio recording of CEO Vidhu Vedalankar's address to the Portfolio Committee for Justice and Constitutional Development on 12 October 2010 during LASA's briefing on its Annual and First Quarter Reports (audio recording: http://www.pmg.org.za/node/23447 ; transcript made by Adv Brink)

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

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

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

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

Portfolio Committee on Justice and Constitutional Development
12 October 2010
Legal Aid South Africa on their Annual and Quarterly Reports

Acting Chairperson: Mr J Jeffery (ANC)

Documents Handed Out:
Legal Aid South Africa (LASA) presentation on Annual Report 2009/2010
LASA First Quarter Report: April to June 2010

Relevant Document:
Legal Aid South Africa (LASA) Annual Report 2009/2010

Summary

The Committee on Justice and Constitutional development welcomed Legal Aid South Africa as they presented their annual report for the financial year 2009/2010 as well as the 1st quarterly report for April to June 2010/2011. In a nutshell Legal Aid South Africa had managed to achieve its targets and would now focus on finding new ways of increasing access to justice. On the support services front, the objective was to increase financial maturity. Six new justice centres had been built around the country as well as 27 satellite offices. The client call centre would be opened in two weeks time and Legal Aid South Africa was the first legal aid entity in the world to instill quality assurance structures to ensure that the quality of the services provided by its lawyers was monitored. Risk management and financial control were closely guarded and there was a strong corporate governance ethos. Only 29 000 new civil matters had been handled, this reflected that LASA was still struggling with the load where civil matters were concerned. Of all the matters undertaken by justice centres, in-house practitioners handled 93%, 6% were by Judicare lawyers and 1% were through co-operation with other partners. The general advice provided by paralegals figure for this financial year was 211 874. The number of automatic reviews had decreased to 8 770. A challenge that remained for Legal Aid South Africa was that there was a gap in terms of African females in senior management positions.

The non-current assets, which were less than 12 months old, amounted to R102 559 414. The current assets were R236 366 598. Revenue was R917 408 000; the main source of revenue was the government grant. The main source of expenditure was salaries, which consumed 70% of the budget. 99.5 % of the budget had been spent for the 2009/10 financial year and once again Legal Aid South Africa had received an unqualified audit report.

For the first quarter of the 2010/2011 (April to June) financial year Legal Aid South Africa was on track where New Legal Delivery Matters was concerned. Practitioners were performing well within target range and challenges were being resolved. The government

grant had increased by 21% and had been used to cover the various areas of operations, which included the reduction of case backlogs.

The Committee wanted more insight into the relationship between Legal Aid South Africa and private practitioners. There were also queries regarding the area of operation of the justice centres. The Committee wanted to know about the experience levels of Legal Aid South Africa practitioners as well as their ability to compete with lawyers from the private practice, this tied in with the query on the salary levels of practitioners. There were issues regarding the financial statement that the Committee raised. it was a concern that there was no mention of what the targets set were; especially where the challenges had been set out in the presentation for the annual report. The Committee requested feedback on the *Porrit* and *Boeremag* cases. The Committee suggested that media services available in Parliament such as Parliament Live should be used by Legal Aid South Africa. The entire Committee commended Legal Aid South Africa for its excellent work and congratulated them on an excellent Auditor General Report.

Minutes

Opening Remarks

Judge Dunstan Mlambo, Chairperson of Legal Aid South Africa (LASA) referred to slide 3 of the annual report presentation and said that overall, LASA had managed to achieve its strategic shift for the period leading up to 2012. The next strategic phase would be to try and find new ways of increasing access to justice. On the support services front, the objective was to increase the financial maturity of LASA. The risk-based management of the performance of lawyers at LASA would be perfected further. The Information Technology platform would be enhanced as well as the availability of the business intelligence facet. Six new justice centres had been built around the country as well as 27 satellite offices. The client call centre would be opened in two weeks time by the Minister of Justice and Constitutional Development. LASA was also the first legal aid entity in the world to instill quality assurance structures and thus ensuring that the quality of the services provided by its lawyers was monitored. LASA would like to embrace a more value centred approach.

Ms Noni Mgadza, Chairperson of the Audit Committee for the board of LASA elaborated on the audit focus of LASA. Risk management and financial control were closely guarded at LASA and there was a strong corporate governance ethos. The result of this was that in the past nine years LASA had received an unqualified report, in five of those there were no matters of emphasis. The various sub-committees of the board worked together to ensure that LASA functioned competently. The established corporate governance structures all worked towards servicing the various communities of South Africa.

Presentation: Annual Report 2009/2010

Ms Vidhu Vedelankar, Chief Executive Officer (CEO) of LASA addressed the Committee and saying that management had strived to turn the organisation around in order to

increase access to justice. The justice centres operated in all the criminal courts within the Republic. For the 2009/10 period there was a slight decrease in the number of new matters handled. 29 000 New civil matters had been handled, this reflected that LASA was still struggling with the load where civil matters were concerned. This was listed under the challenges that would be undertaken by the organisation. The call centre would assist in this regard as first level advice would be provided especially to those communities where LASA was not present. LASA's justice centres undertook 93% of all new matters, 6% were by Judicare lawyers and 1% were done through co-operation with other partners. There were 59 266 new matters that involved children. General advice was provided by paralegals and the figure for this financial year was 211 874. The number of automatic reviews had decreased to 8 770 as LASA had been working hard on reducing this. The quality of practitioners was tracked at justice centre levels. In order to increase awareness on its services, LASA had done branding in prison and police cells. Branding was also done in courts as well as at public lectures. Concerning the Business Processes Performance, LASA was aiming to improve the Matrix management and Risk Based Management, which were both successfully implemented.

The Business Intelligence model allowed management to have oversight over what was going on in the organisation at any time. It also allowed practitioners to know what their caseload was. Recruitment stood at 94% and the staff turnover rate – excluding Candidate Attorney's (CA) - was 9.6%. Lawyers constituted 69% of staff. There was a gap in terms of African females in senior management positions.

Presentation: Annual Financial Statements & Auditor General's Report

Ms Rebecca Hlabatau, Chief Financial Officer (CFO) of LASA informed the Committee that the non-current assets, which were less than 12 months old, amounted to R102 559 414. The current assets were R236 366 598. Revenue was R917 408 000, it should be noted that the main source of revenue was the government grant. The main source of expenditure was salaries, which consumed 70% of the budget. 99.5 % of the budget had been spent for the 2009/10 financial year. This had been the trend for the past six years as there was efficient management of all fixed assets and vehicle management. There were also functional and efficient supply chain management committees. 99.6% of trade creditors were paid within 30 days of the invoice date and 99% of judicare accounts were paid within 30 days of receipt of invoice. The 2009/10 financial year was the 9th year in succession that LASA had received an unqualified audit report and this was the 5th year in succession that there were no matters of emphasis.

The Chairperson commented that there was a lot of data in the quarterly report, in future the focus should only be a highlight of the trends and issues.

Presentation: Quarter 1 Report April to June 2010

Mr Brian Nair, National Operations Executive presented to the Committee that LASA was on track where New Legal Delivery Matters was concerned. Finalised matters were slightly lower but still within target range. Civil matters were extremely lower than criminal matters

as a result of the resource constraints. There was a good trend for quality monitoring and the practitioners were performing well within target range. There was still some work to be done concerning the branding for community outreach purposes. LASA was on track with addressing most of the challenges it faced.

Mr Jerry Makokoane, Chief Operations Officer for LASA continued with the presentation. The funding for case backlogs from the government assisted in the reduction of cases. The government grant had increased by 21% and had been used to cover the various areas of operations. 19% of the funding went to salaries. Direct expenditure increased by 70% due to the 2010 FIFA World Cup funding as well as funding for new legislation. 25 % of the budget had already been spent; this was in line with the trend of LASA's spending. Business continuity was being monitored in order to ensure that operations in LASA were being monitored.

Discussion

Mr J Sibanyoni (ANC) asked what kind of relationship existed between LASA and private practitioners. Did the private legal sector consider LASA as a rival competitor and was it easy for LASA to be able to obtain private practitioners for judicare? Taking into consideration the fact that LASA was freely available to the public, would a newly admitted attorney be able to successfully set up his or her own practice? The civil work that LASA was now undertaking was commendable. Were there LASA centres that provided services across two provinces or were they provincially bound?

Judge Mlambo replied that LASA did not have any problems with judicare. LASA had an accreditation system for private practitioners; from there instructions were issued to the various lawyers on the accreditation list. LASA was now accepted in the legal fraternity however there were still many lawyers in private practice that bad mouthed LASA. These lawyers did this for the simple reason that they did not have access to the work done by LASA. The justice centres were court based in terms of their coverage and they were not provincially bound.

Mr Nair replied that the relationship between LASA and private practitioners was not adversarial. More and more clients were asking for assistance from LASA. LASA provided assistance for clients who could not afford legal services; these were not the type of clients that comprised the market for private lawyers

Ms D Schaefer (DA) commented that she was concerned that the annual report was not made available to members on Friday. Were the salaries of LASA practitioners competitive when compared to the private sector? What were the experience levels of LASA practitioners and were they able to compete with private lawyers? Was LASA concerned about not providing services to persons other then indigenes that also could not afford legal services? On page 123 of the annual report LASA had an excess of R21 million rand access in the past financial year yet this year there was a deficit of R1.8 million, is there an explanation for this? On page 146 there were bad debts written off in 2009/10 to the tune

of R563 000 as opposed to R42 000 during the financial year before that, why was this the case?

Judge Mlambo replied that the best way to ascertain the quality of the work done by LASA practitioners rested with the judicial officers in front of whom LASA practitioners stood. One would find judicial officers in very remote areas traveling to LASA launches to commend me on the work done by LASA. There were many judges who would say that they did not want judicare in their courts because they were not committed and preferred LASA practitioners. LASA practitioners were monitored and if they had a higher number of guilty pleas they would be reined in. The group referred to that did not qualify for legal aid but also could not afford legal services would benefit a lot from the private legal profession increasing their *pro bono work*. Those who failed the means test could also appeal.

Mr Nair replied that LASA had no problems with regards to recruiting lawyers and the salary levels were an indication of this. LASA practitioners served in different types of courts, therefore there were different types of experience levels required. LASA would definitely expand from where it was right now.

Ms Hlabatau referred to the questions relating to finance and said that the reason for the deficit figure was because the income statement took into consideration depreciation. The deficit was not a reflection that LASA overspent on its budget during the past financial year. The bad debts written off related to old debts stretching back to 2000. The bad debts were written off after a considerable amount of time had been spent trying to recover the debts in terms of Treasury regulations. It came to a point where the costs of recovering these debts were now exceeding the benefits that would be derived in recovering them.

Mr M Gungubele (ANC) echoed the praise from Mr Sibanyoni on the excellent work done by LASA. Where the presentation focused on the challenges, it was a concern that there was no mention of what the targets set were. It would be useful if the challenges were articulated in a manner where the set targets were included so one could judge according to figures provided.

The Chairperson commented that there should be more information on the Co-operation agreements that LASA was entering in with other organisations. Could there be commentary on the *Porrit* case that just concluded and its impact on LASA. What was LASA trying to do in order to improve the figures for civil matters?

Judge Mlambo replied that the impact of the *Porrit* case would not affect the judicare instructions. The decision in the case would mean that courts would no longer force LASA to provide legal aid for non-qualifying persons. Cases like the *Porrit* one were going to be a threat and would have consumed a huge part of the budget.

Mr Nair said that last year the board had decided to review the civil matters strategy, which included looking at access and the quality of services for civil matters. Civil matters were

expected to grow, as there was now added capacity.

Advocate Peter Du Randt Chief Director for Court Services in the Department of Justice and Constitutional Development (DOJ & CD) also replied that some of the Co-operation agreements included an agreement with the National Prosecuting Authority (NPA). The agreements were to enhance coordination in how cases were dealt with and also for the reduction of cases on the court register. LASA practitioners were now also available as adjudicators in small claims court cases. This was also contributory towards the work being done where civil matters were concerned.

Ms C Silkstone, Content Advisor for the Committee asked why new matters had decreased.

Mr Nair said that the figures have generally decreased because the cases that should not be on the court roll were not. The Child Justice Act also meant that more and more cases involving children were being diverted

Mr Gungubele asked what mechanisms were in place for quality control purposes and how were the standards measured to determine consistency in the performance of practitioners.

Ms Vedelanker added that quality would remain on the agenda as a challenge because of the professional work done by LASA. The standard of LASA was improving; the target for Candidate Attorneys (CA's) was lower because they were fresh from university. The quality assessment now consisted of both file and court monitoring. This was not so successful in judicare because it was much harder to track matters.

Judge Mlambo added that the budget for judicare had been reduced. It should be noted by the Committee that whenever they read about LASA lawyers behaving inappropriately it was usually Judicare lawyers. This was why Judicial Officers always preferred LASA lawyers to Judicare.

Mr Sibanyoni asked for feedback on the *Boeremag* case.

The Chairperson suggested that LASA should make use of the media services available in Parliament such as Parliament Live especially when they come to present the quarterly reports. Were there amendments to the Legal Aid Guide that had to come before Parliament? LASA should report on the progress of the Child Justice Act in the next quarter. Were there any cases where LASA was suing the state especially Home Affairs? Had there been any forms of engagement with the Minister of Home Affairs so that court proceedings against the state can be avoided where Home Affairs was concerned. Another issue of concern was pensions, had LASA looked at engaging with the pensions ombudsmen to ensure that any queries from its clients were looked at? The work by LASA was once again commendable. It was important that Members also assisted in the quality

maintenance of LASA by conducting surprise visits to their offices.

Judge Mlambo replied that just under R27 million had been spent on the trial. The courts forced LASA to fund the *Boeremag* case the way it was being funded now despite the best efforts of LASA. The accused were 23 and all were represented by the state. It was difficult to handle more civil matters because the funding constraints. It was not clear if there were dedicated LASA units that dealt with pensions but they definitely dealt with estate matters.

Ms Vedelanker added that the Legal Aid guide was tabled before the Minister of Justice who would in turn table it before Parliament. There were not too many amendments.

Mr Nair replied that there were no statistics available for where LASA was suing the state on behalf of clients but one could not rule out the possibility that there would be such cases. The bulk of the matters involving Home Affairs and pensions would be handled at the advice stage where a paralegal would refer the client to the relevant person or body. The problems had not reached the stage where practitioners were involved.

The Chairperson asked if both Houses had to approve them.

Ms Vedelanker replied in the affirmative.

The Chairperson thanked LASA and once again congratulated them on their excellent work.

The meeting was adjourned.

Justice and Constitutional Development Portfolio Committee
31 March 2011
Legal Aid South Africa Strategic Plan and budget 2011

Chairperson: Mr L Landers (ANC)

Documents handed out
Legal Aid presentation: Strategic plans, Annual Performance Plan and budget 2011/12

Audio recording
(pm)

Summary
Legal Aid South Africa (LASA) briefed the Committee on its strategic plans, annual performance plans and budget for 2011/12. The strategies were grouped into various categories, and the programmes indicated how the strategies would be implemented. 94% of legal aid was rendered through Justice Centres employing lawyers in-house, which participated in case flow management teams in each region, as well as through 4% Judicare instructions to private practitioners. LASA was attempting to develop a strong and recognised brand. It placed great emphasis on its own financial strength and stability. It would constantly review its business processes to ensure that they remained relevant, had sought external reviews of the Board, and aimed to maintain its unqualified audit status of the past nine years. It was aware that it needed an expanded national footprint, to staff its 128 offices, and the programmes and initiatives to develop the staff were outlined.

The Annual Performance Plan illustrated strong links between objectives and programmes. LASA emphasised that quality of service was central to every programme. It tried to adopt a risk-based approach that sought to match services to staff with specific requirements. LASA had achieved 90% coverage of regional courts, and 80% coverage in district courts. It was trying to improve the practitioner to court ratio. LASA also aimed to increase its uptake of civil matters, by 10%, which was a high target. Its new call centre, handling up to 2 000 calls a day, increased its coverage and profile, and its paralegals also assisted at other advice centres and correctional service centres. It had set targets for completion of matters in the courts. All standard operating procedures in place were reviewed regularly, and great emphasis was placed on relevant and accurate management information and reporting. LASA also tried to give support to developing systems in other countries. The budget was tabled, with a line-item breakdown and comparisons to previous years. The biggest portion of the budget went to salaries and related costs, and direct expenditure was directly related to service delivery. In 2011/12, LASA had an allocation about 4% higher than the previous year, as some costs of 2010/11 were not carried forward. However this would result in negative real-term growth, since Public Service salary agreements and contract escalations were higher than the 4% budget increase. There were insufficient allocations for full implementation of the Child Justice Act. LASA usually managed to spend around 99.5% of its budget, and was expecting to do so in the 2010/11 financial year.

All Members expressed their congratulations both on the achievements and the report. They questioned possible overlaps with the work of other entities, particularly in training, asked whether LASA would be providing services to farm dwellers and proposed that this Committee discuss the issue with the Portfolio Committee on Rural Development and Land Reform. Members felt that the LASA could do more to promote itself, enquired about the vacancy rate, wondered if there was cooperation with the Legal Resources Centre on class action work, and where any recovery of costs in civil matters was reflected in the financial statements. Members noted the recent Supreme Court of Appeal judgment in favour of LASA, on the provision of legal aid to those who did not qualify under the means test, but who could be assisted and asked to contribute to costs. Members sought clarity on the annual salary adjustments and executive management remuneration. They questioned the anomalies in the location of courts and offices, asked whether the means test was the only criterion and called for an explanation of “substantial injustice” provisions. They also asked if LASA accepted all types of work, questioned whether salaries paid to candidate attorneys were now standardised across entities, and asked if LASA had a presence in deep rural areas, how the call centre operated, and its requirements. Members noted the impressive

numbers of cases handled, and also expressed appreciation that each of the 400 000 cases cost the taxpayer about R2 800, or less if the call centre advice was taken into account. Members also discussed how LASA set its targets. Finally, Members expressed their congratulations to Judge Mlambo on his appointment as Judge-President of the Labour Court, and recorded their good wishes to Mr Peter Brits, a long-standing LASA employee, on his move to a new position.

Minutes
Legal Aid South Africa (LASA) Strategic Plan and budget 2011/12
Judge Dunstan Mlambo, Chairperson, Legal Aid South Africa, congratulated Mr Landers on his appointment as Chairperson of this Committee.

He noted that the 2011/12 strategic plan of Legal Aid South Africa (LASA) represented the final year of a three-year plan, and that this would be followed by a five-year plan. The strategic plan was reviewed annually. He tabled the objectives, strategy and programmes (see attached document) and explained that the strategies were grouped into specific components, relating to broad overall topics, such as clients, community, stakeholders and shareholders, and financial sustainability. LASA followed the “SMART approach” as demanded by the Auditor-General (AG), and all strategies were achievable and time-bound.

In the area of clients, community, stakeholders and shareholders, LASA sought to provide increased access, and timeous legal services, with special focus on vulnerable groups, and an emphasis on quality. The programmes listed represented the way in which the strategies would be implemented. Legal Aid sought to provide education to clients and communities about the Constitution and legal aid services. The third and fourth strategies focused on the courts, and LASA’s contribution to the Justice, Crime Prevention and Security Cluster (JCPS), by way of trying to assist with improved functioning of the courts, improved co-ordination with stakeholders, advocacy and ensuring independence. Judge Mlambo explained that LASA’s Justice Centres (JC) were linked to case flow management teams that ran in each region, to ensure coordination between stakeholders. LASA sought to maintain timeous accountability to Parliament and the Minister. Programmes under the fifth to seventh strategy were aimed at maintaining a sustainable and financially stable LASA, with good governance, and developing a strong and recognised Legal Aid brand. He emphasised that LASA took financial strength and stability very seriously.

Judge Mlambo then outlined that the next group of strategies looked to business groupings and programmes to ensure that the business scheme of LASA remained effective, efficient, and professional, and that its business processes were sustainable. LASA maintained that the Justice Centres remained the best way to deliver services. LASA would constantly review the business processes to ensure that they remained on track, and relevant to delivery. LASA issued exhaustive Quarterly Reports, which were tabled to the Board and the Minister. It aimed to maintain its unqualified audit status.

The next component group of strategies dealt with internal matters of employees and support systems. LASA needed to have an expanded national footprint that would enable it to deliver, and support others in the delivery of legal services. LASA constantly looked at staffing and business models. It also wished to develop the competencies of the staff, through training programmes. Its attempts to have an enabling environment to deliver legal services meant that it had policies and targets around matters such as hours in court, research hours, and consulting hours for its legal staff. Human management and practices looked at the different needs of different staff groups. LASA aimed to remain an employer of choice, by having a people-centred organisational culture. It would support its staff also by ensuring that its IT platform remained responsive to the needs of employees, and encouraged and paid for its staff to go on courses and do research.

Judge Mlambo summarised that all these strategies were achievable, relevant and allowed LASA to perform correctly.

Ms Vidhu Vedalankar, Chief Executive Officer, LASA, noted that the Annual Performance Plan (APP), also referred to as the Business Plan, expanded on the strategies. While the document she would present was not fully comprehensive, and she did not intend to go into every programme in detail, she would be happy to answer any questions around the key deliverables that were set out here. This document, for the

first time, established the links between the objectives and the programmes. She emphasised that providing quality of service was central to every programme, assured both by constant monitoring and assessment, and by interventions to improve where any deficiencies were highlighted.

Ms Vedalankar explained how the targets were then derived from the outputs. She noted the use of the phrase “risk-based”, saying that this was used to emphasise that one size did not fit all. LASA would look at the support needed by staff – a “high-risk” practitioner, with little experience, would need greater support, including greater intervention by managers. This approach made better use of resources. She explained that lower targets, based on a scorecard, were set for candidate attorneys, in view of the fact that they would serve LASA under shorter-term contracts. The Internal Audit departments would independently assess quality, aiming to review 50% of all practitioners across all justice centres in each year. These reviews would then be compared to management’s independent assessments of quality.

Ms Vedalankar noted that LASA now had a presence at all criminal courts, and had 90% coverage of regional courts, with 80% coverage in district courts, with a practitioner present for 4 days a week. LASA was trying to improve the practitioner to court ratio. It achieved this through mixed delivery: Justice Centres (JC) were delivering 94% of services, while Judicare was delivering around 5%.

She said that LASA wanted to increase its civil matters by 10% from the previous year. She conceded that the targets for civil work had not been achieved in the past, but LASA still preferred to aim for high targets and strive to improve. It had also introduced a call centre, and had increased its marketing to achieve full capacity, up to around 2 000 calls a day. Although not all vacancies in the call centres had been filled initially, and LASA preferred to wait to assess the need, it had now decided to do so. LASA gave advice to the public, largely through paralegals, and hoped to increase this by 10%. Paralegals would also visit advice offices elsewhere and correctional service centres.

It was noted that some of the targets around cases had not been reached because they were linked to pro bono agreements and arrangements with the law societies and General Council of the Bar (GCB). LASA measured the turn around time of cases, and this linked to the case backlog project. LASA aimed to complete matters within six months in the District Court, nine months in the Regional Courts and twelve months in the High Court.

Ms Vedalankar said she did not wish to present all the slides exhaustively, but moved to slide 16, which dealt with how LASA worked in the Criminal Justice System (CJS) and its review. This would include screening of matters before they were put on the roll, case flow meetings at national level, and tabling of the Legal Aid Guide and annual reports to Parliament.

Ms Vedalankar said that although LASA could not determine the amounts it received, it would report and account fully for what it had received, and justify continued funding. LASA constantly sought to improve in its own handling of finances to ensure sustainability. Plans and measures were in place to ensure good governance. To ensure good functioning of the Board, an external evaluation was being done, and the resulting report would help the Board to improve its own governance. Brand management would ensure that services were provided, and that trust and relationships were built to improve its local and international status.

She highlighted the business processes in slide 23. LASA would ensure that standard operating procedures were in place, were reviewed regularly and were reported upon. Relevant and accurate management information and sound financial management would improve on its work, and enable good reporting to Parliament and the Minister. Ms Vedalankar explained that the “national footprint” related to the infrastructure of LASA. Shortly before the global recession, LASA had completed a three-year expansion process. There were currently 128 sites through which it reached clients, and expansion of services was also achieved through the call centre.

LASA sought to increase the capacity of its legal practitioners by giving them support through training, but also expected them to take responsibility for self- training through on-line self-learning models. Other programmes were also offered, covering aspects such as and self-learning models would be made

available on-line. LASA had other programmes such as organisational culture and wellness programmes, and tried to achieve standardised delivery. IT support was an important aspect.

LASA, as well as offering legal aid in South Africa, also tried to give support to developing systems in other countries, and was frequently visited by other jurisdictions wanting to study its models.

Ms Rebecca Hlabatau, Chief Financial Officer, LASA. tabled various slides on the budget. The first showed comparisons of new funding, case backlogs (funding from previous years), and total government grants, between 2010 and 2013. She noted that the amounts shown included allocations for Occupation Specific Dispensation (OSD) adjustments. She noted that about 94% of LASA's work was done through its in house legal practitioners, so the bulk of its budget (around 72%)went to salaries and related costs. 70% of its staff were lawyers. Direct expenditure was directly related to service delivery, including Judicare.

She then tabled slides showing the link between the strategies and budgets and components of the strategy. About R833 million was allocated to the strategies aimed at client, community, stakeholders and shareholders. She noted that the contribution to building a system was directly related to the backlog, and this had an allocation of R30 million. She noted that some programmes drew their resources from more than one programme – for instance, accounting to Parliament would be reflected under salaries, printing, travelling and other costs. She said that developing a strong LASA included the building of the brand and marketing, and R9.7 million was allocated to this. About R2.5 million was related to the business processes, including ensuring sound financial management and sustainable business processes. She noted that compensation of support staff related to those not directly involved in delivery of legal services, so this would include administrative and IT staff, for instance. R156.9 million was allocated to "additional" programmes that supported the running of LASA, and this included matters such as depreciation, office rental, travel and other costs.

Ms Hlabatau tabled a comparison of line-item budgets for 2010/11 and 2011/12, which showed a 4% increase, which had included the backlog for OSD funding, not carried forward to the 2011/12 year. Direct expenditure decreased by 16%, because the allocations for 2010/11 included once-off funding, such as World Cup funding, and implementation of the Child Justice Act. The reasons for the variances were shown.

Ms Hlabatau then described the challenges relating to funding. The government grants increase was about 6%, but annual salary adjustments were higher. Contract escalation, such as office rental, security and cleaning costs, amounted to about 12% increase, which again was higher than the macro-increase. This resulted in negative real-term growth. There was inadequate funding to implement the Child Justice Act.

She noted that over the last seven years, LASA had spent around 99% of its budget, and the as-yet-unaudited figures for the financial year ended 31 March 2011 indicated that it would spend about 99.6%. LASA had nine years of unqualified audit reports, with unqualified reports with no matters of emphasis for the past five years. All the AG's recommendations were implemented within the agreed timeframes.

Discussion
Mr Jeffrey commented LASA on yet another comprehensive and impressive report, noting that its reporting on quality control was most encouraging. He asked if the Committee's Budgetary Review and Recommendation Report (BRRR) had been sent to LASA.

Ms Vedalankar said that she had only just received it.

Mr Jeffrey appealed to the Chairperson that the Committee should, in future, ensure that this was set out to all entities. He noted that the Committee should be emphasising the quarterly reports as well. He said that the BRRR had made some recommendations in relation to OSD funding, additional funding for civil work and clarity on Child Justice Act implementation, but this could not be addressed in this meeting.

Mr Jeffrey wondered if there were potential overlaps with the work of other entities. The South African Human rights Commission (SAHRC) and the Department of Justice and Constitutional Development (DOJ) were already running education campaigns on the Constitution, and LASA indicated it was doing something similar. He urged that any public awareness on this issue should be coordinated. He also noted LASA's work in advice offices, but noted that the DOJ had received money from the European Union (EU) to set up advice offices through civil society structures, and asked if there were links.

Ms Vedalankar clarified that LASA was not setting up separate advice offices but was linking into existing offices, by sending paralegals and legal practitioners to provide extra legal capacity. A coordinating body of advice officers might be linking with DOJ on the EU funding. Educating the public about the Constitution was not really the responsibility of LASA, and it would not run direct campaigns but built an understanding of those rights as it marketed its own services. LASA was considering how best to cooperate with the SAHRC and others on specific programmes; although it did not have the capacity to run its own strategy, it would support others where it could.

Mr Jeffery asked if there had been any developments on the provision of legal services to farm dwellers, noting that a private firm had been asked by the Department of Rural Development and Land Reform (DRDLR) to set up a roster of private practitioners to handle this a while ago, after some concerns about LASA's ability and quality of services.

Judge Mlambo said that he was not aware of any further developments. LASA had not been approached again, after the appointment of attorneys Cheadle Thompson, and he was not aware how many farm dwellers they had reached. Land claims seemed to be receiving less media attention.

Ms Vedalankar added that LASA had read a report that this contractual arrangement was now coming to an end, and had written formally to the Director General of the DRDLR to investigate cooperation with LASA. There had been no suggestion made to the LASA that the DRDLR's decision was based on perceived lack of quality. LASA believed that it could achieve more, for less, than private firms, and would welcome support from this Committee in engaging with the Minister.

Mr Jeffrey suggested that it might be useful to discuss this with the Portfolio Committee on Rural Development and Land Reform. He could not recall exactly where the comments about quality had emanated, but perhaps it would be useful for LASA to consider employing more specialist people at a central level to advise and train practitioners. The State was obliged to provide legal support on a number of issues around land rights and evictions. He did not think that this issue needed to be included in the Committee Report, but that discussions should be held.

Mr Jeffery noted the references to the brand and publishing, said it was unfortunate that no journalists were present, and commented that perhaps LASA should have its own media officers or promote itself more.

Judge Mlambo responded that LASA had invited all media houses to the launch of Legal Aid Live, and LASA was receiving some attention in law report programmes, radio initiatives and other matters. However, he took the point.

Mr Jeffrey enquired about the vacancy rate, generally, and at professional assistant level.

Ms Vedalankar replied that in 2010/11, LASA had set a target of 96% of all posts being filled, although it had then held back on filling some of the vacancies because of the uncertainty of obtaining OSD funding in Phase 1, which, if not recovered, would have put the LASA into deficit. OSD was now settled in the baseline figures, and she thanked the Committee for its support in this regard. LASA now had 96% of all posts filled.

Mr Jerry Makokoane, Chief Operations Officer: LASA, added that the vacancy rate for professional staff was about 5.5%, for support staff it was 4% and there were no vacancies at executive level.

Mr S Swart (ACDP) noted that LASA had a high standard. He thought that the “impact legislation” in civil work was commendable. He noted, however, that the Legal Resources Centre (LRC) undertook similar class-action work, and he asked if LASA had discussed this with LRC, particularly as LASA had said that the number of applications received determined whether it could do the work.

Judge Mlambo said that there were discussions with the LRC. LASA funded some of this work through Judicare, and also had taken over one of the LRC’s senior lawyers.

Mr Swart asked where any possible recovery of costs in civil actions was reflected.

Ms Hlabatau noted that this appeared under “other income” on page 143 of the report. R28 000 was recovered in the last year.

Judge Mlambo informed the Committee that LASA had recently won a Supreme Court of Appeal matter in which it had appealed against a lower court ruling that it must give legal aid to those who did not necessarily meet the means test. The Supreme Court of Appeal had ruled that a person who did not qualify for the means test, but who could not fund his or her full costs for a protracted case, could be assisted but asked to contribute. LASA was looking at amending the provisions of the Legal Aid Guide, and was sensitising judicial officers to this point, asking that they order contributions where appropriate. LASA had always believed that it was unsustainable to require LASA to fund everything, and this ruling would assist it in stretching its budget further.

Mr Swart noted the financial constraints, but asked why annual salary adjustments were higher than increases in the overall allocation.

Ms Vedalankar said this was because the Public Sector Bargaining Council’s agreed settlement was higher.

Mr Swart questioned the Executive Management remuneration. Whilst he was aware of the need to retain highly skilled people, he called for explanation of what appeared in the “other” column, which cumulatively amounted to a fairly large percentage of the expenses.

Ms Hlabatau explained that Senior Management Staff could choose how to structure their salary, and that “other” would include matters such as the amounts allocated to, for instance, a thirteenth cheque, medical aid, pension, cash allowances or retirement. The total, including the “other” was informed by the Public Service salary levels.

Mr J Sibanyoni (ANC) congratulated Judge Mlambo on his appointment as Judge-President of the Labour Court, and expressed his gratitude that through Judge Mlambo’s interventions, many of the past problems with the former Legal Aid Board and late payments had been overcome. However, he asked that some delays in payments to practitioners in December 2010 should be investigated. He was pleased that LASA was now taking civil work.

Mr Sibanyoni said that there was still a problem with the former cross-border boundaries, as some LASA offices were based in places that were difficult for communities to access, since they may have to drive about 60 kilometres to the relevant office although another centre was geographically closer. This was particularly a problem in Witbank.

Judge Mlambo agreed that there were some anomalies. For instance, although King Williams Town was closest to the Bisho High Court, people preferred to institute action in the Grahamstown High Court, whilst a person committing a criminal offence in East London might be tried in Port Elizabeth, not Bisho. This was a hangover from the apartheid days, and it had cost implications for LASA. The Witbank issue had been discussed and hopefully should be resolved.

Mr Brian Nair, National Operations Director, LASA, added that 95% of Justice Centres did cover courts in that province, except where the court in another province might be closer. LASA tried to ensure that,

particularly in civil work, clients would not have to travel, especially for consultations. Justice Centres worked in clusters, so a client could visit the closest office and be advised by phone or by visiting practitioners. The DOJ was implementing rationalisation of courts, which should deal with the problems outlined by Judge Mlambo, and ensure that process was served at the court closest to the community.

Mr Sibanyoni noted that legal aid could be offered where failure to do so might result in “substantial injustice”, and asked if this implied that the means test was not the only qualifier, or if the nature of the case was also taken into account. He said that if LASA was to grant assistance on a wide scale, irrespective of means, this could result in legal practitioners being deprived of their client base.

Mr Mlambo said that the LASA Board had not changed its approach to applying the means test, other than instances that Mr Nair could outline.

Mr Nair added that LASA would apply the means test to Regional and High Court matters. LASA did not grant assistance for certain cases in the District Courts, as listed in the Legal Aid Guide, including traffic offences. The Justice Centre could, however, give legal assistance in cases where the local head office believed that substantial injustices would occur otherwise – for instance, where a particular court was handing down inappropriate sentences to those who were unrepresented. He reiterated that a person who did not qualify under the means test, but who also did not have the financial resources to run a long trial, could be asked to contribute some costs, on a monthly basis, to LASA for its help. The Board was considering introducing a contributions policy to deal with this in a more standardised way.

Mr Sibanyoni asked if candidate attorneys employed by the National Prosecuting Authority (NPA) were better paid that those articled to LASA.

Judge Mlambo said that OSD had been introduced to correct the situation, which was now equalised. Those who left LASA for NPA generally left for higher positions.

Mr Nair added that candidate attorneys, who were of course on contract for the duration of their articles, might move to the NPA to accept a position as an intern prosecutor, hoping that they would then be appointed permanently.

Ms S Shope-Sithole (ANC) also congratulated Judge Mlambo on his appointment and his impressive approach to financial issues. She asked if LASA had an office in Bushbuckridge.

Judge Mlambo replied that there was indeed a satellite office there, and that expansion outwards from Bushbuckridge probably justified establishment of a Justice Centre being established, but financial constraints were preventing this at the moment.

Ms Shope-Sithole asked that reports in terms of the Public Finance Management Act should be sent through regularly from LASA.

Judge Mlambo said that the reports were sent to the Minister, but that LASA would in future also send them to the Committee.

Ms D Schafer (DA) asked for an explanation of the percentage targets for quality of practitioners.

Ms Vedalankar said that LASA had standard instruments, or scorecards, to measure quality, such as court and file work, and these varied for the different categories of staff. These could be made available. There was substantial work done in preparing these and linking them to outputs.

Ms Schafer asked if anyone could phone LASA advice offices, or whether there was a means test for this.

Mr Nair noted that originally the toll-free number had played a recorded message stating that the advice was limited to people earning less than a certain amount, but it was found that asking people to choose an option to confirm this, and access an agent, was not practical. Currently, anyone could phone in for

advice, irrespective of their means, but would need to pass the means test in order to take the matters further through a Justice Centre.

Dr M Oriani-Ambrosini (IFP) asked how many clients had been served during 2010/11.

Mr Nair said the case figures were expected to be around 400 000 at the end of the financial year, compared to about 416 000 in the previous year, and should increase over the following years.

The Chairperson asked if the breakdown between civil and criminal matters was available.

Mr Nair said that at the end of the third quarter of 2010/11, 93% criminal and 7% civil matters were handled.

Dr Oriani-Ambrosini said that the figure of 400 000 cases was quite impressive, and noted that this meant about R2 800 was expended on each case. He congratulated LASA on its achievement.

Judge Mlambo added that the figure of R2 800 per case would drop if the legal advice was also factored in. This illustrated LASA's contention that the Justice Centre model was the best for South Africa.

Mr Jeffrey asked how civil matters were logged.

Mr Nair explained that they would be logged when the client was assessed as qualifying for legal aid and the file was opened. Most civil matters did not proceed through the full trial process, as most were resolved through mediation or negotiation.

Dr Oriani-Ambrosini noted that the performance of NPA was assessed by conviction rates, and asked how LASA was assessed.

The Chairperson pointed out that the National Director of Public Prosecutions had stressed that some people were prepared to use their positions to "stretch out" legal proceedings, knowing full well that LASA was limited in how far it could take matters.

Mr Jeffery said that the NPA could set targets for convictions, because this body decided what cases to prosecute. LASA was faced with a responsibility, but had no choice whether to take on the case.

Judge Mlambo said that the number of convictions or acquittals was not a true measure of effectiveness. He pointed out that those who had the resources would not approach LASA, but LASA was constitutionally obliged to deal with even cases that were unlikely to succeed. LASA was proud of its intervention and pointed out that it achieved acquittals, withdrawals or reduced sentences, in about 25% of the matters.

Judge Mlambo thanked Members for their guidance and comment, and hoped that Legal Aid would continue to be relevant to South African society. He agreed that there was much still to be done in reaching the rural poor, but LASA had realised, from comments made by traditional leaders, that it must also establish satellite offices in far-flung areas. LASA maintained its commitment to rendering legal aid services.

Judge Mlambo noted that he had asked to be released from his Chairmanship of the LASA. He also noted that a long-serving employee, Mr Peter Brits, would be leaving LASA, and would be sorely missed.

The Chairperson congratulated Judge Mlambo on his appointment at the Labour Court, and LASA on its excellent performance. The Committee would miss Judge Mlambo if he were no longer to chair the LASA Board. He also asked that the Committee's best wishes be conveyed to Mr Brits for his new endeavours.

The meeting was adjourned.

LEGAL AID BOARD

ADDITIONAL MTEF ALLOCATION FOR FY 07/08 - BUDGET PROPOSALS

No	Programme description	Kopanong	KZN/MP	EC/FS	WC/NC	Total	Cumulative Totals	% Split all prog.	% Split Avail. funds.	No of new Staff	No of new matters
1	Increasing ratio of PAs at Regional Court	R 7,490,000	R 4,815,000	R 6,955,000	R 4,280,000	R 23,540,000	R 23,540,000	18%	49%	88	4400
2	Strengthening CA capacity at reception courts	R 1,425,000	R 1,200,000	R 975,000	R 750,000	R 4,350,000	R 27,890,000	3%	9%	58	
3	Increase number of satellite offices	R 1,640,000	R 1,640,000	R 1,640,000	R 1,640,000	R 6,560,000	R 34,450,000	5%	14%	24	1600
4	Provision for admin staff at JC to match increase in legal staff					R 2,550,000	R 37,000,000	2%	5%	34	
5	Increasing senior litigation capacity	R 1,065,000	R 1,065,000	R 1,065,000	R 1,597,500	R 4,792,500	R 41,792,500	4%	10%	9	450
6	Group Life provision					R 1,629,000	R 43,421,500	1%	3%		
7	Funding of new posts, including COO, MSP & Financial posts					R 1,900,000	R 46,321,500	1%	4%		
8	Provision to fund performance incentive bonus shortfall					R 2,388,000	R 47,709,500	2%	5%		
9	CA replacement programme at Satellite Offices	R 1,155,000	R 3,465,000	R 962,500	R 3,465,000	R 9,047,500	R 56,757,000	7%		48	
10	Establishment of Land Units	R 755,000	R 1,132,500	R 1,510,000	R 1,887,500	R 5,285,000	R 62,042,000	4%		14	1400
11	Addressing gaps in regional coordination of Justice Centres	R 973,000	R 973,000	R 973,000	R 1,631,000	R 4,550,000	R 66,592,000	3%		9	
12	Alignment of Legal Practitioner salaries to Justice Cluster					R 66,075,000	R 132,667,000	50%			
		R 11,620,000	R 8,720,000	R 10,635,000	R 8,267,500	R 132,667,000		100%	99%	213	6450

Available funding R 46,250,000

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LEGAL AID BOARD

ADDITIONAL MTEF FY07/08 - JUSTICE CENTRE CONSOLIDATION

(ONLY PROJECT 1, 2 & 7 INCLUDED IN CONSOLIDATION)

Region	Province	No	Justice Centre	Number of new staff positions: Senior Litigators	PAs	CA's	Para-legals	Admin staff	Totals	Operations Budget: Staffing costs	Operations Budget: Other costs	Capital Budget	Total budget
Kopanong	Gauteng	1	Alexandra	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
		2	Benoni	0	2	2			4	R 550,000	R 95,000	R 40,000	R 685,000
		3	Germiston	0	2	2			4	R 550,000	R 95,000	R 40,000	R 685,000
		4	Johannesburg	1	3	2			6	R 1,250,000	R 185,000	R 50,000	R 1,485,000
		5	Krugersdorp	0	2	1			3	R 500,000	R 80,000	R 30,000	R 610,000
		6	Pretoria	0	4	2			6	R 1,000,000	R 160,000	R 60,000	R 1,220,000
		7	Soweto	0	3	1			4	R 725,000	R 112,500	R 40,000	R 877,500
		8	Vereeniging	0	3	2			5	R 775,000	R 127,500	R 50,000	R 952,500
	Limpopo	9	Makhadu	1	1	0			2	R 700,000	R 90,000	R 10,000	R 800,000
		10	Modimolle	0	0	0			0	R 0	R 0	R 0	R 0
		11	Polokwane	0	2	2			4	R 550,000	R 95,000	R 40,000	R 685,000
		12	Thohoyandou	0	2	1			3	R 500,000	R 80,000	R 30,000	R 610,000
		13	Tzaneen	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
	NW	14	Ga-rankuwa	0	1	3			4	R 375,000	R 77,500	R 40,000	R 492,500
		15	Rustenburg	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
			Regional Total	2	28	19	0		49	R 8,200,000	R 1,310,000	R 470,000	R 9,980,000
KZN/MP	KZN	1	Durban	1	3	3			7	R 1,300,000	R 200,000	R 60,000	R 1,560,000
		2	Empangeni	0	3	0			3	R 675,000	R 97,500	R 30,000	R 802,500
		3	Ladysmith	0	0	0			0	R 0	R 0	R 0	R 0
		4	Newcastle	0	0	2			2	R 100,000	R 30,000	R 20,000	R 150,000
		5	Pietermaritzburg	0	2	2			4	R 550,000	R 95,000	R 40,000	R 685,000
		6	Pinetown	0	1	2			3	R 325,000	R 62,500	R 30,000	R 417,500
		7	Port Shepstone	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
		8	Umlazi	0	1	2			3	R 325,000	R 62,500	R 30,000	R 417,500
		9	Verulam	0	1	2			3	R 325,000	R 62,500	R 30,000	R 417,500
		10	Vryheid	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
	MP	11	Ermelo	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
		12	Middelburg	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
		13	Nelspruit	1	2	0			3	R 925,000	R 122,500	R 20,000	R 1,067,500
		14	Witbank	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
			Regional Total	2	18	16	0		36	R 5,800,000	R 940,000	R 340,000	R 7,080,000
EC/FS	EC	1	Alfred North	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
		2	Butterworth	0	2	0			2	R 450,000	R 65,000	R 20,000	R 535,000
		3	East London	0	2	2			4	R 550,000	R 95,000	R 40,000	R 685,000
		4	Graaff-Reinet	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
		5	Grahamstown	0	2	1			3	R 500,000	R 80,000	R 30,000	R 610,000
		6	King Williams Town	0	2	1			3	R 600,000	R 80,000	R 30,000	R 610,000
		7	Mthatha	0	3	1			4	R 725,000	R 112,500	R 40,000	R 877,500
		8	Port Elizabeth	1	3	2			6	R 1,250,000	R 185,000	R 50,000	R 1,485,000
		9	Queenstown	0	2	0			2	R 450,000	R 65,000	R 20,000	R 535,000
		10	Uitenhage	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
	FS	11	Bloemfontein	1	3	2			6	R 1,250,000	R 185,000	R 50,000	R 1,485,000
		12	Kroonstad	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
		13	Phuthaditjhaba	0	2	1			3	R 500,000	R 80,000	R 30,000	R 610,000
		14	Welkom	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
			Regional Total	2	26	13	0		41	R 7,450,000	R 1,155,000	R 390,000	R 8,995,000
WC/NC	WC	1	Athlone	0	3	4			7	R 875,000	R 157,500	R 70,000	R 1,102,500
		2	Caledon	0	0	0			0	R 0	R 0	R 0	R 0
		3	Cape Town	1	3	2			6	R 1,250,000	R 185,000	R 50,000	R 1,485,000
		5	George	0	2	0			2	R 450,000	R 65,000	R 20,000	R 535,000
		11	Stellenbosch	0	2	0			2	R 450,000	R 65,000	R 20,000	R 535,000
		13	Vredendal	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
		15	Worcester	0	0	0			0	R 0	R 0	R 0	R 0
	NC	4	Colesberg	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
		6	Kimberley	1	2	1			4	R 975,000	R 137,500	R 30,000	R 1,142,500
		12	Upington	0	0	1			1	R 50,000	R 15,000	R 10,000	R 75,000
	NW	7	Klerksdorp	0	1	1			2	R 275,000	R 47,500	R 20,000	R 342,500
		8	Lichtenburg	0	0	0			0	R 0	R 0	R 0	R 0
		9	Mafikeng	1	0	1			2	R 525,000	R 72,500	R 10,000	R 607,500
		10	Potchefstroom	0	1	0			1	R 225,000	R 32,500	R 10,000	R 267,500
		14	Vryburg	0	0	0			0	R 0	R 0	R 0	R 0
			Regional Total	3	18	10	0		29	R 5,525,000	R 842,500	R 260,000	R 6,627,500
			National Total	9	90	58	0		155	R 26,975,000	R 4,247,500	R 1,460,000	R 32,682,500

LEGAL AID BOARD
STRENGTHENING SENIOR LITIGATION CAPACITY

Reg		No	Justice Centre	No of PAs required	Operations Budget		Capital Budget	Total budget
					Staffing costs	Other costs		
Kopanong	Gauteng	1	Alexandra					
		2	Benoni					
		3	Germiston					
		4	Johannesburg	1	R 475,000	R 57,500		R 532,500
		5	Krugersdorp					
		6	Pretoria					
		7	Soweto					
		8	Vereeniging					
	Limpopo	9	Makhadu	1	R 475,000	R 57,500		R 532,500
		10	Modimolle					
		11	Polokwane					
		12	Thohoyandou					
		13	Tzaneen					
	NW	14	Ga-rankuwa					
		15	Rustenburg					
			Regional Total	2	R 950,000	R 115,000	R 0	R 1,065,000
KZN/MP	KZN	1	Durban	1	R 475,000	R 57,500		R 532,500
		2	Empangeni					
		3	Ladysmith					
		4	Newcastle					
		5	Pietermaritzburg					
		6	Pinetown					
		7	Port Shepstone					
		8	Umlazi					
		9	Verulam					
		10	Vryheid					
	MP	11	Ermelo					
		12	Middelburg					
		13	Nelspruit	1	R 475,000	R 57,500		R 532,500
		14	Witbank					
			Regional Total	2	R 950,000	R 115,000	R 0	R 1,065,000
EC/FS	EC	1	Alwal North					
		2	Butterworth					
		3	East London					
		4	Graaff-Reinet					
		5	Grahamstown					
		6	King Williams Town					
		7	Mthatha					
		8	Port Elizabeth	1	R 475,000	R 57,500		R 532,500
		9	Queenstown					
		10	Uitenhage					
	FS	11	Bloemfontein	1	R 475,000	R 57,500		R 532,500
		12	Kroonstad					
		13	Phuthaditjhaba					
		14	Welkom					
			Regional Total	2	R 950,000	R 115,000	R 0	R 1,065,000
WC/NC	WC	1	Athlone					
		2	Caledon					
		3	Cape Town	1	R 475,000	R 57,500		R 532,500
		4	George					
		5	Stellenbosch					
		6	Vredendal					
		7	Worcester					
	NC	8	Colesberg					
		9	Kimberley	1	R 475,000	R 57,500		R 532,500
		10	Upington					
	NW	11	Klerksdorp					
		12	Lichtenburg					
		13	Malikeng	1	R 475,000	R 57,500		R 532,500
		14	Potchefstroom					
		15	Vryburg					
			Regional Total	3	R 1,425,000	R 172,500	R 0	R 1,597,500
			National Total	9	R 4,275,000	R 517,500	R 0	R 4,792,500

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Legal Aid
South Africa
Your voice. For justice.

Independent and within reach

Business Plan 2011/12

Legal Aid South Africa

2692

Legal Aid South Africa

Your voice. For justice.

BUSINESS PLAN PLAN 2011 - 2012

(SMART Compliant)

(31 March 2011 - based on Strategic Plan 9 March 2011)

Notes:

1. With effect from 2011/12 the SMART compliant corporate plan, including the priority/key programmes of Legal Aid SA, is called the Annual Performance Plan (APP).

2. Performance will be reported on quarterly in terms of the programmes and KPIs of the APP to the Board and to the Executive Authority.

3. The programmes and KPIs in the APP forms the reporting basis for the Annual Performance Report, which is published in the Annual Report.

4. Key to the row colours in this document :

	Indicates rows in the expanded APP
	Indicates rows in the APP

S	Specific
M	Measurable
A	Achievable
R	Relevant
T	Time-bound

Projects		KPIs			Outputs	Proof of Delivery	Time-frames				Budget	Respon-sible Exec
		Measures	Targets				Q1	Q2	Q3	Q4		
			Quality	Quantity								
P26-5	Leadership Development	Develop the Legal Aid SA Leadership Pipeline	Maintain Legal Aid SA Leadership Pipeline	Ongoing	Management and Leadership Competencies Developed across pipeline	Focussed management and leadership training appropriate to the level of management	*	*				HRE
P26-6	Management of training	Training addresses the competency gaps of Legal Aid SA Employees	Assessed skills improved appropriately	All Training interventions	Conduct a needs analysis amongst practitioners regarding their training and development needs and include their proposals in the training	Legal Training Plan	*					LDE
P26-7	Accreditation of training providers	Training Providers comply with SETA requirements	As per the unit standards	All training service providers	Source and maintain relationships with accredited training service providers in order to obtain formal recognition	Training Provider Expert Locator	*					LDE
P26-8	Skills Development Compliance	Improved skills level of work force	Relevant and responsive ATP	1	Submission of revised annual training plan	ATP and ATR prepared and finalised to be submitted to Seta on time		*				HRE
P26-9	Employment Equity	Targets as per Justice Centre, Regional Offices and Departments at National Office, to be defined in the performance contract, met and adhered to	Reflect demographics	As per the five-year plan	Diverse workforce in line with annual targets to achieve EE goals	5 Year EE Plan implemented and monitored	*	*	*	*		HRE
P26-10	Talent acquisition & retention	Effective and efficient recruitment processes	Efficient recruitment processes	No longstanding vacancies	Effective and efficient recruitment processes	Monthly reports	*	*	*	*		HRE
P26-11	Retaining Talent	Talent risk profile monitored and mitigated	Retention risk monitored	Annual omnibus survey conducted	Ensuring staff retention	i. High risk employees identified ii.Retention interviews conducted iii. Mitigation measures implemented	*	*	*	*		HRE

DOC 3

LEGAL AID BOARD

Justice for all

REPORT TO THE BOARD

November 2006

ADDITIONAL MTEF FUNDING – BUDGET PROPOSALS

1 Introduction

On an annual basis, the Legal Aid Board submits motivations to National Treasury via the Department of Justice for additional funding for the Medium Term Expenditure Framework (MTEF) period. These motivations are essentially to increase the capacity of the LAB to deliver legal services, as well as to address gaps in its current service delivery programme.

The following additional MTEF funds, over and above the baseline, have been allocated to the LAB for each of the following financial periods:

Allocations	FY 06/07 R,000	FY 07/08 R,000	FY 08/09 R,000	FY 09/10 R,000
2005 MTEF	R15,000	R5,000		
2006 MTEF	R20,000	R25,000	25,000	
2007 MTEF*		R20,000	R20,000	R40,000
TOTAL	**R35,000**	**R50,000**	**R45,000**	**R40,000**

* 2007 allocation letter not yet received

As per the above table, the LAB has R50m additional funds available in the new financial year to fund its activities. However, noting that the cost of living (COL) adjustment of 5% for the baseline for the new financial year did not include the R35m additional funding received for the last financial year, provision of R1.75m was made to cater for COL costs for projects funded during the 06/07 period. Hence, the amount available for additional projects for the new year is R48,250m.

The 2006 MTEF allocation letter made a sum of R5m available in FY 07/08 for the representation of children. However, noting that we have rolled out children's units/PAs to 20 JCs this financial year, most of whom are still struggling to increase demand at these units, it was considered prudent not to increase Justice Centre capacity for children's representation more than what is currently provided, and to rather increase our use of judicare for the representation of children.

2. Proposals for Additional funding

2.1 Increasing ratio of PAs for Regional Court

In terms of our court coverage plan, as well as the demands from the courts, most of our practitioners are expected to be in court every day of the week. This requirement to be at court every day of the week impacts very negatively on the quality of our representation of clients, especially with regards adequate consultation and preparation for cases. Court time is also sometimes disrupted because of the need for our lawyers to consult with clients.

In terms of our motivations to National Treasury, it was proposed that our staff ratio per court is amended from 1 PA per regional court and 1 CA per 2 district courts to 1.25 PAs per regional court and 1 CA per 1 district court. However, due to limited funding, this proposal targets only our representation at regional courts and aims to achieve a ratio of 1.25 PAs per regional court.

2.2 Strengthening capacity at Reception Courts

Reception courts have been established at most court seats with multiple court rooms. These courts act as channelisation courts where all new matters are processed and then distributed to the other court rooms to be heard. Hence, it is critical that we have a good presence at these courts to ensure that all accused who make their first appearance are able to apply for legal aid immediately. Where possible, we will also try to represent clients at their first appearance. This will ensure that more clients have access to justice and will contribute greatly to reducing the levels of unrepresented accused. In terms of this proposal, it is suggested to staff all reception courts with 2 CAs on a full time basis, especially noting the large number of clients that are processed daily at these courts.

2.3 Increase the number of satellite offices/Justice Centres.

An ongoing strategy of the LAB is to increase access to its services. The establishment of satellite offices has been found to greatly improve our delivery to more outlying courts as well as provide an access point to communities. We are currently reviewing our national coverage footprint and we expect to identify gaps where our services could be better served by opening new satellite offices/Justice centres. Provision has been made to open a further 8 satellite offices in this budget.

2.4 Provision for admin staff at Justice Centres to match the increase in legal staff

Many of our Justice Centres have complained about their limited admin capacity to support the delivery of legal services. The LAB recently contracted National Productivity Institute (NPI) to conduct an independent study into the admin capacity needs of small, medium and large justice centres. This study was conducted by doing workload assessments of all admin positions at a sample of justice centres. Arising out of this study an admin staffing model for Justice Centres was developed. This proposal provides for admin staffing positions to match the new legal posts created on a ratio of 1 admin post for every 5 legal posts created, as per the staffing model.

2.5 Group Life Provision

During the September 2006 Board meeting, the Board approved a sum of R1,629m to be taken from the unallocated MTEF funding to pay for the shortfall in the group life as a result of the increased participation levels of staff as well as some enhanced benefits chosen.

2.6 Funding for new posts

During the September 2006 Board meeting, the Board approved a sum of R1,9m to be taken from the unallocated MTEF funding to pay for new staff positions created, including the COO post, the Manager Special Projects as well as new finance posts.

2.7 Increasing Senior Litigation capacity

The LAB often has cases of a highly complex nature. However, we do not have professional staff that are senior enough to take on such matters. 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 the more complex work as well as support and mentor our other High Court unit staff. This programme will also provide content to our dual career path option whereby technical specialists do not have to switch to management jobs in order to earn more in our organisation.

2.8 Provision to fund Performance Incentive Bonus shortfall

During the last financial year, 141 new posts were funded from additional MTEF funding. However, whilst provision was made for their salary budget as well as certain operational and capital costs, no provision was unfortunately made for their incentive bonus costs. This has therefore resulted in a shortfall in the budget for this expense. Provision is now being made to fund this shortfall. It must also be noted that incentive bonus costs will henceforth be included in all new posts proposed.

2.9 CA Replacement programme at Satellite offices

Many of our district courts linked to our satellite offices are served by candidate attorneys. This has created problems with supervision of these candidates, especially with their principal attorneys being located at the justice centre. It is proposed that these CAs be replaced with PAs, which will result in reduced supervision needs and better quality of service.

2.10 Establishment of Land Units

The need for dedicated capacity at identified justice centres to deal specifically with land related matters has been identified. Currently, most of the land legal work for the LAB is handled by our co-operation partners. However, there is still need for more capacity in order to meet this increasing demand in land related matters.

2.11 Addressing gaps in the regional co-ordination of Justice Centres

We are currently in the process of reviewing the our National Coverage Footprint with regards our delivery points across the country. Currently, out four regional offices currently co-ordinate the justice centres located at all nine provinces in the country although they are currently only located in four provinces. Regional office staff therefore have to travel to provinces in addition to their base province in order to provide a support and monitoring function. Whilst this has proved adequate for the support functions of a justice centre such as monitoring finance, HR and administration, the monitoring and support of the legal programme requires additional engagement and interaction. This review of our National Coverage Footprint will point the way forward with regards how to better support our Justice Centres by regional offices. However, the costing for this proposal is based on creating new provincial principal attorney positions. These new positions will be based in the five provinces where there are no regional offices. They will operate from a justice centre within the province and will be assisted by an additional supervisory attorney. The review of the National Coverage Footprint may however alter this proposal.

2.12. Provision for the alignment of salaries of legal staff within the Justice cluster

The DPSA is currently coordinating a task team to make recommendations for the alignment of salaries within the public service. This is in terms of a decision taken at a cabinet legotla in January 2006. The Legal Aid Board has been advocating for such an alignment for some time, especially noting the fact that we are continuously losing staff to other justice cluster stakeholders, especially the NPA. The costing for this exercise is based on aligning our salaries to the salaries currently paid to legal staff within the Department of Justice.

3. Summary of projects

The following is the summary of the projects proposed for consideration by the Board:

No	Programme description	Total	Cumulative Totals	% Split	No of new Staff	No of new matters	
1	Increasing ratio of PAs at Regional Court	R 23,540,000	R 23,540,000	18%	88	4400	Funding available
2	Strengthening CA capacity at reception courts	R 4,350,000	R 27,890,000	3%	58		
3	Increase number of satellite offices	R 6,560,000	R 34,450,000	5%	24	1600	
4	Provision for admin staff at JC to match increase in legal staff	R 2,550,000	R 37,000,000	2%	34		
5	Group Life provision	R 1,629,000	R 38,629,000	1%			
6	Funding of new posts, including COO, MSP & Financial posts	R 1,900,000	R 40,529,000	1%			
7	Increasing senior litigation capacity	R 4,792,500	R 45,321,500	4%	9	450	
8	Provision to fund Performance Incentive Bonus shortfall	R 2,388,000	R 47,709,500	2%			
9	CA replacement programme at Satellite Offices	R 9,047,500	R 56,757,000	7%	48		Funds unavailable
10	Establishment of Land Units	R 5,285,000	R 62,042,000	4%	14	1400	
11	Addressing gaps in regional coordination of Justice Centres	R 4,550,000	R 66,592,000	3%	9		
12	Alignment of Legal Practitioner salaries to Justice Cluster	R 66,075,000	R132,667,000	50%			
		R 132,279,000		100%	213	6450	

LEGAL AID BOARD

Legal Aid South Africa

LA2

RESOLUTION OF THE BOARD OF LEGAL AID SOUTH AFRICA

Board agenda item 4.6: Additional Programmes in Budget 2007/08 of the Board meeting held on 24 November 2006:

I, Bee-Mari Schoeman, in my capacity as Board Secretary, hereby confirm that in the meeting held on 24 November 2006, the Board of Legal Aid South Africa considered and approved item 4.6 of the Board agenda as per the extract of the minutes of the Board meeting attached hereto.

Bee-Mari Schoeman
Board Secretary

2011/11/04
Date

TUESDAY, 7 JUNE 2011

_____

PROCEEDINGS OF THE EXTENDED PUBLIC COMMITTEE – GOOD HOPE CHAMBER

_____

Members of Extended Public Committee met in the Good Hope Chamber at 10:05.

The House Chairperson Mr C T Frolick, as Chairperson, took the Chair and requested members to observe a moment of silence for prayers or meditation.

APPROPRIATION BILL

Debate on Vote No 24 – Justice and Constitutional Development:

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT: Chairperson, hon members, Chief Justice and members of the judiciary, heads of constitutional institutions, distinguished guests, comrades, friends, ladies and gentlemen, it is an honour and a privilege to be afforded this opportunity to present to you the budget of the Department of Justice and Constitutional Development for the coming year.

years of generalised larceny as the cost of the revolution. It happened, historically.

This has been a bloodless revolution, but we need to turn a new page, otherwise we are going to have a parallel system of power fuelled by corruption, akin to what there is in Russia, which will undermine the democratic system of power which we try to uphold within Parliament. This is an issue that I will be carrying forward in further debates. Thank you, Mr Chairman. I see my time has expired. [Time expired.]

Nom J B SIBANYONI: Sihlalo, ngisikima nokuthokoza, bengiyalotjhisa kuNgqongqotjhe wezoBulungiswa nokuThuthukiswa komThethosisekelo, uMhlonitjhwa uJeff Radebe, kunye nomndenakhe, ngilotjhise kuSekela lakhe uMhlonitjhwa u-Andries Nel, godu namajaji akhona njenganje, namajaji wakade, begodu nakiwo woke amaLunga ahloniphekileko wePalamende akhona namhlanjesi. (*Translation of isiNdebele paragraph follows.)*

[Mr J B SIBANYONI: Chairperson, I stand to thank and greet the Minister of Justice and Constitutional Development, hon Jeff Radebe, his family, with greetings to his Deputy hon Andries Nel, and all judges present here, retired judges, and all hon Members of Parliament present today.]

Minister, we thank you so much. I understood you as you were speaking, even when you said the programme will not be used to postpone the cases only, but as time goes by there will be prosecution of cases through a satellite linked-up of a person sitting in the cells where he is kept. So we thank you.]

With regard to Legal Aid SA, Lasa, led by the honourable Mr Justice Dunstan Mlambo, the report of the Portfolio Committee on Justice and Constitutional Development indicates that, during its presentation, Legal Aid SA indicated that it received additional funds to improve its practitioner-per-court ratio, accommodate occupational-specific dispensation, OSD, funding and increase its civil work. Additional amounts of R44,6 million, R90,8 million and R106,3 million have been allocated to Legal Aid SA to increase capacity, improve conditions of service and implement phase 2 of the OSD for legally qualified professionals.

The Justice and Constitutional Development portfolio committee, as in previous years, has been impressed by Lasa’s presentation of its strategic and annual performance plan.

Umsebenzi wenu eniwenzako muhle, Jaji Mlambo, begodu uyakarisa. [Judge Mlambo, the work you are doing is commendable and impressive.]

Lasa should be proactive in seeking out opportunities to promote what it does. The report states that the committee is encouraged by the strong emphasis that emerged on the quality of services that Legal Aid SA provides. The ANC supports Lasa's goal of expanding its civil work and impact litigation, despite the financial constraints that it faces in this regard. Therefore, the ANC supports Lasa's aim to reach the rural poor.

I will be very brief on the matter of the Small Claims Courts. We commend the hon Andries Nel for championing the establishment of Small Claims Courts throughout South Africa. Thank you very much. [Applause.]

The extension of the civil jurisdiction of regional courts has been a resounding success. It is opening up access to justice for the rural poor.

I want to end by reflecting on the concept of freedom of expression versus the sub judice or *pendente lite* principle. The question is: Does the media respect the sub judice or *pendente lite* rule? *The Sunday Independent* newspaper of 29 May 2011 carried a front-page story with its heading in bold and huge letters. It said: "Hlophe must go: Ramphele". The question is ...

Service Commission Amendment Act, the Child Justice Act and the Children's Act of 2005.

Consultations on the Muslim Marriages Bill is also ongoing, and we do hope that the consultations will recognise Muslim marriages, the absence of which gives rise to countless instances of hardship, particularly in the case of women and children who find themselves in distressing situations when these marriages fail and are terminated.

Hon members, allow me to provide you with the budget allocation relative to the programmes and commitments that have been made. A total budget of R13,5 billion has been allocated to the department for the 2011-12 financial year. Of this budget allocation, R4,3 billion is allocated to court services, R2,6 billion for the National Prosecuting Authority and R1,6 billion for public entities and Chapter 9 institutions.

The 2011 budget also sets out additional allocations of R477 million for this financial year, R1,2 million for 2012-13, and R1,4 million for 2013-14: for increasing regional capacity, R490 million for building new courts, R175 million for implementing legislation concerning vulnerable groups, R210 million for renewing our information and communications technology infrastructure, R45 million for the United in

Diversity presidential initiative, R938,4 million for improving conditions of service and implementing the second phase of the occupation-specific dispensation for legally qualified professionals, R240 million for increasing the department's baseline for accommodation charges, R437,5 million for appointing more judges and magistrates, including secretarial support, and R405 million for adding capacity for Legal Aid SA, the Special Investigating Unit, the SA Human Rights Commission and the Office of the Public Protector. Over the next three years, the department will spend R2, 5 billion constructing new courts, and so on.

Before I conclude, allow me to convey my gratitude to Chief Justice Ngcobo for his profound leadership. We also congratulate him on the extension of his tenure as Chief Justice for a further five years. Allow me also to thank my Deputy, Mr Nel, the justice, crime prevention and security cluster, the Director-General, Ms Sindane, and the whole management team, heads and chairpersons of statutory bodies, heads of courts and members of the judiciary as a whole, and the entire staff of the justice family.

Lastly and most importantly, I would like to thank my wife, Bridgette, who is here today, and my family who are always at my side throughout the many challenges that I face in the execution of my responsibilities. Thank you. [Applause.]

working now. So that when there are talks, it will be known what he has done.]

In conclusion, hon Chair, I would like to say that I also looked at an article written by the author Mr Moya in the *City Press* of 5 June 2011, which says, “Hlophe deserves fair treatment”. The ANC supports the Budget Vote. [Time expired.] [Applause.]

The DEPUTY MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT: Hon Chairperson, hon Minister, hon members, heads of court and other members of the judiciary, heads of constitutional institutions, distinguished guests, comrades and friends, ladies and gentlemen, 27 years ago, in 1984, the people of South Africa marked the first anniversary of the United Democratic Front, UDF. On this occasion, one of its co-presidents said:

> Sons and daughters, to me today I’m a great big mother, for today our multiracial baby is born. For today our baby that will rule this South Africa in future is born. The multiracial baby, the United Democratic Front, which is uniting the people to speak with one voice, which is uniting the people with the truth, which is uniting the people to say no to the Koornhof laws, which is uniting the people to

households, people affected by violations of human rights, the aged, persons with disabilities, the youth including children in prisons, and foreign nationals in need of assistance. We thank the European Union for their support and partnership in this vitally important programme.

Legal Aid SA has been very effective in utilising a budget of more than R1 billion to execute the constitutional imperative of providing legal aid to indigent accused persons and vulnerable litigants. Legal Aid SA now provides legal aid services at all our criminal courts through a national network of 64 justice centres and 64 satellite offices staffed by 1 600 salaried in-house legal representatives and by access to over 4 500 accredited lawyers.

During the 2010-11 financial year, Legal Aid SA provided legal services in 421 365 matters, comprising assistance in 389 914 criminal matters and 31 451 civil legal matters. Through these legal services, 25 586 children were assisted in criminal matters and 2 529 children in civil matters.

The Legal Aid Advice Line was launched in November 2010, facilitating telephonic access to primary legal assistance by persons from across the country and especially from rural areas. Since then, the Legal Aid Advice Line has assisted over 13 926 callers. We thank the Judge President of the Labour

Mr S N SWART: Chairperson, the ACDP shares in expressing our condolences to the family and friends on the passing of Ma Albertina Sisulu. Our prayers are with you at this time.

Chairperson, hon Minister, court performance lies at the heart of this department. The committee has, for some years, expressed its dissatisfaction at ongoing poor court performance despite many initiatives. We are, however, pleased that the Chief Justice has now taken on the responsibility of monitoring performance in all the courts and we look forward to an improvement in this area.

We also support the three prioritised projects, namely to achieve a no-audit qualification by 2012-2013, a service turnaround in maintenance services, and a turnaround in the Master’s branch. These are crucial areas in terms of service delivery and financial accountability.

One of the shining stars is clearly Legal Aid SA, whose presentation greatly impressed many members. It shows that a state organ can be turned around and effectively run consistently over a period of years, and serves as an inspiration to other organs and departments that service delivery can be effectively provided. Well done, Judge Mlambo and your team! [Applause.]

R55
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Budget 2011/12
Legal Aid South Africa

2709

Legal Aid South Africa

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BUDGET 2011/12

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1 April 2011

Legal Aid South Africa

Your voice. For justice.

BUDGET 2011/12

EXECUTIVE SUMMARY

1 April 2011

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1. BACKGROUND

The Board approved Legal Aid South Africa's 2011/12 Budget at its 26 November 2010 meeting. The budget was prepared on various assumptions due to the fact that the MTEF allocation letters were not yet issued by National Treasury. The MTEF Allocation letters: 2011/12 – 2013/14 were subsequently issued by National Treasury on 3 December 2010.

Subsequent to the Allocation Letter being issued, Management sent an allocation letter executive summary to the Board, detailing the funds allocated for 2011/2012 Budget.

This budget has now incorporated the allocation of funds as per National Treasury letter dated 3 December 2010.

The following considerations were made when preparing the 2011/12 Budget:

1.1 Legal Aid South Africa Strategic Plan 2009/12.

1.2 The year on year increase of the National Treasury allocation including additional funding over the MTEF period.

1.3 Future financial sustainability of the organisation.

1.4 The proportion of direct service delivery costs to administration support costs.

1.5 The Capital Asset Replacement Programme.

2. KEY ASSUMPTIONS MADE WHEN PREPARING THE BUDGET

2.1 As per National Treasury guidelines, the budget was prepared under the assumption that inflation increase is 6,4% for the budget period under review with salary increases budgeted at 6%. The CPI was 3.7% as at end of July 2010.

2.2 In 2010/11 salaries for regional and justice centres were budgeted at 97%. This recruitment rate was increased to 100% in the 2011/12 financial year.

2.3 The standard unit costs were applied on the following line items.

a) Disbursements
b) Education and training
c) Printing and stationery
d) Public Relations
e) Staff refreshments
f) Subscriptions and membership fees
g) Telephone and faxes
h) Tools and equipment
i) Vehicle licences
j) Workshops

2.4 In instances where contracts are in place, the budget was based on our contractual obligations. We have contractual obligations on the following line items:

a) Audit fees – (Dependent on external audit strategic plan)
b) Cleaning materials and services
c) Computer disaster recovery
d) Computer software licences – (Dependent on foreign currency exchange rate)
e) Document exchange
f) Insurance – Group Life - (Dependent on the wage settlement agreements)
g) Insurance – Short term- (Budget dependent on the annual premium reviews)
h) IT Support
i) Office rental and operating costs
j) Postage and courier
k) Rental office equipment
l) Security costs
m) Storage costs
n) Vehicle tracking
o) Wide area network

2.5 Other operating budget items were increased by 6%.

3. SALIENT FIGURES OF THE BUDGET

Budget allocations for the years 2008-2014 are tabled below.

YEAR	LEGAL AID SOUTH AFRICA REVISED BASELINE	NEW FUNDING	BASELINE ADJUSTMENT	LEGAL AID SOUTH AFRICA MTEF PER ALLOCATION LETTER	ONCE OFF /CHILD ACT & CHILD JUSTICE ACT	ROLL OVER FUNDING	OCCUPATIONAL SPECIFIC DISPENSATION (OSD)	COST OF LIVING INCREASE (COLI)	SUBTOTAL BEFORE CASE BACKLOG MTEF LETTER	% CHANGE GRANT	CASE BACKLOG	LEGAL AID SOUTH AFRICA REVISED MTEF
2008/09	605,312,000	55,000,000		660,312,000		31,431,083	Note 1 144,604,000	8,604,000	844,951,083	22.8%	24,600,000	**869,551,083**
2009/10	718,547,000	60,000,000		778,547,000	1,600,000		Note 2 106,000,000	11,261,000	897,408,000	8.7%	20,000,000	**917,408,000**
2010/11	937,309,000	40,000,000		977,309,000	24,916,000	17,980,871	Note 3 72,000,000	24,130,000	1,116,335,871	10.7%	25,000,000	**1,141,335,871**
2011/12	1,081,438,000	Note 4 20,000,000		1,081,438,000	13,715,000		30,000,000	14,619,000	1,139,772,000	8.6%	30,000,000	**1,169,772,000**
2012/13	1,197,099,000	Note 5 20,000,000	Note 6 (34,308,000)	1,182,781,000	14,401,000		5,000,000	15,555,000	1,217,717,000	6.4%	32,000,000	**1,249,717,000**
2013/14	1,248,963,000	10,000,000		1,258,963,000	15,121,000		5,000,000	16,275,000	1,295,359,000	6.8%	34,000,000	**1,329,359,000**
TOTAL	**5,788,638,000**	**205,000,000**	**-34,308,000**	**5,939,330,000**	**69,753,000**	**49,411,954**	**362,604,000**	**96,444,000**	**6,511,542,954**		**165,600,000**	**6,677,142,954**

Notes

1. This figure relates to OSD Phase I funding - R44.6 million for 2007/08 back pay and R100 million for 2008/09.
2. The amount relates to OSD Phase I carry through costs.
3. The amount relates to OSD Phase II back pay of R42 million from 2007/08 to 2009/10 financial years and R30 million for the current financial year, i.e. 2010/11.
4. The amount relates to new funding allocated for increase in legal capacity as per allocation letter for 2010/11 - 2012/13 MTEF.
5. The amount relates to new funding allocated for increase in legal capacity as per allocation letter for 2011/12 - 2013/14 MTEF.
6. The budget cut of R34.3 million for financial 2012/13 is as per 2010 allocation letter.
7. In 2008/9 the grant increased by 22.8% due to the first time allocation of R100 million for OSD Phase I.
8. In 2010/11 the grant increased by 10.7% due to the first time allocation of R30 million allocation for OSD Phase II.

3.1 The Budget allocation of R1,169,772,000 for **2011/12** includes:

R1,081,438,000	Revised Baseline funding
R30,000, 000	OSD Phase II funding
R14,619,000	Cost of living adjustment
R30,000,000	Case backlog funding to be allocated from DoJ's budget
R 13,715,000	Implementation of new legislation i.e. Child Act & Child Justice Act

4. ANALYSIS OF BUDGET

The analysis below relates to 2011/12 Budget – National Consolidation attached as Annexure A.

EXPENDITURE ITEM	2010/2011 BUDGET	2011/2012 BUDGET	INCREASE/ DECREASE	% CHANGE
Total salaries and related costs	**835,887,752**	**867,887,364**	**31,999,613**	**4%**
Salaries and related costs	*753,343,752*	*833,268,364*	*79,924,613*	*11%*
OSD funding Phase 1 & 2 / Increase in legal capacity	*72,000,000*	*20,000,000*	*-52,000,000*	*-72%*
COLI	*10,544,000*	*14,619,000*	*4,075,000*	*39%*
Other direct expenditure	**115,777,741**	**110,397,229**	**-5,380,512**	**-5%**
Recurring direct expenditure	*103,861,741*	*110,397,229*	*6,535,488*	*6%*
Once off direct expenditure	*11,916,000*	-	*-11,916,000*	*-100%*
Operating budget	**165,068,257**	**195,825,608**	**30,757,351**	**19%**
Non contractual expenditure	*66,188,847*	*70,811,089*	*4,622,242*	*7%*
Contractual expenditure	*78,464,600*	*88,534,571*	*10,069,971*	*13%*
Depreciation	*20,414,810*	*36,479,948*	*16,065,138*	*79%*
Total Capital budget	**37,516,932**	**17,741,747**	**-19,775,185**	**-53%**
Capital budget	19,536,061	17,741,747	*-1,794,314*	-9%
Rollover funds capital budget	17,980,871	-	-17,980,871	-100%
Total excluding Case Backlog	**1,154,250,681**	**1,191,851,948**	**37,601,267**	**3.3%**
Case backlog	**25,000,000**	**30,000,000**	**5,000,000**	**20%**
Total Including Case Backlog	**1,179,250,681**	**1,221,851,948**	**42,601,267**	**4%**

Major variances are explained below

COMMENTS	VARIANCE
4.1 Salaries and related costs increased by 4% when compared to the previous financial year. This is due to the R42 million once off backlog funding for OSD Phase 2, which has been included in the 2010/11 budget. The recruitment level was also increased from 97% in 2010/11 financial year to 100% in 2011/12. Salaries for 2011/12 include the cost of living increment (COLI) of 6% and the performance progression increase (PPI) at an *average of* 1.5%.	31,999,613

Transcript of:

(a) question by Justice and Constitutional Portfolio Committee member John Jeffrey MP on impact litigation, answered by LASA Legal Development Executive Patrick Hundermark; and,
(b) Chief Executive Officer Vidhu Vedalankar on LASA's budget and its implications for recruitment

at the presentation of LASA's annual report 2010/11 to the National Assembly on 11 October 2011

(Audio recording online at http://www.pmg.org.za/node/28680)

John Jeffrey MP
(56 minutes, 10 seconds into the recording)

I just have a question on the impact litigation. I see there was a booklet in the bag you gave us on impact litigation, and I think it's a good concept, but the booklet refers to a number of cases, I sort of just wanted to find out: was LASA involved in these cases referred to in the booklet, but that's from 6.1 on page 14 of the booklet, I mean in terms of, in what way, was it LASA employees or was it Judicare effectively because I see that the, if I'm understanding it correctly on page 101 of your report, you don't seem to be spending the money allocated to impact litigation, so if you can give clarity on that, thanks Chair.

Patrick Hundermark, LASA Legal Development Executive
(82 minutes, 43 seconds into the recording)

Thank you Chair, I think in terms of impact litigation, in terms of the matters in which Legal Aid is specifically involved, there are three ways in which we can do impact litigation, firstly, err, and obviously the initial stages were that we would be funding, err, whether it was NGOs or private law firms to be involved in the impact litigation, so firstly it would be a model in terms of where we fund specific cases where they come and motivate for a budget in terms of litigation in certain cases. In other instances we can then, our justice centres or high court units, that's specifically our senior litigators, themselves can do the impact litigation and then the unit itself in terms of that can be involved in the impact litigation. So there are different ways in

which we can render the services, so then in terms of the booklet some of the cases we would have done ourselves, some of it was funded NGOs or private practitioners to render those specific services. In terms of us spending the money the one real problem we have in each case we require a budget so sometimes litigation doesn't always happen as we anticipated and not all, the full budget is not always used in some of the instances, so that's difficult, you've got to try and manage the case and the progression of the case to understand where the funds are allocated to a specific case but we don't overspend on the overall budget that we manage involving it, so we try and do, see if we can, err, if they are not going to spend the whole budget, reallocate it, but we don't always have new and other impact cases to which to allocate it at quite short notice, so that's the problem in terms of the spending of the budget and the money issues and you very often find lawyers are not very good in terms of budgeting so we do find ourselves scrutinising the budgets that come and cutting them significantly because we are not always then able to use the money.

Vidhu Vedalankar, LASA CEO
(68 minutes, 7 seconds into the recording)

As far as the budget cut is concerned what we did do and I think that you're right it was across all departments but that we what we did do and respect in the 2012 financial year for everything in the operational expenditure which was not contractual we clearly did the only thing, so that in effect is a budget cut, if it's below inflation it's anyway a budget cut but this is clearly one, and so that wasn't adequate. Now we run quite a tight operation as you can see and it's very hard for us and what we will do is so that we don't jeopardise our service delivery we won't cut in [inaudible] all we do is manage our recruitment level so that we don't overspend in terms of what we have, so that is where we, we hold recruitment levels until we can get some additional funds [inaudible] as you can see our recruitment levels are high at 96%, we were intending to increase it to 98% because we are able to recruit but now that we have this we will probably keep it at around 97%, so that is one way just of managing it without, without jeopardising the service delivery, but in terms of our discussions with treasury and the rest of what else we can do, let's start with that because that's one sector with Jerry [inaudible. (She hands over to COO Jerry Makokoane.)]

25 Baker Road
Prestbury
Pietermaritzburg 3201
29 July 2011

The Board of Directors
Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

Dear Board Members

BRINK/LASA/LABOUR COURT

I have commenced my action in the Labour Court for an order instating me to the Pietermaritzburg Senior Litigator post for which I was duly selected and recommended for appointment in November 2009 by the KwaZulu-Natal regional professional selection panel. Although my statement of claim was mailed to the Board secretary by registered post on Wednesday last week, I see from the post office tracking system that it's yet to be collected from the Braamfontein post office. In the meantime it's available in PDF at www.tig.org.za/LASA username: lasa password: LASA2010.

Last month Justice and Constitutional Development Portfolio Committee chairperson Luwellyn Landers MP provided me with a copy of a 'Confidential … Report … Re: Adv Anthony Brink' drawn by LASA chairperson Judge Mlambo without the knowledge or authority of the Board and sent to the Minister in March and to chairperson Landers in June.

Judge Mlambo's several false allegations in the 'Report' are the subject of my letters on Friday and Monday to Judicial Services Commission chairperson Chief Justice Ngcobo, to Minister Radebe, and to chairperson Landers. All may be read at the above-mentioned internet archive, and Board members would be well advised to do so.

On 24 November 2008 the Board delegated the authority to litigate on behalf of LASA to the CEO and CSE. CEO Vedalankar's conflict of interest obviously

disqualifies her from taking an objective decision in LASA's interest whether to oppose and defend my claim in the Labour Court, because her unlawful abortion of my recruitment behind the scenes and off the record, and her subsequent fabrication of a plainly false alibi to camouflage her reason for doing so – unsupported and contradicted by LASA's own records – lies at the heart of my case.

It therefore falls to the Board to resolve whether to conciliate or to defend my claim. For the reasons indicated in my letters to the Chief Justice, to the Minister, and to the chairperson of the Portfolio Committee, Judge Mlambo will be disqualified from participating in the Board's deliberations, and will necessarily have to recuse himself.

It remains to be seen whether the Board at last resolves to put right what has been done wrong, and prevent LASA suffering any further harm, or whether it votes to defend my claim for my appointment and other relief on the basis of a concocted version of events it well knows to be false, thereby increasing LASA's exposure in special and general damages, and dragging LASA very publicly into the mud when the matter goes to trial. Concerning the financial implications of the latter course, I respectfully call your attention to the joint and several personal liability provisions of the Public Finance Management Act, mentioned in paragraph 273 of my statement of claim.

Yours sincerely

ADV ANTHONY BRINK

Cc: The chairperson of the Portfolio Committee on Justice and Constitutional Development, Luwellyn Landers MP, and all committee members

The chairperson of the Public Service Commission, Dr Ralph Mgijima

The Auditor General, Terence Nombembe

Portfolio Committee on Justice and Constitutional Development
9 October 2012
Legal Aid South Africa 2011/12 Annual report

Chairperson: Mr L Landers (ANC)

Documents Handed Out:
Pres Release on Legal Aid South Africa (LASA) 2011/12 Annual Report
Power point presentation on the Annual Report
Legal Aid South Africa 2011/12 Annual Report

Summary

Legal Aid South Africa reported that it had successfully completed the third year of its 2009-2012 Strategic Plan period and was able to achieve most of the strategic shift it had set to achieve in that period. In 2011/12 it provided access to legal aid to indigent clients – handling 682 962 legal and legal advice matters. It increased civil legal aid by 48% due to increased civil practitioner capacity. Legal quality remained a focus and a priority and generally legal practitioners met their quality targets. Strong financial management and governance were reflected in the 11th unqualified audit and 7th year of no matters of emphasis. The non-compliance with tax clearance certificates in judicare matters was being attended to. A people-development focus continued as confirmed by the successful accreditation for the third year as a Best Employer.

The Committee members congratulated Legal Aid South Africa on its accomplishments. Members asked about the use of agencies where there were already Legal Aid Centres present. There was also an exchange about the exact numbers of employees versus the number of budgeted posts and how Legal Aid managed their expenditure for its number of employees. Questions also included requests for detail on the Children's Act and the allegation published about the Boeremag. There was a suggestion that because of Legal Aid's large footprint in the country, its offices be used as a gateway for people to reach other agencies such as Chapter 9 organisations.

Minutes

The Chairperson said he had been informed that the Chairperson of the Board would not be able to attend the meeting but that was fine as he was sure that Legal Aid SA had brought qualified people.

Presentation by Legal Aid South Africa (LASA)

Mr Jan Maree, Non-Executive Director and Committee Member, LASA, introduced the report with a short overview. This was the second integrated report that reported on financial and non-financial performance against the Strategic Plan 2009-12 as well as the Annual Performance Plan 2011-12. The integrated report reported on social, economic and environmental considerations that had a bearing on the future of the organisation, the environment within which they operated and the communities they served. It included reports on an overview of the organisation as well as issues and trends impacting on it, sustainability, corporate social investment and stakeholder engagement. LASA reported on its compliance with Global Sustainability Reporting Initiatives (GSRI). The Integrated Report included a statement from the governing board acknowledging its responsibility for ensuring the integrity of the report. 2011-12 completed the three-year period of the LASA Strategic Plan 2009-12. The presentation also reported on progress against the recommendations of Budgetary Review Recommendation Report (BRRR) of the Justice Portfolio Committee dated 26 October 2011.

LASA operated within a strong governance framework which included an effective and functioning governing board and audit committee, compliance with the Legal Aid Act, Public Finance Management Act and National Treasury regulations, 100% implementation of all recommendations of the King III Report on Corporate Governance, compliance with the Promotion of Access to Information Act (PAIA), and an effective and independent internal audit department. The Legal Aid Act was in the process of being redrafted and a new Legal Aid Bill was expected to be tabled before Parliament in 2012.

Ms Vidhu Vedalankar, CEO: LASA, went through the statistics that Legal Aid had produced over the year. Legal Aid now had 2 470 people working in 64 Justice Centres and Satellite Offices and 13 high court and civil units. They had covered 428 653 criminal and civil cases. 95% of these matters were handled by the Justice Centres while the remaining 5% was handled via Judicare, coops or agency agreements. There was also a 50% drop in children cases handled by Legal Aid.

Regarding non-legal functions delivery, Matrix Management had been further consolidated. Functional management committees continued to assist in monitoring performance of support staff at both Justice Centre level and regional office level. The matrix function had been fully embedded resulting in effective

Challenges

▪ Capacity at regional and district courts was insufficient to adequately meet the demand as well as provide a limited relief capacity to deal with staff absence.
▪ High turnaround times at Regional Court and High Court led to increased backlogs at court.
▪ There was also insufficient civil capacity to meet increased demand for civil legal aid services.
▪ There were high numbers of awaiting trial detainees in custody for excess periods.
▪ There was non-compliance on tax clearance certificates in judicare matters as noted by Auditor General. ▪ The IT challenge: problems with K2 patching, finalisation of K2 upgrade, finalisation of switch to sharepoint platform which all impacted on speed and stability of the IT system.
▪ Dependence on candidate attorneys to render services at district courts negatively impacts on perception and sometimes service delivery

Ms Vedalankar concluded by reminding Members that LASA had provided access to legal aid for indigent clients with 682 962 legal and legal advice matters – which was a notable achievement – as was the increase in civil legal aid by 48% due to increased civil practitioner capacity.

Discussion

Mr J Jeffrey (ANC) said that he was extremely pleased with Legal Aid but it was the Committee's job to make sure they did oversight. He was curious about a Promotion of Access to Information Act (PAIA) report that was released that stated the South African Human Rights Commission was unhappy with LASA and their cooperation in terms of PAIA. He also noticed that the slide on Child Justice was the exact same slide from their presentation. That did not seem to make sense neither did their allocation of funds for Child Justice. They created 23 district and six regional posts in both 2011 and 2012 and that did not seem possible.

Mr Jeffrey said that the Committee had asked for quarterly reports from Legal Aid not just annual ones. He asked why there was not a cooperation agency agreement and asked how much it cost. The use of agency agreements was also questioned. On a more particular note, he said that Legal Aid could not say technically that they were compliant with the Legal Aid Act because according to the Act, an updated version must be published annually which had not occurred.

The Chairperson told the delegation that they would arrange for Legal Aid to view the PAIA report.

Ms D Schafer (DA) congratulated LASA on their annual achievements. She had a question about the tax sheets that the legal providers were not giving to Legal Aid. She asked if the huge lack of them was because of a lack of oversight. Also, did the trust deposits create a problem for LASA?

Mr J Sibanyoni (ANC) asked specifically about agency agreements. He was curious as to why there were agency agreements in areas where there was already a LASA office. The time limit that came with these agency agreements was also brought into question. He was curious to know about some of the success stories with the agency agreements.

Ms C Pilane-Majake (ANC) asked about LASA's internal audit and how many people on the audit committee were external from LASA. She also congratulated LASA on their report.

Ms M Smuts (DA) congratulated LASA on a sensational report. She was curious what LASA thought about the news article on Sunday about the Boeremag which she believed that LASA had represented. She explained that there was a sensational story that reported that legal information between the members of the Boeremag and their legal team had been intercepted by the police and turned over to the prosecution. She was also curious about what role LASA could play in the unclogging of the legal system particularly the issue with accused being detained, trial times, and missing trial transcripts.

Mr Jeffrey interjected saying that this happened often with awaiting trialists who should not even be there because their crime was not even punishable by prison time.

Response

Ms Vedalankar told the Committee that they had provided quarterly reports and had sent them to the Committee.

Mr Jeffrey interrupted, asking whether anyone in the Committee had received the reports which none of them had or could recollect.

Ms Vedalankar apologised and said that the reports would be sent. She went on to say that the Children's Act expenditures were basically the same because that was how much it cost to keep to the employees on

for the financial year with a slight increase for property costs.

Mr Jeffrey said that the wording was wrong and wanted the CEO to be clear that new positions had not been created but merely maintained. He said that they merely “cut and pasted” from last year’s report which created wrong information.

Ms Vedalankar said they had not cut and pasted but they merely had worded the information wrongly.

Mr Jeffrey said that he did not agree with that.

Ms Vedalankar said they would agree to disagree and that she knew that the Committee did not like cutting and pasting.

The Chairperson said that he wanted to know about the PAIA report.

Ms Vedalankar said that she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgement about this. In terms of the audit reports, she explained that one of the members of the audit committee had resigned so currently there were five members on the audit committee, of which three were external members.

Ms Pilane-Majake thanked the CEO for the clarification but said that the report seemed to show only what was desirable.

Mr Jeffrey said that he wanted LASA’s statistics on children because those of the South African Police Service seemed to be off. He again asked the question about the successfulness of service agencies.

Ms Vedalankar said that they did not have the statistics on children in the report but that they wanted to do more in terms of domestic violence. In terms of the alignment of services, she said that just because a town was in a province, it did not mean that the closest office was in the same province and that there were no provincial boundaries. She also agreed that the lost records of trials especially in Gauteng was an issue. She then handed over to her colleague.

Adv Wilna Lambley, Regional Operations Executive, explained the issue of proximity. There had been reshuffling of offices and agency agreements. There was constant oversight and discussion about which offices should serve which communities. In terms of the lost transcripts, most of these had occurred in Gauteng. It was due to a turnover in terms of the people who managed the transcripts. As of now, most of the transcripts had been found but there were still 40 to 50 missing.

She went onto say that the Boeremag practitioners were only briefed by Legal Aid but they would be looking into reports that an alleged witness had come forward with this information. This however would probably not create any appeals different from the law’s regular appeals process The Judge would have to make a decision about this and what the law said.

Ms Vedalankar said that 25% of their legal providers had applied for tax sheets while 25% had said that they would not provide LASA with any of them.

The Chairperson asked if these legal providers would be used by LASA if they failed to produce tax clearance certificates.

Ms Vedalankar said, yes, they would be terminated if they were in the middle of any trial proceedings.

Mr Maree added that a tax clearance certificate had never been required for a legal provider.

Mr Jeffrey asked about the discrepancy between staff and number of posts in terms of their expenditure in their budget for each. He also asked if Legal Aid had been in touch with Chapter 9 organisations and if Legal Aid could accept complaints on behalf of a Chapter 9 organisation if such organisation did not have an office in the area. Legal Aid’s footprint throughout the country could make this cost effective and he asked if Legal Aid would be open to the idea.

Mr Jeffrey asked why land cases were up so dramatically this year or last year and their status in relationship with rural development, and also why had Duty Care gone up. He also inquired about the costs of cooperation agreements and the status of the criminal justice review.

Ms Vedalankar said that she could not comment on helping with Chapter 9 organisations because she would have to discuss it with her staff first. In terms of the discrepancy with the posts and employees, it was very clear in the report. They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.

Mr Jeffrey said that the expenditure could not be 99% with the figures that they had.

Ms Vedalankar said she would send the information to the Committee.

Mr Jeffrey then asked for clarification on the IT budget.

Ms Vedalankar said that they had not been given the proper budget for IT and thus Legal Aid had suffered because of it.

Mr Jeffrey said that the Committee would get in touch with the Treasury and find out why the IT budget for LASA had not been fulfilled.

The Chairperson adjourned the meeting.

5.2 Chief Executive Officer's Statement

It is an inspiring and humbling experience to lead a successful organisation able to continue to deliver on its mandate each year and present a pleasing set of performance results. Inspiring because it raises the performance platform higher and enables and empowers us to strive for further excellence in the next period. Humbling because we are mindful that our services impact directly on many South Africans and can positively touch their lives to improve the quality of their lives and ensure they are able to live with dignity and be treated as equals before the law. In making the constitutional values of human dignity, equality and access to justice a reality for our people and our communities we contribute to making our Constitution a living document for many of the poorest and most vulnerable South Africans.

Legal Aid South Africa has completed another successful year 2011-2012 in which it delivered legal aid services to thousands of people within a sound financial and governance framework.

It continues to do so with a strong people centred approach ensuring that our clients remain the core focus of our delivery while our employees are also empowered to perform optimally in a work environment where the organisational culture is one of high performance and service excellence with integrity.

In the 2011-12 financial year we have achieved our targets on performance in all aspects of our business. We continue to increase access to justice by our presence in all the criminal courts in the country ensuring that no person is unrepresented because they are not able to afford the cost of their legal defence. We increased our capacity to assist clients in civil matters resulting in a 48% increase in the number of civil legal aid matters we were able to take on. In giving effect to Section 28 of the Constitution, we assisted 22,376 children in conflict with the law and 5,584 children in civil matters, including Estates matters. In total we were

"By ensuring access to justice for poor and vulnerable South Africans, we contribute towards making our Constitution a living document for many."

able to assist clients in 428,653 legal matters of which 89% were criminal and 11% were civil legal aid matters. We also took on 23 Impact Litigation matters. In addition we assisted 254,286 clients with legal advice. We were thus able to increase access to justice for 682,962 persons in South Africa.

We were also pleased to achieve another year of excellent financial results with our eleventh unqualified audit and seventh year of no matters of emphasis. A spend of more than 99% of our Budget ensured that resources were directed to the much needed delivery of legal aid services. This is testimony to our sound financial management and governance practices all of which contribute to our sustainability in ensuring our continued capacity to deliver legal aid services to the indigent. A strong financial management and governance ethos is complemented by our commitment to a people-focussed development linking both to our clients and our employees. This commitment ensured that we were able to be accredited as a Best Employer for the third consecutive year.

Our practitioners handled 382,125 new matters in criminal courts in this period. We were able to increase our civil legal practitioner capacity which enabled us to expand our assistance in civil legal aid matters to take on 46,528 new matters. Our call centre advice matters increased in the past year but advice matters handled at Justice Centres and Satellite Offices did not grow. Although demand for legal advice remained low at our Satellite Offices a basic level of service is being maintained to provide assistance especially to rural communities.

We continued to cover all courts but because of budget constraints were not able to increase practitioner per court ratios. No increased capacity in criminal courts has meant a marginal increase of 2% in new criminal matters over the past year. Our Impact Litigation Unit is now fully functional and it assessed and took on 23 new matters affecting vulnerable groups. Our specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts and children's matters is in place and practitioners are continuously trained in handling these specialist matters. Senior Litigators employed are working on complex matters and matters in higher courts.

We continued our various quality improvement programmes, including training and development, monitoring and supervision, case dicussion, expert legal advice support, legal research and legal newsletters. In addition to the monitoring of quality by our Justice Centre and Regional legal management, our independent legal quality assurance unit also continues to cross-audit the quality of our legal practitioners thus providing assurance on the case file and court based performance of our legal practitioners. Our independent legal quality assurance unit further expanded its coverage to also assess our paralegals, judicare practitioners and agency agreements. Quality targets are being met by legal practitioners in assessments done by both our Justice Centre (JC) management and our Independent Legal Quality Assurance Unit. The small minority not meeting quality targets are supported and developed to ensure their quality is improved.

Our success in criminal matters is assessed by the quality of the defence we are able to provide to our clients to best protect their interests and where convicted to argue for the appropriate sentence noting the individual circumstances of our clients. This cannot be judged by acquittals alone and is a lot more complex. We were however pleased to achieve a 66% success rate in the criminal appeal matters that our practitioners argued in the Supreme Court of Appeal (SCA) with a 100% success rate in the SCA in its first term in 2012. This is higher than the average 54% success rate in criminal appeals in the SCA in that year. We were also successful in 94% of the impact matters that we finalised.

Our lawyers continued to play a significant role in representing poor clients in the Criminal Courts and influencing the course of our legal jurisprudence. In the high profile matter of S v Hendriks that was handled by our Cape Town Justice Centre, we challenged the validity of the use of Drager breathalyser device in drunken driving cases. The Western Cape High Court upheld our argument and ruled that the device was not reliable in its present form. We also contributed to bringing certainty to our legal system when we argued successfully in S v Baartman 2011(2) SACR 79 (WC) that the Minimum Sentences Act, which sets out 15 years as a minimum sentence for certain offences, was not applicable in Firearm Control Act matters since a maximum sentence of 15 years is set out for those matters in terms of this act.

Our lawyers appeared in a number of cases that caught the imagination of many South Africans. In what is now widely known as the Tereblanche murder case, our Pretoria High Court Unit appeared

for Chris Mahlangu whilst the legal representation for the second child accused was funded by us on brief to Judicare practitioners. Whilst Chris Mahlangu was found guilty in this matter, we were successful in ensuring that the child accused was acquitted of the murder charge.

In what is a significant civil judgment for security guards who transport money, our Port Elizabeth Justice Centre in Kogana v SBV Security, challenged a High Court decision in which a security guard was held liable to pay over R5million to his employer after a robbery. Our client stood to lose his house and his pension fund. The Supreme Court of Appeal ruled in our favour and saved a number of other security guards who would have found themselves liable to their employers for failing to prevent robberies.

In Jonker v Manager Gali Thembani and 4 others, our Queenstown Justice Centre vigorously opposed the Eastern Cape Department of Education's attempts to close down the provinces only school of industry, Gali Thembani School, and to move all the children at this school to a facility in Bhisho which housed children in need of care. Our view was that this arrangement would not have been in the best interest of both groups of children and it would also have been contrary to the provisions of the Child Justice Act and the Children's Act. The Eastern Cape High court agreed with our submissions and ruled in our favour.

Legal Aid South Africa was involved in a number of high impact cases in the past year. The unit was involved in the Pioneer Hi Bred International Inc. and Pannar Seed Merger which was heard in the Competition Tribunal. Our Impact Litigation Unit represented the African Centre for Bio-safety, an NGO that specialises in research on food security, protection of the indigenous seed and germplasm of staple food such as maize in Southern Africa. It was the first time since its inception that the Competition Tribunal allowed a third party to intervene in a merger hearing. In refusing the merger the Competition Tribunal took into account our submission that the merger would have a negative effect on subsistence farmers and food security in South Africa. The Competition Appeal Court subsequently set aside this decision allowing the merger but incorporating various measures to protect the interests of the subsistence farmers.

We also took on a number of impact matters relating to housing, the rights of children in need of care, as well as the rights of children in conflict with the law. Of importance is the rights of children not to be treated as adults and to be incarcerated for the shortest possible time in compliance with section 28 (1) g of the Constitution of the Republic of South Africa. The unit intervened in the prosecution of a young female Zimbabwean refugee who was treated as an adult by the justice system. The decision of the Magistrate to prosecute the young offender without considering whether she was an appropriate candidate for diversion out of the justice penal system was set aside in a review application.

In the year under review we continued to give support to developing legal aid systems, hosting 14 international delegations visiting us to study our legal aid delivery model. A significant impact on increasing access to justice internationally was made with an international instrument, the UN Principles and Guidelines on access to legal aid in criminal matters being adopted by the United Nations Commission on Crime Prevention and Criminal Justice in Vienna in April 2012. This will facilitate the development of legal aid systems and increased access to justice by indigent persons, in all member countries, if these principles and guidelines are adopted by the UN General Assembly later this year.

In the year under review we achieved our targets for community outreach programmes promoting an understanding of our constitutional rights as well as marketing the services of Legal Aid South Africa. Our successful branding at courts, prisons cells and police cells increased awareness of our services to our clients. In the past year our brand strategy showed positive responses with awareness of Legal Aid South Africa growing by 7% to 56% amongst the lower LSM groups.

Our audit report confirmed our financial management and compliance being in place as well as prudent expenditure management ensuring that more than 99% of our budget was spent. The mention by the Auditor-General of non-compliance of a specific supply change management process for certain of our procurement transactions has been explained in the notes to our Annual Financial Statements. The majority of this non-compliance resulted from not obtaining tax clearance certificates from judicare practitioners in matters costing us more than R30,000 per matter. In all instances where tax clearance certificates were not obtained, it is confirmed that services were rendered by the judicare practitioners

to clients who therefore received legal aid services. This situation has been addressed with a change to our judicare accreditation policy which requires practitioners to submit tax clearance certificates to be accredited to be part of our judicare data base to receive judicare instructions. The condonement of the National Treasury for the non-compliance will also be attended to in the near future. Our comprehensive risk management also ensured that our managers were able to anticipate and mitigate risks and potential fraud resulting in only one minor fraud matter involving R2000 being reported in this period. The increasing number of civil matters resulted in an increase in the quantum of funds in our Trust Account holding clients' monies. The related challenge of unaccounted for deposits is being addressed to ensure that all funds are accounted for and directed to the right clients.

Our IT Platform was enhanced and upgraded with K2-workflow software upgrade and a switch to a SharePoint platform. However this caused challenges to stability and speed of the IT platform in the year. This has subsequently been addressed. A few delays in payments and data capture were also addressed within the financial year. Our increased user volumes and transactions and dependence on our IT platform for our business needs require a further expansion of our VPN bandwidth capacity in the new financial year. Our electronic links to clients using our websites was delayed due to the IT challenges mentioned above.

The 2011-2012 year marked the completion of our three-year Strategic Plan period 2009-2012. In this year we prepared a new Strategic Plan 2012-2017 for the next five-year period. Details of the process and content of this Strategic Plan are provided in this Annual Report. To a large extent we were able to make the strategic shift that we mapped for the 2009-12 Strategic Plan (SP) period as indicated below.

We aimed in the 2009-2012 period to explore and implement new ways of increasing access to justice within resource constraints. In the SP period we completed the expansion of the National Footprint (6 new JCs and 27 Satellite Offices), launched our Client Call Centre – the Legal Aid Advice Line in November 2010 and implemented a new delivery model using Agency Agreements with Legal Firms to improve coverage of courts in rural areas. No staffing increase in criminal courts, due to budget constraints, resulted in only a marginal increase of 1-2% in new criminal matters over this SP period. We were able to expand civil legal aid capacity and establish civil units to improve coverage of civil matters which resulted in a 60% increase in the number of persons assisted in civil legal matters in the SP period [FY 2009/10 (29,024), FY 2010/11 (31,451) and 2011/12 (46,528)].

Our aim to increase the practitioner per court ratio and thus improve caseload management and quality was partially successful. Although we continued to cover all courts, because of budget constraints we were not able to increase practitioner per court ratios. Our court coverage ratio increased marginally per court type as follows: District Courts FY 2009/10 (80%), FY 2010/11 (83%) and 2011/12 (89%) and Regional Courts FY 2009/10 (94%), FY 2010/11 (96%) and 2011/12 (97.5%).

Improving specialist capacity to serve vulnerable groups was achieved with the specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts and children's matters all in place. Our Impact Litigation Unit became fully functional and is assessing and taking on new matters affecting vulnerable groups. We employed Senior Litigators who are working on complex matters and matters in higher courts. Our practitioners have been trained in specialist matters and continuing training is also implemented. Expert panels were established to support our legal practitioners in specialist matters.

An independent legal quality assurance unit was also implemented and became fully functional in the SP period. This quality assurance is expanding to cover quality assessments of all aspects of legal services delivery including paralegals, judicare practitioners and agency agreements. Quality targets are being met by legal practitioners as assessed by both JC management quality assessments as well as independent legal quality assurance unit assessments.

Our aim to consolidate the Legal Aid brand thus increasing public awareness of independent quality legal aid services was realised by the launch of our new corporate identity and 'Legal Aid South Africa' brand in this period. Brand awareness has increased each year FY 2009/10 (43%), FY 2010/11 (49%) and 2011/12 (56%) with an overall increase of 19% over 3 years to 56% awareness of Legal Aid South Africa amongst lower LSM groups.

In contributing to the functioning of the Criminal Justice System, the Criminal Justice System review protocols, legislative proposals and other interventions to improve case flow and the efficiency of the criminal justice system were monitored and implemented as they were rolled out.

Our aim to increase the financial maturity of the organisation and improve risk based management in all facets of the business, as well as maintain unqualified audits was achieved with unqualified audits and no matters of emphasis in each of the years in the SP period.

We were able to achieve our aim of consolidating and aligning our people development programmes. We developed our Competency Profiles and identified talent pools in the Leadership Pipeline and began a process of identifying and implementing development programmes for each talent pool. In this three-year SP period we were successfully accredited as a Best Employer for each year. Our recruitment levels were maintained at 95-96% year on year to ensure optimum resourcing directed to delivery. Our Leadership Programme was also successfully implemented with a focus on a training and development phase for individual managers and leaders.

Enhancing our IT platform from serving internal need to also increase access to justice that is to play a role in the delivery of services was partially achieved. We upgraded our Internet Line, upgraded to the Virtual Private Network, upgraded K2 workflow and SharePoint software. The latter two upgrades in the third year caused challenges to stability and speed of platform in that year which was subsequently addressed. Further upgrade of the VPN will be required in the next period. A link to clients with self-help modules will be further developed in the next period. A Judicare practitioner link was developed and implemented but usage is low on the part of judicare practitioners.

Business Intelligence is available to all staff providing online real-time access to management data. Our Corporate Dashboard is compiled electronically but all components of the dashboard are not electronically linked.

We successfully improved our Business Processes by implementing a risk based management of performance with individual responsibility for tracking performance and allowing greater flexibility and also aligning supervision and support to the level of risk of individual practitioners and managers. A matrix management system was also successfully implemented to ensure greater focus on legal matters by our legal managers.

As we commence the first year of our new 5-year Strategic Plan period our greatest challenge continues to be inadequate funding. In our 2012/13 budget we have a R34million efficiency cut from government as well as a reduction of R30million which was meant for the continued implementation of OSD Phase I. This constrains our ability to achieve, in particular, improved court coverage as well as the necessary IT and support platform capabilities.

Our key focus areas in the next period will be sustainability and integrated planning and implementation as well as excellence, continued learning and improvement.

In presenting the pleasing results in this report I record my appreciation to all our stakeholders with whom we work and who in the past year shared their experience and wisdom with us in the formulation of our Strategic Plan for the next period. With them we collectively strive to increase access to justice in our country. The guidance and leadership of our Board of Directors, under the leadership of Judge President Dunstan Mlambo is always appreciated. I wish to sincerely thank all the employees of Legal Aid South Africa that contribute to the excellent performance which has come to be accepted as the norm for us at Legal Aid South Africa. The collective leadership of Legal Aid South Africa is to be credited for the success of this organisation. Every leader in our team works diligently and tirelessly to ensure that we can reach many more South Africans to achieve our vision of equality, justice and a quality life for all. Legal Aid South Africa citizens, you make us proud and ensure that we remain a leader in the provision of accessible and independent quality legal services to the poor and vulnerable. My heartfelt thanks to each one of you!

Ms Vidhu Vedalankar
Chief Executive Officer: Legal Aid South Africa

Legal Aid South Africa

Annual Performance Report 2011-12

Briefing of

Portfolio Committee on Justice & Constitutional Development

9 October 2012

Report on completion of Strategic Plan 2009-2012

	2009-12 SP period legal services delivery shift planned	2009-12 SP period legal services delivery shift achieved
3	Improve specialist capacity to serve vulnerable groups	•Specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts, children's matters, all in place; •Impact Litigation Unit fully functional and assessing and taking on new matters affecting vulnerable groups •senior litigators employed and working on complex matters and matters in higher courts •practitioners trained in specialist matters and continuous training also continues •Expert panels established to support our legal practitioners in specialist matters;
4	Independent quality assurance implemented and functional	•Independent legal quality assurance unit fully functional and expanding to cover all quality assessment of aspects of legal services delivery including paralegals, judicare practitioners and agency agreements •Quality targets are being met by legal practitioners -both JC management quality assessment and independent legal quality assurance unit assessment
5	Consolidate the Legal Aid brand thus increasing public awareness of independent quality legal aid services	•Launched our new corporate identity and 'Legal Aid SA' brand which has been positively received •Brand awareness has increased each year - overall increase of 19% over 3 years to 56% awareness of Legal Aid SA in lower LSM groups •Brand awareness in lower LSM Groups: FY 2009/10 (43%), FY 2010/11 (49%) and 2011/12 (56%)
6	To implement programmes and projects from the CJS Review	•Criminal Justice System review, protocols, legislative proposals and other interventions to improve case flow and the efficiency of the criminal justice system were monitored and implemented as they were rolled out.

STRATEGY C1: TO DELIVER CLIENT FOCUSED AND QUALITY LEGAL SERVICES							
Projects		**KPIs**			**Outputs**	**Performance against KPIs**	**Variance in performance against target**
		Measures	**Targets**				
			Quality	**Quantity**			
	Proactive Supervision at courts	Court observations		CA Risk Profile H - bi-Monthly; M - monthly; L - quarterly;	Court observation model implemented	All JCs were required to conduct court observation reviews based on a model developed for practitioners. 94% of JCs that were audited upto Q4 were found to have implemented proper controls to manage the performance of practitioners at court.	Only 4 of the 64 JCs did not implement this programme fully. A lack of management oversight would be one reason why this programme was not fully implemented at these 4 JCs. Regional legal teams will ensure that JC legal managers are made aware of their requirements in monitoring practitioner performance at court.
				CA Risk Profile		According to the quarterly court observation quality scores all categories of practitioners achieved their targets. It has been noted that the court observation scores are generally better than the file audit scores for practitioners. The actual numbers of practitioners that have achieved their targets was monitored. Greater attention will be focused on assisting and supporting those practitioners who have not achieved the required quality levels.	Targets were exceeded. This can be primarily attributed to the quality intervention and monitoring programme which is diligently followed at all JCs.
	Consultation & preparation for cases			One day a week per practitioner reserved for consultation and preparation	Increased practitioner consultation & preparation time	RO legal audits confirmed that 98% of JCs set aside a day per week per practitioner for the purposes of consultation and preparation of their cases. However, low practitioner per court ratios have created challenges at a few JCs with regards the full implementation of this programme. A JC management survey conducted in Q2 confirmed the implementation of this requirement. A follow up survey done in Q4 confirmed that 95% of JCs plan a weekly consultation/preparation day.	A few JCs have reported that due to insufficient practitioner per court ratios, it was not possible to allow the one day per week consultation and preparation day. In these instances, it could have been extended to once every forthnight.
	Preparation of cases for high courts and higher courts	Support programme in place for all HCU practitioners			HCU practitioners supported in all their matters	HCU managers supported HCU practitioners in the performance of their work. This included the review of all heads of arguments prior to filing them at court. The recent appointment of senior litigators increased suppport for practitioners in more complex matters.	

Legal Aid South Africa

Your voice. For justice.

5 March 2012

FOR IMMEDIATE RELEASE

Child support & maintenance issues to be tackled head on at Legal Aid SA hosted Colloquium

Child support and maintenance are at present some of the most contentious areas of family law, with regulation governing them always a subject of debate.

Critics cite the apparent lack of priority given to the legal enforcement of women's and children's rights under the Maintenance Law Act.

As part of on-going efforts to help children that are most disadvantaged by the systemic challenges of the current child support and maintenance regime, the issue of child maintenance will be put under the spotlight during a Child Support and Maintenance Colloquium to be hosted by Legal Aid South Africa's Impact Litigation Unit.

To be held at the organisation's Braamfontein head office in Johannesburg on Tuesday 6 March, 2012, the meeting will bring together key stakeholders and decision makers in the justice system, to discuss the challenges and evident loopholes in child support legislation.

Participants include representatives from NGO's, academics, government actors, claimants, etc. who will discuss and contribute to an open forum and strategy workshop, on issues relating to child support and maintenance.

"Through the colloquium, the Impact Litigation Unit hopes to initiate a multipronged strategy to confront and address challenges in child support and maintenance, highlighting the dynamic methods that the legal community and civil society can employ in protecting the rights of women and children," says Legal development Executive, Patrick Hundermark.

He adds: “Our vision as an organisation is for the implementation of a child-centred justice strategy that ensures the best interests of the child in all legal matters.”

To drive home the gravity of the issue, the day will commence with personal accounts by two Johannesburg mothers who have been unable to access child support and maintenance, and the detrimental impact this has had on their livelihoods, particularly the lives of their children.

The first-hand accounts by the women will highlight to the stakeholders in the justice system, the grim reality of the situation, as experienced by women and children.

-Ends-

Notes to editors:

- Participants in the colloquium include representatives from the Department of Justice, the Market Street Maintenance Court, Tshwaranang Legal Advocacy Centre, the South African Law Reform Commission and the Centre for Child Law, the Women’s Legal Centre and the Legal Resources Centre.
- This is the second Colloquium focusing on children, to be hosted by Legal Aid SA. The first was held in 2009 and focused on Child Law.
-
- With children being a key area of focus for Legal Aid South Africa, the organisation has established dedicated children’s units in some of its justice centres. These units focus exclusively on providing representation to children in both criminal and civil matters. Based in these units are specialist child law practitioners who have had advanced training and research background in child law. In very complex matters, our Senior Litigators provide support and advice to practitioners that need it.

Portfolio Committee on Justice and Constitutional Development
9 October 2012
Legal Aid South Africa 2011/12 Annual report

Chairperson: Mr L Landers (ANC)

Documents Handed Out:
Pres Release on Legal Aid South Africa (LASA) 2011/12 Annual Report
Power point presentation on the Annual Report
Legal Aid South Africa 2011/12 Annual Report

Summary

Legal Aid South Africa reported that it had successfully completed the third year of its 2009-2012 Strategic Plan period and was able to achieve most of the strategic shift it had set to achieve in that period. In 2011/12 it provided access to legal aid to indigent clients – handling 682 962 legal and legal advice matters. It increased civil legal aid by 48% due to increased civil practitioner capacity. Legal quality remained a focus and a priority and generally legal practitioners met their quality targets. Strong financial management and governance were reflected in the 11th unqualified audit and 7th year of no matters of emphasis. The non-compliance with tax clearance certificates in judicare matters was being attended to. A people-development focus continued as confirmed by the successful accreditation for the third year as a Best Employer.

The Committee members congratulated Legal Aid South Africa on its accomplishments. Members asked about the use of agencies where there were already Legal Aid Centres present. There was also an exchange about the exact numbers of employees versus the number of budgeted posts and how Legal Aid managed their expenditure for its number of employees. Questions also included requests for detail on the Children's Act and the allegation published about the Boeremag. There was a suggestion that because of Legal Aid's large footprint in the country, its offices be used as a gateway for people to reach other agencies such as Chapter 9 organisations.

Minutes

The Chairperson said he had been informed that the Chairperson of the Board would not be able to attend the meeting but that was fine as he was sure that Legal Aid SA had brought qualified people.

Presentation by Legal Aid South Africa (LASA)

Mr Jan Maree, Non-Executive Director and Committee Member, LASA, introduced the report with a short overview. This was the second integrated report that reported on financial and non-financial performance against the Strategic Plan 2009-12 as well as the Annual Performance Plan 2011-12. The integrated report reported on social, economic and environmental considerations that had a bearing on the future of the organisation, the environment within which they operated and the communities they served. It included reports on an overview of the organisation as well as issues and trends impacting on it, sustainability, corporate social investment and stakeholder engagement. LASA reported on its compliance with Global Sustainability Reporting Initiatives (GSRI). The Integrated Report included a statement from the governing board acknowledging its responsibility for ensuring the integrity of the report. 2011-12 completed the three-year period of the LASA Strategic Plan 2009-12. The presentation also reported on progress against the recommendations of Budgetary Review Recommendation Report (BRRR) of the Justice Portfolio Committee dated 26 October 2011.

LASA operated within a strong governance framework which included an effective and functioning governing board and audit committee, compliance with the Legal Aid Act, Public Finance Management Act and National Treasury regulations, 100% implementation of all recommendations of the King III Report on Corporate Governance, compliance with the Promotion of Access to Information Act (PAIA), and an effective and independent internal audit department. The Legal Aid Act was in the process of being redrafted and a new Legal Aid Bill was expected to be tabled before Parliament in 2012.

Ms Vidhu Vedalankar, CEO: LASA, went through the statistics that Legal Aid had produced over the year. Legal Aid now had 2 470 people working in 64 Justice Centres and Satellite Offices and 13 high court and civil units. They had covered 428 653 criminal and civil cases. 95% of these matters were handled by the Justice Centres while the remaining 5% was handled via Judicare, coops or agency agreements. There was also a 50% drop in children cases handled by Legal Aid.

Regarding non-legal functions delivery, Matrix Management had been further consolidated. Functional management committees continued to assist in monitoring performance of support staff at both Justice Centre level and regional office level. The matrix function had been fully embedded resulting in effective

Challenges

▪ Capacity at regional and district courts was insufficient to adequately meet the demand as well as provide a limited relief capacity to deal with staff absence.
▪ High turnaround times at Regional Court and High Court led to increased backlogs at court.
▪ There was also insufficient civil capacity to meet increased demand for civil legal aid services.
▪ There were high numbers of awaiting trial detainees in custody for excess periods.
▪ There was non-compliance on tax clearance certificates in judicare matters as noted by Auditor General. ▪ The IT challenge: problems with K2 patching, finalisation of K2 upgrade, finalisation of switch to sharepoint platform which all impacted on speed and stability of the IT system.
▪ Dependence on candidate attorneys to render services at district courts negatively impacts on perception and sometimes service delivery

Ms Vedalankar concluded by reminding Members that LASA had provided access to legal aid for indigent clients with 682 962 legal and legal advice matters – which was a notable achievement – as was the increase in civil legal aid by 48% due to increased civil practitioner capacity.

Discussion

Mr J Jeffrey (ANC) said that he was extremely pleased with Legal Aid but it was the Committee's job to make sure they did oversight. He was curious about a Promotion of Access to Information Act (PAIA) report that was released that stated the South African Human Rights Commission was unhappy with LASA and their cooperation in terms of PAIA. He also noticed that the slide on Child Justice was the exact same slide from their presentation. That did not seem to make sense neither did their allocation of funds for Child Justice. They created 23 district and six regional posts in both 2011 and 2012 and that did not seem possible.

Mr Jeffrey said that the Committee had asked for quarterly reports from Legal Aid not just annual ones. He asked why there was not a cooperation agency agreement and asked how much it cost. The use of agency agreements was also questioned. On a more particular note, he said that Legal Aid could not say technically that they were compliant with the Legal Aid Act because according to the Act, an updated version must be published annually which had not occurred.

The Chairperson told the delegation that they would arrange for Legal Aid to view the PAIA report.

Ms D Schafer (DA) congratulated LASA on their annual achievements. She had a question about the tax sheets that the legal providers were not giving to Legal Aid. She asked if the huge lack of them was because of a lack of oversight. Also, did the trust deposits create a problem for LASA?

Mr J Sibanyoni (ANC) asked specifically about agency agreements. He was curious as to why there were agency agreements in areas where there was already a LASA office. The time limit that came with these agency agreements was also brought into question. He was curious to know about some of the success stories with the agency agreements.

Ms C Pilane-Majake (ANC) asked about LASA's internal audit and how many people on the audit committee were external from LASA. She also congratulated LASA on their report.

Ms M Smuts (DA) congratulated LASA on a sensational report. She was curious what LASA thought about the news article on Sunday about the Boeremag which she believed that LASA had represented. She explained that there was a sensational story that reported that legal information between the members of the Boeremag and their legal team had been intercepted by the police and turned over to the prosecution. She was also curious about what role LASA could play in the unclogging of the legal system particularly the issue with accused being detained, trial times, and missing trial transcripts.

Mr Jeffrey interjected saying that this happened often with awaiting trialists who should not even be there because their crime was not even punishable by prison time.

Response

Ms Vedalankar told the Committee that they had provided quarterly reports and had sent them to the Committee.

Mr Jeffrey interrupted, asking whether anyone in the Committee had received the reports which none of them had or could recollect.

Ms Vedalankar apologised and said that the reports would be sent. She went on to say that the Children's Act expenditures were basically the same because that was how much it cost to keep to the employees on

for the financial year with a slight increase for property costs.

Mr Jeffrey said that the wording was wrong and wanted the CEO to be clear that new positions had not been created but merely maintained. He said that they merely “cut and pasted” from last year’s report which created wrong information.

Ms Vedalankar said they had not cut and pasted but they merely had worded the information wrongly.

Mr Jeffrey said that he did not agree with that.

Ms Vedalankar said they would agree to disagree and that she knew that the Committee did not like cutting and pasting.

The Chairperson said that he wanted to know about the PAIA report.

Ms Vedalankar said that she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgement about this. In terms of the audit reports, she explained that one of the members of the audit committee had resigned so currently there were five members on the audit committee, of which three were external members.

Ms Pilane-Majake thanked the CEO for the clarification but said that the report seemed to show only what was desirable.

Mr Jeffrey said that he wanted LASA’s statistics on children because those of the South African Police Service seemed to be off. He again asked the question about the successfulness of service agencies.

Ms Vedalankar said that they did not have the statistics on children in the report but that they wanted to do more in terms of domestic violence. In terms of the alignment of services, she said that just because a town was in a province, it did not mean that the closest office was in the same province and that there were no provincial boundaries. She also agreed that the lost records of trials especially in Gauteng was an issue. She then handed over to her colleague.

Adv Wilna Lambley, Regional Operations Executive, explained the issue of proximity. There had been reshuffling of offices and agency agreements. There was constant oversight and discussion about which offices should serve which communities. In terms of the lost transcripts, most of these had occurred in Gauteng. It was due to a turnover in terms of the people who managed the transcripts. As of now, most of the transcripts had been found but there were still 40 to 50 missing.

She went onto say that the Boeremag practitioners were only briefed by Legal Aid but they would be looking into reports that an alleged witness had come forward with this information. This however would probably not create any appeals different from the law’s regular appeals process The Judge would have to make a decision about this and what the law said.

Ms Vedalankar said that 25% of their legal providers had applied for tax sheets while 25% had said that they would not provide LASA with any of them.

The Chairperson asked if these legal providers would be used by LASA if they failed to produce tax clearance certificates.

Ms Vedalankar said, yes, they would be terminated if they were in the middle of any trial proceedings.

Mr Maree added that a tax clearance certificate had never been required for a legal provider.

Mr Jeffrey asked about the discrepancy between staff and number of posts in terms of their expenditure in their budget for each. He also asked if Legal Aid had been in touch with Chapter 9 organisations and if Legal Aid could accept complaints on behalf of a Chapter 9 organisation if such organisation did not have an office in the area. Legal Aid’s footprint throughout the country could make this cost effective and he asked if Legal Aid would be open to the idea.

Mr Jeffrey asked why land cases were up so dramatically this year or last year and their status in relationship with rural development, and also why had Duty Care gone up. He also inquired about the costs of cooperation agreements and the status of the criminal justice review.

Ms Vedalankar said that she could not comment on helping with Chapter 9 organisations because she would have to discuss it with her staff first. In terms of the discrepancy with the posts and employees, it was very clear in the report. They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.

Mr Jeffrey said that the expenditure could not be 99% with the figures that they had.

Ms Vedalankar said she would send the information to the Committee.

Mr Jeffrey then asked for clarification on the IT budget.

Ms Vedalankar said that they had not been given the proper budget for IT and thus Legal Aid had suffered because of it.

Mr Jeffrey said that the Committee would get in touch with the Treasury and find out why the IT budget for LASA had not been fulfilled.

The Chairperson adjourned the meeting.

PARLIAMENT
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LUWELLYN LANDERS MP
National Assembly
e-mail:
llanders@parliament.gov.za

Ref.: Brink(1)

Judge D. Mlambo
Chairperson: Legal Aid Board of S.A.
P/Bag X76
BRAAMFONTEIN 2017

23 March 2011

Dear Judge Mlambo

ADVOCATE ANTHONY BRINK

Attached for your attention please find copies of correspondence relating to a complaint comprising allegations made against the Legal Aid Board and it's CEO, Ms. Vidhu Vedalanker, with specific reference to his recruitment as Senior Litigator in Pietermaritzburg and refusal to comply with the provisions of the Promotion of Access to Information Act, amongst other things.

Having received Advocate Brink's letter you will understand that I must ask you, your Board and the Board's CEO for a formal response to these allegations, please.

Thank you.

Yours faithfully

_____

LUWELLYN LANDERS MP
Chairperson:
Justice Portfolio Committee,
National Assembly

Legal Aid South Africa

National Office
29 De Beer Street
Braamfontein
2017
Tel: 011-877-2055
Fax: 011-877-2222
www.legal-aid.co.za

22 June 2011

Mr L Landers MP
Chairperson Justice Portfolio Committee
National Assembly
P O Box 15
Cape Town
8000

Dear Mr Landers

Adv A Brink

Your letter dated 23 March 2011 on the above matter refers. Please accept my sincere apology for the delay in responding to your letter. Attached please find a report on this matter which was submitted to the Minister of Justice and Constitutional Development in March 2011 and which has since been updated. In summary I wish to reiterate what I said to Mr Brink when he wrote and complained to me :

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

I trust that the attached report and this letter clarify the matter concerning Mr Brink.

Yours faithfully

Judge Dunstan Mlambo
Chairperson
Legal Aid South Africa

Confidential

Legal Aid South Africa

REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Re: Adv Anthony Brink

1. Background

On 12 July 2010 Advocate Anthony Brink wrote to the CEO expressing his concern with regards the delays in the finalisation of the recruitment process for the senior litigator position at our Pietermaritzburg Justice Centre. Adv Brink was an applicant for this position and he was interviewed by our regional selection panel. He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted interview panel.

This nationally constituted panel did not however sit to consider applicants recommended for the second stage of interviews. Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts. Adv Brink was subsequently informed of this decision.

This resulted in him generating numerous requests for information in terms of PAIA, arising from his discontent with not being appointed to this post. He also wrote several lengthy letters to various individuals and organisations, including to the Chairperson and other Directors of the Board of Legal Aid SA. In his letter to the Board, Adv Brink also made allegations relating to multiple contraventions of the PFMA, including the presentation of false financial information in our 2009/10 Annual Report.

2. Adv Brink's discontent with non-appointment to Senior Litigator Position

From the many letters received from Adv Brink, it is clear that he believes that he was not appointed because of a racial and political bias against him resulting in a conspiracy to exclude him from Legal Aid SA. The conspiracy he alleges relates to his political views against the use of anti-retro viral drugs for HIV AIDS and also discrimination against him as a white male. He incorrectly believes that the second round of interviews was simply a confirmation process where he appears before the Chairperson of our Board who must ratify his appointment. This however is incorrect. All executives involved in this matter have confirmed that this individual was not known to them, nor his political views or publications, and that the first time they came across his name was when his letter of complaint about his non-appointment was received.

The reason for freezing of senior litigator posts was that Legal Aid SA was going through a very uncertain period with regards the provision of funding by the DoJ to finance our OSD phase 1 implementation, which was resulting in an unbalanced budget for 2010/11. As a result various options to make up for the shortfall in our funding, including the freezing of posts, were considered. Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time, as well as contingency measures that we were contemplating to cater for this, including

the freezing of many positions, were shared with Adv Brink in response to his request for information in terms of PAIA.

Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he remains convinced that there is a conspiracy against him. Legal Aid SA, has under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views. He is currently pursuing his requests for further information with the Human Rights Commission and has threatened litigation. We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA. We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act. We copied these responses to the SA Human Rights Commission to confirm our compliance with PAIA.

Adv A Brink subsequently referred a dispute against Legal Aid SA in the CCMA on 20 April 2011. He alleged unfair discrimination on the basis of political conscience, belief and activism on the issue of HIV Aids and to a lesser extent race. He further contended that he held the belief that this alleged unfair discrimination resulted in him not being appointed to the position of Senior Litigator at Legal Aid SA – a position for which he applied and was interviewed. The relief he sought was monetary in the amount of R55 000 per month from January 2011 (he avers to have become aware of the alleged discrimination at this point) to the date of the conciliation which totalled R220 000. The dispute could not be resolved as Legal Aid SA submitted that it believed that it had not directly or indirectly discriminated unfairly against Mr Brink on the basis averred by him or on any other basis. A certificate of non-resolution was thus issued by the CCMA on 20 April 2011 which paved the way for Mr Brink to refer the dispute for adjudication to the Labour Court, a route he has to date not pursued.

3. <u>Allegations of multiple contraventions of the PFMA</u>

In Adv Brink's November correspondence to the Board Chairperson and members of the Board, he draws attention to the fact that Table 3 in Section 4.1 at page 106 of Legal Aid SA's Annual Report for 2009/10,relating to executives remuneration, contains incorrect column totals for basic salaries, bonuses, incentives, expenses/allowances and other unspecified payments.

An examination of this table has revealed that these four column totals are indeed incorrect, although the last column relating to total expenditure is correct. It must also be noted that the row totals which show individual executives remuneration is correct. We have since been able to determine that the source of this problem was caused by human error at the time when the annual report was being prepared for printing.

This table is however not a part of the Annual Financial Statements (AFS) nor is it material to the AFS presented later in that section. They therefore do not alter any of the AFS, which do not have any errors. These are the AFS that were audited by the Auditor-General and found to 'present fairly, in all material respects, the financial position of Legal Aid SA as at 31 March 2010…".

The executives' remuneration is also referred to in Note 18.2 of the AFS (page 145 of the Annual Report) in which the total per executive as well as the overall total is indicated. The total per

executive as well as the overall total in Note 18.2 of the AFS is the same as the row totals and overall total in Table 3. This confirms that the material amount included in the AFS was not incorrect and therefore our AFS 2009/10 remain correct.

Given that the AFS remain correct and that the error in Table 3 is not material to the AFS, the allegations by Brink of 'false and misleading figures' being a serious criminal offence and that our Annual Financial Statements in our Annual Report are not a 'true and fair representation' are unfounded.

4. Conclusion

Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems in this matter that Adv Brink would be well advised to approach the courts to ventilate his issues. We are however comfortable that we would be able to show to a court of law that the decisions we took on this matter made good business sense and were in the best interests of our organisation at the time. As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

This report is sent to the Ministry to provide the necessary background to this matter as well as to contextualise and clarify the allegations by Mr Brink re contravention of the PFMA and provides the necessary reassurance that no contravention occurred in this regard.

Judge D Mlambo
Chairperson

Legal Aid SA

9 March 2011

Updated with sections in blue font

22 June 2011

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

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

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number:

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

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

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

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

Legal Aid South Africa

29 De Beer Street

Braamfontein

Johannesburg

B. Particulars of person requesting access to the record

(a) The particulars of the person who requests access to the record must be recorded below.
(b) Furnish an address and/or fax number in the Republic to which information must be sent.

Full names and surname	: Anthony Robin Brink
Identity number	: 5902255116081
Postal address	: 36 Pearson Street, Eshowe 3815, KwaZulu-Natal
Fax number	: N/A
Telephone number	: 083 779 4174
E-mail address	: anthonybrink.sa@gmail.com

With typo fixes

C. Particulars of person on whose behalf request is made:

N/A

D. Particulars of record

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

PART ONE

CONTEXTUAL NOTE:

On 15 March 2019, upon application made to the High Court at Pietermaritzburg, Legal Aid SA ('LASA') was granted an order postponing three opposed applications brought by the requester under section 78 of the Promotion of Access to Information Act 2 of 2000 ('PAIA') under case numbers 11187/16P; 14224/17P and 5239/18P to compel compliance with his requests for access to certain of LASA's public records, duly set down for argument on that day.

RECORDS REQUESTED:

1. **All LASA's counsels' fee-notes for their services in drawing or settling the said postponement application papers, and for arguing the application.**

2. **All travel expense and subsistence vouchers reflecting what LASA disbursed on travel and subsistence expenses for LASA's junior advocate and two in-house attorneys to attend the said postponement application.**

PART TWO

RECORDS REQUESTED:

3. **LASA's annual reports made under section 32 of PAIA to the South African Human Rights Commission for:**
   3.1. 2016/17;
   3.2. 2017/18;
   3.3. 2018/19.

PART THREE

CONTEXTUAL NOTE:

On 9 October 2012, at a meeting with the National Assembly's Portfolio Committee on Justice and Constitutional Development (since renamed '-and Correctional Services'; hereafter 'the Committee'), LASA CEO Vidhu Vedalankar presented LASA's annual performance report for 2011/12.

The Committee had called the meeting in the exercise of its oversight responsibility over LASA imposed by section 55(2)(b)(ii) of the Constitution.

The Parliamentary Monitoring Group ('PMG') kept a minute of the meeting, a material excerpt of which follows:

> Ms Vedalankar said that she could not comment on helping with Chapter 9 organisations because she would have to discuss it with her staff first. In terms of the discrepancy with the posts and employees, it was very clear in the report. They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.
>
> Mr Jeffrey said that the expenditure could not be 99% with the figures that they had.
>
> Ms Vedalankar said she would send the information to the Committee.

The PMG's minute records that Committee member Hon John Jeffery MP (now Justice Deputy Minister) had queried 'the discrepancy with the posts and employees', i.e. the discrepancy between reported budget expenditure and reported post occupancy, to which Vedalankar responded that 'it was very clear in the report. They [LASA's management executives] had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.'

The minute reflects that Hon Jeffery didn't believe and accept this information given by Vedalankar to the Committee. To the contrary, 'Mr Jeffery said that the expenditure could not be 99% with the [post occupancy] figures that they had.'

The minute further records that 'Ms Vedalankar said she would send the information to the Committee' – in addition to the 'very clear' information alleged to have been contained 'in the report' – to persuade Hon Jeffery, and to overcome his incredulity as to the truth of Vedalankar's information to the Committee that 'They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.'

RECORDS REQUESTED:

4. **Any record identifying what vacant 'positions could not be filled' at LASA that 'they [Vedalankar and other LASA officers] knew' about.**

5. **Any record reflecting the reason these vacant 'positions could not be filled' that 'they knew'.**

6. **The record of executive management's decision to 'adjust.. the budget' because 'they knew that those positions could not be filled'.**

7. **The Board's resolution to approve the 'adjust[ment of] the budget' because the vacant 'positions could not be filled', if, per LASA's Approval Framework, this entailed a 'Reallocation of budget in excess of 8% between cost centres'.**

8. **'[T]he information' about LASA's 'adjust[ment of] the budget' (because 'they knew that those positions could not be filled') that Vedalankar sent the Committee after the meeting, as undertaken to Hon Jeffery; and its covering letter.**

CONTEXTUAL NOTE CONTINUED:

The reason Hon Jeffery clearly didn't believe the said information Vedalankar gave the Committee may be because, inter alia, in truth and in fact 'the report' said nothing at all about LASA having 'adjusted the budget' – either for the reason Vedalankar alleged, namely that 'they knew that those [unspecified vacant] positions could not be filled' or for any other.

That is, Vedalankar's statement to the Committee that 'it was very clear in the report' why there was a 'discrepancy with the posts and employees' was absolutely false.

Vedalankar didn't specify to the Committee 'those positions' that 'they knew ... could not be filled'.

Certainly she didn't have in mind any of LASA's public defender 'positions' serving the lower criminal courts, recruitment to which had briefly and temporarily been frozen by executive management with Board approval on 30 July 2010 for a couple of months until provision was made in the national mid-term budget in October 2010 for the payment of legal staff salary increases under the OSD scheme, because by October 2012 when

Vedalankar appeared before the Committee and claimed to it, 'They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget', the hiccup over the delayed transfer of LASA's OSD budget for 2010/11 and the transient freeze on lower criminal public defender recruitment was distant history.

It seems likely that 'those positions' to which Vedalankar was alluding and implicitly claiming to the Committee 'could not be filled' (for some unstated reason 'they knew') were LASA's three remaining, very long vacant Senior Litigator posts at Pietermaritzburg, Durban and Mthatha at the top of its legal professional staff establishment, to which the requester had called both Hon Jeffery's and the Committee chairperson's attention.

Indeed, like Vedalankar's information to the Committee that 'those positions could not be filled so they adjusted the budget', LASA's annual report to the South African Human Rights Commission ('the Commission') under section 32 of PAIA for 2010/11 told a similar lie: 'the decision to freeze the [Pietermaritzburg Senior Litigator] post due to change in business needs budget.'

In truth and in fact, as LASA National Operations Executive and deputy information officer Brian Nair repeatedly confirmed on affidavit in April 2011 and again in evidence in court in mid-2013, no record whatsoever exists of any such 'decision to freeze the post', as falsely and dishonestly alleged to the Commission for the intended misinformation of the Committee in turn.

And LASA's financial records show that there's been no 'change in business needs budget' concerning the Pietermaritzburg Senior Litigator post and those at Durban and Mthatha. Quite the contrary, since their creation by Board resolution in November 2006, LASA has applied and continues applying to the Justice Department every year, and has received and continues receiving millions of rands in salary funding for all nine of its Senior Litigator posts, including its three now very long vacant Pietermaritzburg, Durban and Mthatha posts.

And whereas in her total refusals in October 2010 and January 2011 of the requester's PAIA requests in August and December 2010 interrogating the reason the substantially complete recruitments to the said three posts had been aborted (off the record), Vedalankar repeatedly falsely alleged *insufficient budget* received from the Justice

Department as the reason for not proceeding to appoint the three candidates recommended by selection panels for LASA's three remaining vacant Senior Litigator posts and for freezing recruitment to them – which story she confirmed on affidavit under penalty of perjury in April 2011, as did Nair and Human Resources Executive Amanda Clark – Nair totally changed the alibi in his 'Report to Board' in November 2011 to account for why LASA's three remaining top professional posts had not been filled, after the *budgetary insufficiency* excuse had been completely discredited, and now falsely alleged '*recruitment challenges*', even as three eminently suitably qualified and experienced candidates had been selected and recommended for the posts – consistent with Vedalankar's absolutely false and untruthful claim to the Committee that 'they knew that those positions could not be filled'.

Hon Jeffery was pertinently aware of LASA's unlawful failure to finalize its successful, substantially complete recruitments to its Pietermaritzburg, Durban and Mthatha Senior Litigator posts under cover of a bogus financial insufficiency excuse eventually fed to the requester, and Vedalankar appreciated that Hon Jeffery was aware of this, because at her presentation on 11 October 2011 of LASA's annual report for 2010/11 the year before, Hon Jeffery pointedly raised the fact, reported to him by the requester, that LASA wasn't 'spending its money allocated to impact litigation'.

Which fact Chief Legal Executive Hundermark (then called 'Legal Development Executive'), also present at the meeting, conceded to the Committee, mentioning 'our senior litigators' performing this 'impact litigation', without disclosing to the Committee (i.e. concealing from it) that three Senior Litigator appointments had been illegally aborted and the three posts practically permanently frozen: wholly off the record in criminal contravention of section 55(1)(a) read with section 86(2) of the Public Finance Management Act 1 of 1999 ('PFMA') (quoted below); unlawfully without Board authority under the Approval Framework (quoted below); and unlawfully under section 53(4) of the PFMA (quoted below) – as the Constitutional Court confirmed in Zungu v Premier of the Province of KwaZulu-Natal and Others (CCT136/17) [2018] ZACC 1 (22 January 2018): in the case of public entities, 'leaving' a budgeted and funded 'position' 'vacant' is a 'breach of the provisions of the Public Finance Management Act (PFMA)'.

Section 55(1)(a) of the PFMA requires that 'The accounting authority for a public entity ... must keep full and proper records of the financial affairs of the public entity'. Not to do so is a serious crime under section 86(2): 'An accounting authority is guilty of an

offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.'

So if Vedalankar told the Committee the truth when responding to Hon Jeffery's query about 'the discrepancy with the posts and employees', by stating that she and her management colleagues 'had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget', records will exist to vouch that they had indeed 'adjusted' LASA's salary 'budget' sought from the National Treasury, voted by the National Assembly, and paid over via the Justice Department's Third Party Funds Division during or before the 2011/12 financial year (because 'they knew that those positions could not be filled').

And records will exist to show that that 'they adjusted the budget' by reallocating to other cost centres the salary 'budget' applied for and received for 'those positions' that 'they knew ... could not be filled'.

Certainly LASA's 'budget' has never been 'adjusted' downwards in regard to its three Senior Litigator 'positions' that 'they' allegedly 'knew ... could not be filled', because LASA's annual budget records reveal that it has always budgeted for and has always received salary budget from the Treasury via the Justice Department for all nine of its Senior Litigator posts, including its three now very long vacant posts at Durban, Pietermaritzburg and Mthatha. And it continues to do so.

Section 2.3 of LASA's Approval Framework governing 'Reallocation of budget – Operational expenditure' prescribes different levels of executive approval required for the reallocation of different amounts of LASA's budget, and it requires Board approval for any 'Reallocation of budget in excess of 8% between cost centres'.

So if Vedalankar and her fellow management executives 'adjusted' LASA's salary 'budget', not by lowering it (because they never did) but by reallocating part of it, and this entailed a 'Reallocation of budget in excess of 8% between cost centres', a record will exist to vouch that the Board approved this – unless she and they 'adjusted' LASA's salary 'budget' in regard to 'those positions' that 'they knew ... could not be filled' by reallocating 33.3% of it (one third of the salary budget for the nine Senior Litigator posts – three vacant) without Board approval in an unlawful contravention of section 2.3 of LASA's Approval Framework.

Section 53(4) of the PFMA prescribes: ‘The accounting authority for such a public entity is responsible for ensuring that expenditure of that public entity is in accordance with the approved budget.’

By definition under section 1, the Board is LASA’s ‘accounting authority’; and as authorised to do so by section 56(1)(a), the Board has delegated its powers as such to Vedalankar.

Under section 56(2)(c), the Board retains ultimate ‘responsibility concerning the exercise of the delegated power or the performance of the assigned duty’ as ‘accounting authority’, of which ‘responsibility’ its delegation to Vedalankar doesn’t ‘divest’ it.

Consistently with section 56(1)(a) of the PFMA, section 16 of the Legal Aid South Africa Act 39 of 2014 stipulates under the heading ‘Functions of chief executive officer’ in subsection (2): ‘Subject to the provisions of section 56 of the Public Finance Management Act, the chief executive officer has such powers and duties as may, in writing, be delegated or assigned to him or her by the Board.’

At the trial of case DLC 529/11 in mid-2013, a copy of the Board’s delegation to Vedalankar of its ‘powers and duties’ as ‘accounting authority’ was handed into court by LASA’s counsel.

If the requested records specified in this Part don’t exist, section 23 of PAIA requires that this be certified on affidavit – categorically and unambiguously: Section 23(1)(b) draws a clear and crucial distinction between a record that ‘(i) is in the public body’s possession but cannot be found’ and one that ‘(ii) does not exist’.

The two categories are distinguished by ‘or’, so an affidavit complying with section 23 may not conflate non-existent records with extant but lost records.

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

Albeit irrelevant under section 11(3) of PAIA to the decision of the request, the requester records that his reason for requesting the records specified in this Part is to establish whether Vedalankar told the Committee the truth in responding to Hon Jeffery’s query about ‘the discrepancy with the posts and employees’ when she stated, ‘They had

allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget' (certainly untruthfully false was her statement that 'In terms of the discrepancy with the posts and employees, it was very clear in the report'), or whether, as Hon Jeffery suggested, she lied to the Committee in making this statement – in furtherance of a cover-up of top-level recruitment corruption entailing multiple criminal and other illegal contraventions of the PFMA (illustrating the adage coined after Watergate: 'The cover-up is always worse than the crime') to defeat the Committee's constitutional oversight mandate over LASA and to evade detection and being held to account – in criminal contravention of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.

Which provides: 'A person who ... wilfully furnishes a House or committee with information, or makes a statement before it, 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.' In which case, the requester intends referring the matter to the Committee and to the National Director of Public Prosecutions.

E. Fees

*(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid. (b) You will be notified of the amount required to be paid as the request fee. (c) The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.*

The R35 request fee prescribed by section 22 of PAIA was paid into Legal Aid SA's bank account on even date under reference number: PAIA_Brink_2019.

F. Form of access to record

Mark the appropriate box with an "X". *(a) Your indication as to the required form of access depends on the form in which the record is available.* *(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.* *(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.*

1. If the record is in written or printed form -			
X	copies of records		inspection of record

2. If record consists of visual images - N/A

3. If record consists of recorded words or information which can be reproduced in sound - N/A

4. If record is held on computer or in an electronic form -					
	printed copy of record		printed copy of information derived from the record*	X	copies in computer readable form – to be emailed as file attachments.

G. Notice of decision regarding request for access

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

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

By email.

Signed at Eshowe on 12 April 2019

SIGNATURE OF REQUESTER

Legal Aid South Africa
Your voice. For justice.
Independent and within reach.

Mr. Anthony Brink
36 Pearson Street
Eshowe,
Kwazulu Natal
3815
Tel: 083 779 4174
Email: anthonybrink.sa.gmail.com

29 De Beer Street
Braamfontein, 2017
Private Bag X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

Dear Mr. Brink,

REQUEST FOR ACCESS TO RECORDS OF LEGAL AID SA: AR BRINK

1. I refer to the above matter and to your request of access to records of Legal Aid SA dated **12 April 2019** addressed to the Information Officer, Ms Vedalankar and further record that such request was received on **25 April 2019** after we had requested same.

2. The request has been referred to me as the Deputy Information Officer for reply.

3. Before I reply to your requests for records, I wish to place on record that Legal Aid SA will not comment on the allegations and conclusions that you have made relating to your requests, except to state that such assertions and conclusions are baseless and defamatory, and that the veracity of same are denied. Legal Aid SA and its officials reserves their rights in law and will, if they elect to do so, respond at the appropriate forum and time.

4. I hereby reply to your requests in the table below-

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Number	Record requested	Reply
PART ONE		
1.	All Legal Aid SA's counsels' fees for their services in drawing or settling the said postponement application papers, and for arguing the application.	The record is refused. The request is manifestly frivolous and vexatious. Secondly, the information falls within the prescripts of personal information of third parties and they refused to grant permission to release such information as required in terms of section 47 of PAIA.
2.	All travel expense and subsistence vouchers reflecting what Legal Aid SA's junior advocate and two in house attorneys to attend the said postponement application.	The record relating to junior counsels records refused on the basis that she has refused to grant permission to release such information as required in terms of section 47 of PAIA. The records relating two in house attorneys is refused on the basis that it is manifestly frivolous and vexatious and further seeks to substantially and unreasonable divert the resources of Legal Aid SA and furthermore such request does not align to the prescripts and objectives of PAIA, namely to enable the requester to fully exercise his rights and protect such rights.

PART TWO		
3.	Legal Aid SA's annual reports made under section 32 of PAIA to the South African Human Rights Commission for:	
3.1	2016/17	Access to the record is granted. The copy of the record is attached as Annexure **PH1**.This record was submitted to SAHRC and can be accessible from SAHRC.
3.2	2017/18	Access to the record is granted. The record is attached as Annexure **PH2**. This record was submitted to SAHRC and can be accessible from SAHRC.
3.3	2018/19	Access to the record is granted. The record is attached as Annexure **PH3**. This record was submitted to SAHRC and can be accessible from SAHRC

PART THREE		
4	Any record identifying what vacant 'positions could not be filled' at Legal Aid SA that 'they' [Vedalankar and other Legal Aid Sa officers] knew about.	The record is refused. The record requested is similar, ancillary or connected to the legal proceedings at the Durban Labour Court under case 529/11 which matter was ventilated and finalised by a decision of the Labour Appeal Court. The request is therefore manifestly frivolous and vexatious and seeks to substantially and unreasonably divert the limited resources of Legal Aid SA.
5	Any record reflecting the reason these vacant 'positions could not be filled' that 'they knew'.	The record is refused. The record requested is similar, ancillary or connected to the legal proceedings at the Durban Labour Court under case 529/11 which matter was ventilated and finalised by a decision of the Labour Appeal Court. The request is therefore manifestly frivolous and vexatious and seeks to substantially and unreasonably divert the limited resources of Legal Aid SA.
6	The record of executive management's decision to 'adjust the budget' because 'they knew that those positions could not be filled'.	The record is refused. The record requested is similar, ancillary or connected to the legal proceedings at the Durban Labour Court under case 529/11 which matter was ventilated and finalised by a decision of the Labour Appeal Court. The request is therefore manifestly frivolous and vexatious

		and seeks to substantially and unreasonably divert the resources of Legal Aid SA.
7	The boards resolution to approve the 'adjustment of] the budget because the vacant 'positions could not be filled', if, per Legal Aid SA's Approval Framework, this entailed a 'Reallocation of budget in excess of 8% between cost centres'.	The record is refused. The record requested is similar, ancillary or connected to the legal proceedings at the Durban Labour Court under case 529/11 which matter was ventilated and finalised by a decision of the Labour Appeal Court. The request is therefore manifestly frivolous and vexatious and seeks to substantially and unreasonably divert the limited resources of Legal Aid SA.
8	'[T]he information' about Legal Aid SA's adjustment of] that Vedalankar sent the Committee after the meeting, as undertaken to Hon Jeffrey; And its covering letter.	The record is refused. The record requested is similar, ancillary or connected to the legal proceedings at the Durban Labour Court under case 529/11 which matter was ventilated and finalised by a decision of the Labour Appeal Court. The request is therefore manifestly frivolous and vexatious and seeks to substantially and unreasonably divert the resources of Legal Aid SA.

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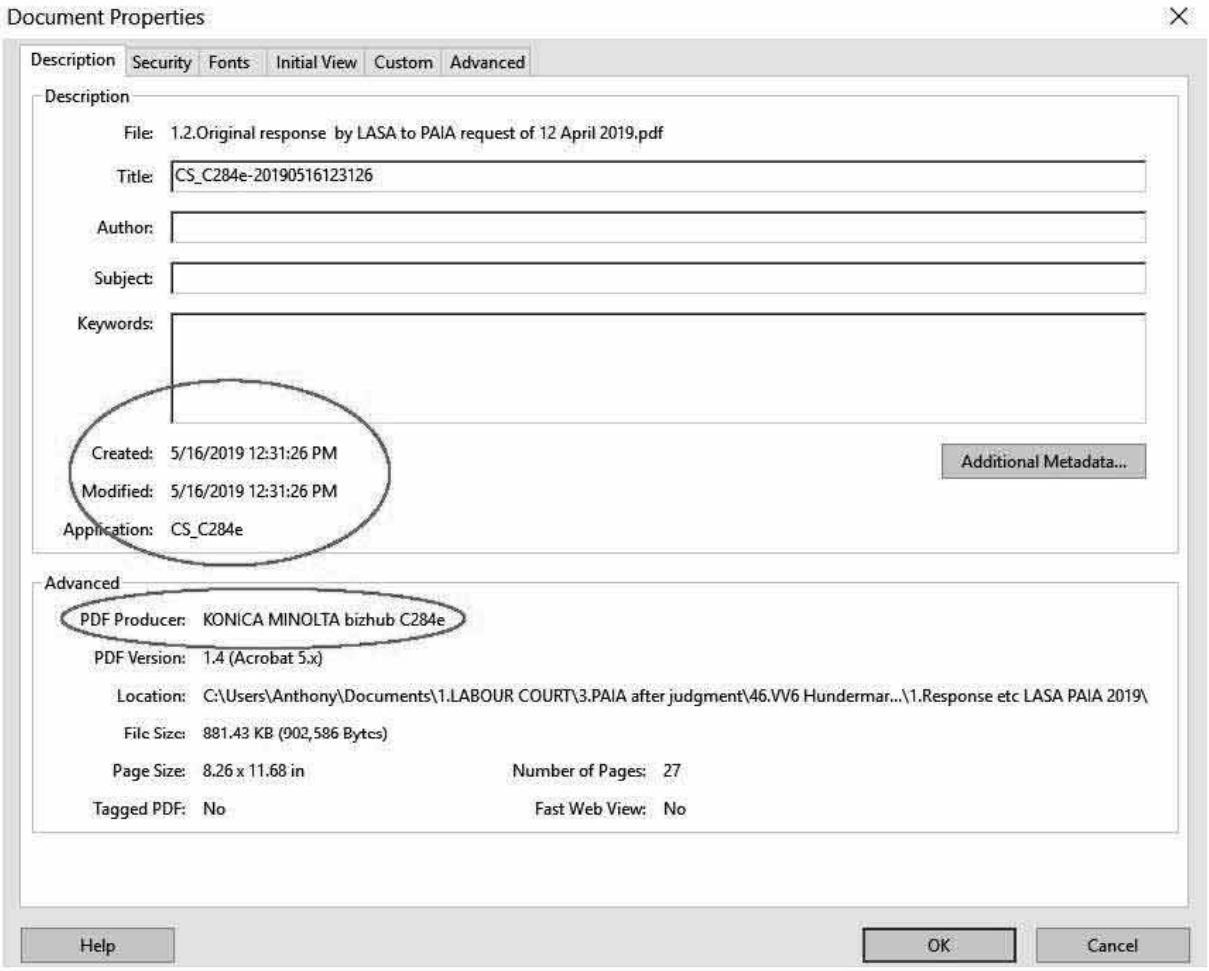
Yours Faithfully,

Mr. Patrick Hundermark

Deputy Information Officer.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Author:
Subject:
Keywords:
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Modified: 5/16/2019 12:31:26 PM
Application: CS_C284e
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File Size: 881.43 KB (902,586 Bytes)
Page Size: 8.26 x 11.68 in
Number of Pages: 27
Tagged PDF: No
Fast Web View: No
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Legal Aid South Africa

National Office
29 De Beer Street
Braamfontein
2017
Tel: 011-877-2000
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www.legal-aid.co.za

8 April 2011

South African Human Rights Commission
PAJA Unit
P/Bag 2700
Houghton
2041
paja@sahrc.org.za

Dear Commissioner

REPORT IN TERMS OF SECTION 32 OF THE PROMOTION OF ACCESS TO INFROMATION ACT 2 OF 2000: LEGAL AID SOUTH AFRICA

Please find the report for Legal Aid South Africa in compliance with section 32 of the Promotion of Access to Information Act, 20 of 2000 as amended.

Regards

Solly Sekgota
Corporate Legal Manager
Legal Aid South Africa

Received by.....on this.....day of April 2011

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Legal Aid
South Africa

LIST OF REQUESTS IN TERMS OF PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

Name of requester	Type of request	Outcome of the request	Comments	Date when request made.	Date when the request responded to.	Who responded
Antthony Brink	Request for information relating to the process on the conduct of interviews	Access partially refused	No decision taken yet on who should be appointed but the decision to freeze the post due to change in business needs-budget. The other information was provided except for information which was refused in terms of section 65 on the basis that it was not relevant to the excercising of the right he may have in law and further that the request relates to confidential information of third parties.	27/09/2010	19/10/2010	CEO
Leslie Gwele	Request for information relating to the criteria of the bonus system and bonus that the employee would be entitled to.	Access granted	All the information requested was given to the requester.	9/04/2010	12/05/2010	CEO

Professional Update

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

12 June 2009

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

InfoUpdate 12 of 2009
Vacancies

Senior Litigator

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

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

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

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

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

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

Salary:
R603 002 (all-inclousive OSD package - min of scale)

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

Ms Thandeka Hadebe, KZN/MP Regional Office, Fax Number: (031) 702-1960. Email Address: ThandekaH@legal-aid.co.za
(Please indicate clearly in your e-mail subject line the following: Application for Advertised Post: Senior Litigator.

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

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

Ref: 2009/06/25/kzn

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Legal Aid South Africa

Your voice. For justice.

Legal Aid South Africa is an autonomous statutory body with the primary objective of rendering or making available legal aid to poor persons. The National Footprint of Legal Aid South Africa covers more than 58 Justice Centres spread throughout the country.

Senior Litigator

Ref: 2009/06/25/kzn

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

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

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

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

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

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

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

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

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

For more vacancies visit www.legal-aid.co.za

nyanda mbanga communications 1460

REPORT TO BOARD

SENIOR LITIGATORS
REPORTING RELATIONSHIPS AND JOB CLARIFICATION

26TH November 2011

1. Background

The senior litigator position was introduced into our organizational structure during the 2009/10 financial year. The key objectives for creating this position were:

- to have an internal group of practitioners who could handle very complex matters
- toprovide a second career stream within the organization to focus on legal technical skills.
- to establish legal expertise to handle matters in specialist courts and higher courts such as the SCA and CC.
- to strengthen legal leadership within the organization and develop role models for other legal practitioners.

Nine senior litigator posts were created to cater for the 9 provinces. However, because there were no high court divisions in Mpumalanga and Limpopo, a second senior litigator post was allocated to Gauteng and KZN, with a view to increasing the number of positions to include posts for Mpumalanga and Limpopo at a later stage. The criteria set for the appointment of a senior litigator was set at a level to ensure that only very senior and experience practitioners were eligible.

A two stage interview process was implemented in order to identify candidates for appointment. Six senior litigators were filled 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.

2. Reporting relationships

In anticipation of the fact that most of the work allocated to senior litigators would emanate from the high court units where they were based, it was therefore decided that senior litigators should report to the high court unit managers. Whilst this reporting relationship has worked satisfactorily, there has been some concern that this reporting relationship was not appropriate because three of the senior litigations were now reporting to high court managers who previously reported to them when they were high court unit managers. Whilst under normal circumstances such a situation should not pose a problem, there has nevertheless been a concern that the low participation of some senior litigators in SCA cases could arise from the fact that they may be in a position to dictate to their high court unit managers on how cases are allocated in the unit.

It has therefore been agreed that from the beginning of the third quarter of this financial year, all senior litigators will directly report to their ROE. ROEs will therefore be more responsible

for the type of matters undertaken by their senior litigators. Senior litigators will nevertheless be permitted to operate from the Justice Centre where they are currently situated. However, should their relocation to the regional office improve the performance of their function, then this will also be permitted.

3. Type of matters to be handled by senior litigators

It was agreed with senior litigators that the following type of matters should ideally be handled by themselves:

- Matters which are regarded as very complex received at HCUs and JCs in the region.
- Matters identified by CCMC as impact litigation matters;
- Matters that are to be heard by a full bench of the HC, the SCA and the CC.
- Matters to be heard at specialist courts such as the commercial crimes court
- High profile matters which could negatively affect our reputation if not handled properly

A very small percentage of their time could also be spent to prepare opinions, assisting other practitioners with the preparations of their heads of arguments as well as training of staff.

An analysis has been done to determine our current coverage of criminal trial matters at both the SCA, as well as full bench appeals done at each HC division with appeal jurisdiction. During the first three terms this year, 49 criminal appeals were done of which 22 (45%) was done by Legal Aid SA. With regards full bench appeals, 206 full bench appeals were done of which 146 (71%) were done by Legal Aid SA. (Refer to Annexure A and B for details)

4. Quality reviews of senior litigators

Noting that our senior litigators constitute some of our most senior and experienced lawyers in our organization, it is felt that the current system of evaluating their performance, firstly by their high court unit managers and thereafter by our legal quality assurance unit may not be appropriate. It has therefore been agreed 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 these reviews.

The terms of reference for these review panels will include:

- an examination of the type of cases handled to determine if it complies with our requirements;
- an examination of the level of preparedness for their cases
- a review of the appropriateness of the legal strategy adopted in their cases
- a determination of whether the most appropriate outcome of the case was achieved.

The review panel will be established during the third quarter of this financial year. All senior litigators will be reviewed by this panel before the end of this financial year.

Submitted for information.

National Operations Department

LEGAL AID SOUTH AFRICA
BUDGET 2010/11

Office of the CFO
February 2010

LEGAL AID SOUTH AFRICA
2010/2011 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Western Cape /Northern Cape Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Total 2010/11	2009/10	Variance	%
	DIRECT COSTS																							
1	Basic Salary	30050					1 885 277			3 441 398		3 398 578	916 981		74 829 684	67 307 248	91 579 850	85 658 093	76 584 335	53 423 436	459 004 880	400 185 458	58 819 422	15%
2	Bonuses	30100					9 620			237 374		153 784	66 122		4 291 574	3 591 230	4 989 269	4 943 519	4 221 879	3 010 261	25 514 832	26 828 655	-1 313 823	-5%
3	Housing Allowance	30150					10 185					12 976	6 346		628 730	540 562	660 924	837 464	602 676	657 870	3 957 735	7 441 659	-3 483 924	-47%
4	Medical Aid Contribution	30200					24 336			48 672		60 840	21 624		1 533 427	872 150	1 382 288	1 119 943	1 721 785	698 177	7 483 242	7 389 938	93 304	1%
5	Motor Car Allowance	30450					232 682						2 438		66 967	507 345	1 068 812	497 771	251 073	540 825	3 167 913	2 066 518	1 101 395	53%
6	Pension Contribution	30550								341 818		179 273	98 124		4 825 351	4 375 371	6 386 919	5 474 460	5 810 612	4 409 939	31 901 868	33 484 259	-1 582 391	-5%
7	UIF Contribution	30650					5 878			10 416		11 676	3 101		367 435	347 895	485 858	473 478	426 457	308 003	2 440 197	2 128 070	312 127	15%
8	Increasing paralegal capacity	30710																			0	2 036 715	-2 036 715	-100%
9	Review of CA model	30720																			0	5 118 109	-5 118 109	-100%
10	OSD Additional Funding												30 000 000								30 000 000			
			0	0	0	0	2 168 178	0	0	4 079 678	0	3 817 127	31 114 736	0	86 543 169	77 641 801	106 553 920	99 004 729	89 598 819	63 048 510	563 470 666	486 679 381	46 791 285	10%
	ADMIN SUPPORT COST																							
11	Basic Salary	40050	922 087	2 523 053	1 070 623	2 008 042	3 908 248	19 628 887	34 235 746	4 986 235	6 784 830	1 511 316	2 355 516	4 108 011	12 728 672	13 820 630	14 512 096	13 526 410	12 794 948	10 911 252	162 336 601	143 481 595	18 855 002	13%
12	Bonuses	40100	24 557	16 766		187 337	265 395	390 953	238 798	277 674	317 653	107 387	137 622	229 415	914 671	1 049 991	1 042 603	1 105 113	1 050 289	907 398	8 244 022	6 993 816	1 250 206	18%
13	Housing Allowance	40150	12 000	6 000	40 648	36 007	147 607	94 994	67 982	73 458	156 124	18 000	30 000	120 000	514 320	541 440	577 680	569 652	583 437	469 200	4 058 550	4 153 183	-94 634	-2%
14	Medical Aid Contribution	40200	36 504	12 168	12 168	82 791	273 537	269 775	131 157	127 764	177 246	48 672	72 036	240 912	842 789	802 625	1 017 113	697 481	819 259	709 031	6 373 028	6 098 080	274 948	5%
15	Motor Car Allowance	40450	55 553		101 621	88 072	148 633	342 696	313 934	502 131	598 593	81 297	117 108		0	40 320	177 918	89 101	95 593	32 519	2 785 089	2 285 619	499 470	22%
16	Pension Contribution	40550	35 362	24 143		144 327	448 501	670 631	319 043	282 875	329 457	137 666	252 582	330 357	1 341 324	1 592 815	1 661 914	1 579 093	1 510 266	1 306 658	11 967 014	10 257 732	1 709 282	17%
17	UIF Contribution	40650	4 464	4 467	1 488	9 744	33 141	40 866	23 763	27 368	31 248	7 440	10 963	27 641	115 670	123 894	130 638	260 085	118 628	103 115	1 074 603	743 862	330 741	44%
			1 090 526	2 586 597	1 226 548	2 536 319	5 225 062	21 438 802	35 330 425	6 277 706	8 395 151	1 911 779	2 975 827	5 056 336	16 457 646	17 971 715	19 119 960	17 826 915	16 972 419	14 439 173	196 838 907	174 030 798	22 808 109	13%
	OTHER DIRECT EXPENDITURE																							
18	Judicare	35250													9 098 022	9 872 047	21 977 033	13 854 415	13 167 091	6 138 184	74 107 594	78 266 122		0%
19	Disbursements	35950													183 400	105 000	352 128	386 167	130 000	174 230	1 330 925	837 560	493 365	59%
20	Expert Witness	35150													343 746	290 280	611 400	280 960	406 000	231 120	2 163 506	2 163 506	0	0%
21	Co-operation Agreements	35050											2 795 518		302 341		2 539 693	872 524	570 600	73 080	7 153 756	4 208 004	2 945 752	70%
22	Impact Litigation	35200										5 290 000									5 290 000	3 156 000	2 134 000	68%
23	Travelling and Subsistence-Circuit	36060													77 848	240 908	87 104	25 248	81 250	91 254	603 612	603 612	0	0%
24	N/Footprint Expansion Program	36070											8 000 000								8 000 000	11 581 019	-3 581 019	-31%
25	Case Backlog	35900											25 000 000								25 000 000	20 000 000	5 000 000	25%
26	Increase in legal capacity												20 139 988								20 139 988		20 139 988	100%
27	Children's matters																				0	1 600 000	-1 600 000	-100%
			0	0	0	0	0	0	0	0	0	5 290 000	55 935 506	0	10 005 357	10 508 235	25 567 358	15 419 314	14 355 741	6 707 868	143 789 381	122 415 823	21 373 558	17%
	OPERATING BUDGET																							
28	Achiever Awards	41060							216 712												216 712	210 400	6 312	3%
29	Advertising	41100				2 060 004		88 720					20 604								2 169 328	2 106 144	63 184	3%
30	Annual Report	41150	257 500																		257 500	250 000	7 500	3%
31	Audit Fees	41250						2 348 365													2 348 365	1 711 632	636 733	37%
32	Bank Charges	41350						597 384													597 384	579 984	17 400	3%
33	Board Fees	41450	898 813																		898 813	872 634	26 179	3%
34	Change Management	41550							544 520												544 520	528 660	15 860	3%
35	Cleaning Materials & Services	41600					436 467								557 445	540 728	646 002	328 654	598 328	589 029	3 696 653	3 500 765	195 888	6%
36	Communication	41650				2 140 634												166 790		172 363	2 479 787	2 407 560	72 227	3%
37	Computers-Disaster Recovery	41700									939 317										939 317	579 996	359 321	62%
38	Computers-Maintenance	41750									95 901										95 901	93 108	2 793	3%
39	Computers-Software Licences	41800							961 162		5 997 336										6 958 498	6 048 296	910 202	15%
40	Congresses & Seminars	41850	21 006	24 076	22 044			40 017	64 093	21 072			20 020								212 328	206 144	6 184	3%
41	Contingencies	41900											355 095	0	628 653	331 421	503 418	357 583	566 904		2 743 074	2 663 179	79 895	3%
42	Corporate Governance Training	42100	56 893																		56 893	55 236	1 657	3%
43	Depreciation	42200	30 376	48 597		53 170	456 177	89 417	77 009	220 132	2 008 962	87 539	268 969	38 007	2 965 035	2 176 074	2 967 735	3 420 642	3 033 449	2 473 520	20 414 810	18 902 587	1 512 223	8%
44	Document Exchange	42550					24 574								125 016	122 303	99 669	152 854	152 814	123 913	801 143	778 743	22 400	3%
45	Education & Training	42600	6 895	11 492	4 597	12 646	69 530	91 939	394 527	49 419	142 498	2 397 102	45 972	27 580	287 404	598 651	487 075	477 914	430 407	312 785	5 848 432	5 883 779	-35 347	-1%
46	Employee Assist/Counselling(OHS/	42650							210 377												210 377	204 250	6 127	3%
47	Employment Relations	42700							208 313												208 313	200 304	8 009	3%
48	Employment Equity	44750							89 968												89 968	87 348	2 620	3%
49	Forensic Investigations	42800								41 458											41 458	40 250	1 208	3%
50	HIV/Aids Management	42900							206 000												206 000	200 000	6 000	3%
51	Implementation & Training - SAP	42950																			0	94 424	-94 424	-100%
52	Insurance Short Term	43100						4 949 231													4 949 231	4 677 909	271 322	6%
53	Internal Audit Support	43200																			0	103 642	-103 642	-100%
54	IT Support	43250									1 712 186										1 712 186	519 694	1 192 592	69%

ANNEXURE R55

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LEGAL AID SOUTH AFRICA
2010/2011 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Western Cape /Northern Cape Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Total 2010/11	2009/10	Variance	%
55	Leadership Programme	43450							1 278 900												1 278 900	830 000	448 900	54%
56	Legal Fees	43400					425 975														425 975	413 568	12 407	3%
57	Library and Publications	43450	4 625	4 614	4 621	4 625	4 625	4 625	9 794	4 625	4 625	118 290	4 625		112 373	117 979	219 613	85 128	76 589	186 705	968 082	1 145 711	-177 629	-16%
58	Maintenance - Buildings	43500					696 684								51 898	51 177	74 564	57 951	49 164	44 072	1 025 510	995 641	29 869	3%
59	Maintenance - office equipment	43550					76 261								138 025	139 046	276 009	447 469	173 638	169 683	1 420 132	1 378 769	41 363	3%
60	Management Fees	43560						568 869													568 869	552 300	16 569	3%
61	Moving Costs	43650					5 492						51 203								56 695	55 044	1 651	3%
62	Municipal Services	43700					787 330								625 482	613 448	1 211 717	1 140 908	1 161 536	797 006	6 337 429	5 302 881	1 034 548	20%
63	Office Rental and Operating Costs	43850													4 936 600	4 231 279	4 836 124	5 993 978	4 117 847	4 258 518	28 374 346	25 367 712	3 006 634	12%
64	Postage & Courier Charges	44000				30 834	28 055	322 227			29 134		29 310	2 345	59 934	83 779	90 224	88 419	77 335	77 335	918 930	892 165	26 765	3%
65	Printing and Stationery	44100	110 588	27 186	1 520	7 593	221 177	157 077	22 546	41 027	25 716	171 782	264 543	25 400	643 100	569 764	679 042	710 404	651 783	559 603	4 689 852	4 747 429	142 423	3%
66	Professional Services	44150		1 045 013								77 745									1 122 758	1 090 056	32 702	3%
67	Public Relations	44300	7 166	75 608	7 172	7 166	7 166	6 826	7 166	7 166	7 166	32 947	7 166	7 166	21 011	21 516	24 420	33 450	24 377	22 284	326 943	317 420	9 523	3%
68	Recruitment	44350							870 577												870 577	845 220	25 357	3%
69	Refreshment - Board	44450	38 007																		38 007	36 900	1 107	3%
70	Refreshment - Staff	44500	5 294	28 530	11 088	9 052	16 403	20 999	15 311	16 987	11 855	9 829	23 437	10 665	107 657	116 119	128 741	143 265	102 004	84 366	861 602	836 507	25 095	3%
71	Rental - Office Equipment	44550					400 609						3 936		67 616	173 265	340 986	269 030	161 212	185 003	1 601 660	1 545 707	55 953	4%
72	Security Costs	44600					545 414								78 579	91 989	111 866	90 139	99 461	135 997	1 153 585	1 118 975	34 590	3%
73	Signage & Branding	44700				514 838	5 275								6 953	7 127	5 276	24 770	6 240	16 689	589 168	572 008	17 160	3%
74	Skills Development Levy	44800	659	2 359	1 270	3 720	5 374	1 866	5 584	6 920	6 491	5 664	4 162	1 626	78 649	71 073	104 588	106 708	86 368	66 923	562 003	545 634	16 369	3%
75	Software Maintenance	44850							215 979		271 623										487 602	473 400	14 202	3%
76	Staff - Bursaries	44900							515 004												515 004	500 004	15 000	3%
77	Stakeholders Forum	44950											32 322		93 107	81 347	87 307	102 889	83 849	97 461	578 280	561 437	16 843	3%
78	Storage Costs	45000											137 609		40 041	15 151	269 036	156 374	213 955	46 477	876 644	853 052	25 592	3%
79	Subscriptions and Members Fees	45050	5 519	16 987	3 269	6 688	14 889	14 655	25 371	31 036		12 860	1 997		185 379	218 622	225 558	247 310	304 065	180 383	1 494 687	1 451 152	43 535	3%
80	Telephone & Fax	45200					1 365 610								1 956 181	2 368 237	2 398 138	2 052 765	2 234 322	1 827 726	14 202 979	13 789 300	413 679	3%
81	Tools & Equipment	45220	5 860	6 860	6 860	3 455	58 733	8 991	6 860	6 860	6 860	6 860	6 860	6 860	151 634	258 980	75 456	520 924	75 456	68 597	1 283 963	1 246 566	37 397	3%
82	Travel International	45320																			0	100 000	-100 000	-100%
83	Travelling and Other - Committees	45350	325 142																		325 142	315 672	9 470	3%
84	Travelling and Subsistence - Staff	45400	44 054	95 340	88 114	56 617	44 054	56 617	56 617	585 724	44 054	70 491	132 171		853 395	1 037 600	574 752	1 377 442	523 623	926 067	6 666 733	5 884 931	681 802	12%
85	Vehicle - Fuel	45500					77 421			16 494					947 731	1 093 021	740 368	1 020 408	1 098 335	1 425 632	6 419 409	6 232 436	186 973	3%
86	Vehicle - Licences	45550					1 174			724					16 713	16 004	17 366	25 763	28 454	23 445	129 644	125 868	3 776	3%
87	Vehicle - Maintenance	45450					16 724			10 749					251 686	339 383	292 060	354 767	309 424	413 986	1 988 780	1 930 854	57 926	3%
88	Vehicle - Tracking	45660					4 558						1 269 600								1 274 158	1 204 308	69 850	6%
89	Website																				0	855	-855	-100%
90	Wide Area Network	45650									7 681 600										7 681 600	7 481 724	199 876	3%
91	Workmens Compensation	45700						639 300													639 300	620 680	18 620	3%
92	Workshops	45750	121 509	70 160	11 463	14 863	35 982	51 584	20 634	25 792	20 750	14 185	1 088 266	6 449	484 347	538 582	593 069	558 383	555 551	416 653	4 726 242	4 588 584	137 658	3%
	Operating Budget		**1 940 907**	**1 456 825**	**162 017**	**4 926 907**	**5 831 733**	**10 058 709**	**6 021 025**	**1 088 185**	**19 006 075**	**3 005 294**	**3 767 868**	**126 098**	**16 471 644**	**16 021 663**	**18 180 416**	**20 513 083**	**16 998 490**	**15 702 222**	**161 278 161**	**149 462 732**	**11 815 429**	**7.9%**
	Total Operating Budget		**3 031 433**	**4 043 422**	**1 388 565**	**7 462 226**	**13 224 973**	**31 497 512**	**41 351 450**	**11 445 568**	**27 401 226**	**14 024 200**	**93 793 938**	**5 182 434**	**129 477 817**	**122 043 414**	**169 421 654**	**152 764 041**	**137 925 468**	**99 897 774**	**1 065 377 115**	**932 588 734**	**102 788 381**	**11%**
	CAPITAL BUDGET																							
93	Computer Hardware	10100	27 597	38 305		61 374	284 281	201 011	95 763	242 052	406 894	103 991	151 079	84 443	1 384 657	1 340 326	1 421 987	1 315 124	1 176 689	1 311 587	9 647 160	2 206 270	7 440 890	337%
94	Furniture and Equipment	10300																			0	182 004	-182 004	-100%
95	Leasehold Improvements	10200					762 456								562 500	62 500	687 500	375 000	837 500	125 000	3 412 456	8 158 601	-4 746 145	-58%
96	Motor Vehicles	10050													162 922	682 640	1 000 746	1 194 620	1 194 620	1 023 960	5 259 508	11 277 331	-6 017 823	-53%
97	National Footprint	10700																			0	5 233 607	-5 233 607	100%
98	CAPEX Expansion																				0		0	100%
	Total Capital Budget		**27 597**	**38 305**	**0**	**61 374**	**1 045 737**	**201 011**	**95 763**	**242 052**	**406 894**	**103 991**	**151 079**	**84 443**	**2 110 079**	**2 085 466**	**3 110 233**	**2 884 744**	**3 208 809**	**2 460 547**	**18 319 124**	**27 057 813**	**-8 738 689**	**-32%**
	Total Budget		**3 059 030**	**4 081 727**	**1 388 565**	**7 523 600**	**14 271 710**	**31 698 523**	**41 447 213**	**11 687 620**	**27 808 120**	**14 128 191**	**93 945 017**	**5 266 877**	**131 587 896**	**124 128 880**	**172 531 887**	**155 648 785**	**141 134 277**	**102 358 321**	**1 083 696 239**	**959 646 547**	**124 049 692**	**13%**

ANNEXURE

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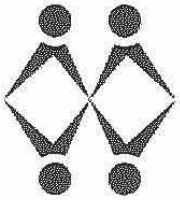
LEGAL AID SOUTH AFRICA
SALARIES BUDGET 2010/2011

Pers. No	Employee Group	New levels 10/11	Position	Total CTC
Filled	Permanent Employees	LP-10-5	Senior Litigator	704 008.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Filled	Permanent Employees	LP-10-6	Senior Litigator	714 568.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00
Vacant	Permanent Employees	LP-10-1	Senior Litigator	663 302.00



Legal Aid
South Africa

LEGAL AID SOUTH AFRICA
BUDGET 2011/12

Office of the CFO
February 2012

LEGAL AID SOUTH AFRICA
2011/2012 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Western Cape /Northern Cape Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Total 2011/12	Total 2010/11	Variance	%
	DIRECT COSTS																							
1	Basic Salary	30050					2 060 725					4 030 083	8 920 865		84 786 179	76 499 941	100 500 230	99 648 269	83 137 833	63 771 801	523 355 926	484 363 871	38 992 055	8%
2	Bonuses	30100					126 009					208 248	279 787		5 085 664	4 594 001	5 802 441	5 738 919	4 701 885	3 903 095	30 440 050	25 736 903	4 703 147	18%
3	Housing Allowance	30150					5 472					6 000	71 352		923 706	873 504	991 876	1 150 134	870 816	1 042 237	5 935 097	4 131 975	1 803 122	44%
4	Medical Aid Contribution	30200					12 168					60 840	103 239		1 712 132	1 383 585	1 731 976	1 435 723	1 549 674	1 437 732	9 427 072	7 799 602	1 627 470	21%
5	Motor Car Allowance	30450					209 136						29 257		60 000	361 340	934 839	400 485	224 951	652 860	2 872 867	3 167 913	-295 046	-9%
6	Pension Contribution	30550										228 562	367 713		7 207 615	6 534 781	8 186 376	7 843 207	6 660 634	5 454 746	42 483 633	32 104 167	10 379 466	32%
7	UIF Contribution	30650					7 440					10 416	17 856		428 545	404 736	525 534	519 311	450 866	351 472	2 716 176	2 586 308	129 868	5%
8	Increase in legal capacity	30 710											20 000 000								20 000 000	72 000 000	-52 000 000	-72%
9			0	0	0	0	2 420 949	0	0	0	0	4 544 149	29 790 069	0	100 203 841	90 651 891	118 673 272	116 736 048	97 596 660	76 613 943	637 230 821	631 890 739	5 340 082	1%
	ADMIN SUPPORT COST																							
9	Basic Salary	40050	860 226	2 343 927	1 103 870	2 463 934	4 205 444	8 325 175	4 847 760	10 200 656	7 703 693	2 377 220	4 449 780	1 959 979	14 732 391	15 027 894	15 899 838	16 894 117	14 069 727	12 245 991	139 711 621	124 970 995	14 740 625	12%
10	Bonuses	40100	12 349	133 235	65 370	147 191	326 158	618 024	364 130	678 207	596 236	115 291	306 355	163 332	1 189 219	1 227 869	1 292 584	1 368 310	988 415	997 529	10 589 826	8 591 525	1 998 301	23%
11	Housing Allowance	40150	9 600	9 600	36 000	42 552	201 600	196 152	97 661	131 297	247 159	46 908	201 600	115 200	864 000	912 000	966 000	1 024 152	1 067 306	768 000	6 936 767	4 058 550	2 878 237	71%
12	Medical Aid Contribution	40200	11 592	24 336	12 168	84 600	249 633	332 037	133 272	174 897	238 239	60 840	264 393	145 593	937 440	920 331	1 121 112	908 736	915 121	753 840	7 288 180	6 493 860	794 320	12%
13	Motor Car Allowance	40450		49 200	90 000			189 290	298 081	438 408	580 233	203 636	102 000			74 437	163 813	82 200		32 269	2 303 568	2 793 968	-490 400	-18%
14	Pension Contribution	40550	17 783	25 955		140 211	469 668	760 344	353 506	622 845	454 252	234 733	494 568	235 197	1 712 475	1 755 762	1 791 577	1 900 625	1 643 503	1 421 603	14 034 608	12 558 130	1 476 478	12%
15	UIF Contribution	40650	2 976	4 464	1 488	10 416	34 224	44 640	22 320	41 664	37 200	8 928	34 224	17 856	142 848	147 312	157 728	166 656	141 360	123 504	1 139 808	1 076 196	63 612	6%
16	Incentives payments - Staff	43000							34 183 697												34 183 697	30 563 078	3 620 619	11.8%
17	Group Life	43050							14 468 448												14 468 448	12 890 710	1 577 738	12%
			914 526	2 590 717	1 308 896	2 888 904	5 486 726	10 465 663	54 768 875	12 287 975	9 857 013	3 047 556	5 852 921	2 637 157	19 578 373	20 065 626	21 392 652	22 344 796	18 825 432	16 342 736	230 656 544	203 997 013	26 659 531	13%
	OTHER DIRECT EXPENDITURE																							
18	Judicare	35250													9 435 607	10 046 190	22 169 310	14 202 449	16 665 777	6 246 462	78 785 795	74 107 579	4 678 216	6%
19	Disbursements	35950													322 975	177 229	491 294	387 832	186 714	272 226	1 838 270	1 737 349	100 921	6%
20	Expert Witness	35150													359 703	297 223	606 762	295 332	455 329	235 697	2 250 046	1 910 506	339 540	18%
21	Co-operation Agreements	35050											2 923 764		321 168	109 200	2 539 693	1 527 407		76 003	7 497 235	7 153 756	343 479	5%
22	Impact Litigation	35200										5 611 632									5 611 632	5 290 000	321 632	6%
23	Travelling and Subsistence-Circuit	36060											0		80 962	250 545	87 104	112 820	72 916	94 904	699 251	662 551	36 700	6%
24	Case Backlog	35900											30 000 000								30 000 000	25 000 000	5 000 000	20%
25	Child Act	35060											3 165 000								3 165 000	3 000 000	165 000	6%
26	Child Justice Act	35070											10 550 000								10 550 000	10 000 000	550 000	6%
27	FIFA World Cup	35 070											0								0	11 916 000	-11 916 000	-100%
			0	0	0	0	0	0	0	0	0	5 611 632	49 867 064	0	10 520 415	10 880 387	25 914 163	16 525 840	17 380 736	6 925 292	140 397 229	140 777 741	-380 512	0%
	OPERATING BUDGET																							
28	Achiever Awards	41060							229 910												229 910	216 712	13 198	6%
29	Advertising	41100				2 191 844		95 337					21 923								2 309 104	2 169 328	139 776	6%
30	Annual Report	41150	275 904																		275 904	261 266	14 638	6%
31	Audit Fees	41250						2 535 980													2 535 980	2 348 365	187 615	8%
32	Bank charges	41350						633 770													633 770	598 162	35 608	6%
33	Board fees	41450	952 646																		952 646	898 813	53 833	6%
34	Call Centre Support	41510											201 272								201 272	189 879	11 393	6%
35	Call Centre Maintenance Equipment	41520											213 571								213 571	201 957	11 614	6%
36	Change Management	41550							571 964												571 964	541 730	30 234	6%
37	Cleaning Materials	41600					578 243								771 625	549 689	851 699	401 001	711 326	630 261	4 493 844	3 922 921	570 923	15%
38	Communication	41650				2 553 188												0			2 553 188	2 416 768	136 420	6%
39	Computer - Disaster Recovery	41700									904 337										904 337	939 317	-34 980	-4%
40	Computer - Maintenance	41750									101 634										101 634	95 901	5 733	6%
41	Computer - Software Licences	41800						25 000	999 609	92 984	5 925 559										7 043 152	7 611 145	-567 993	-7%
42	Congress & Seminar	41850	22 064	27 035	23 155			42 033	67 324	22 134			21 514								225 259	212 328	12 931	6%
43	Contigencies	41900											420 000		250 000	262 500	262 500	250 000	262 500	262 500	1 970 000	1 851 630	118 370	6%
44	Corporate Governance Training	42100	60 358																		60 358	56 893	3 465	6%
45	Depreciation	42200	40 165	64 241		70 285	603 021	4 469 788	101 917	290 993	2 634 892	115 718	355 551	50 246	4 301 025	3 813 842	5 226 737	5 102 976	4 625 948	4 612 603	36 479 946	20 414 810	16 065 138	79%
46	Document Exchange	42550					31 278								153 699	133 293	90 674	146 720	150 922	133 635	840 221	798 035	42 186	5%
47	Education & Training	42600	7 157	11 927	4 771	13 125	72 165	95 424	409 480	53 573	147 899	2 492 104	323 796	28 626	428 569	609 958	498 580	547 147	502 097	395 684	6 642 081	6 306 951	335 130	5%
48	Employee Assist/counselling(OHS)	42650							227 544												227 544	214 034	13 510	6%
49	Employment Relations	42700							251 385												251 385	237 519	13 866	6%
50	Employment Equity	44750							95 447												95 447	89 968	5 479	6%
51	Forensic Investigations	42800								43 982											43 982	41 458	2 525	6%
52	HIV/Aids Management	42900							218 546												218 546	206 000	12 546	6%
53	Insurance Short Term	43100						7 866 294													7 866 294	5 741 218	2 125 076	37%
54	IT Support	43250									1 350 458										1 350 458	1 914 463	-564 005	-29%
55	Leadership Programme	43450							1 356 791												1 356 791	1 278 900	77 891	6%

ANNEXURE A

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LEGAL AID SOUTH AFRICA
2011/2012 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Western Cape /Northern Cape Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Total 2011/12	Total 2010/11	Variance	%
56	Legal Fees	43400					402 700														402 700	380 975	21 725	6%
57	Library & Publications	43450	4 759	4 749	4 755	4 759	4 759	4 759	10 076	4 759	4 759	2 627 461	4 759		66 000	76 500	69 500	79 000	66 500	59 000	3 096 854	957 385	2 139 469	223%
58	Maintenance - Buildings	43500					731 518								95 554	84 834	94 560	77 144	45 388	46 277	1 175 276	1 105 242	70 034	6%
59	Maintenance - Office Equipment	43550					97 353					7 278			101 464	165 350	285 795	580 889	149 355	207 095	1 595 579	1 553 567	42 012	3%
60	Management Fees - Travel	43560						587 338													587 338	553 881	33 457	6%
61	Moving costs	43650																0			0	57 055	-57 055	-100%
62	Municipal Services	43700					1 118 040								680 690	747 793	1 431 979	1 118 657	1 382 375	971 553	7 451 087	6 320 222	1 130 865	18%
63	Office Rental & Operating costs	43850													6 133 926	4 950 651	5 427 228	6 740 546	4 631 014	4 601 032	32 484 397	29 116 355	3 368 042	12%
64	Postage & Courier	44000				32 357	29 438	336 148			30 573		30 758	2 461	90 882	87 860	96 105	111 691	150 148	81 155	1 081 577	1 017 636	63 941	6%
65	Printing & Stationery	44100	119 567	29 395	1 643	8 210	239 137	166 046	24 376	44 359	27 804	187 353	324 948	27 462	678 123	607 371	798 403	864 449	704 971	625 321	5 478 938	5 215 061	263 877	5%
66	Professional Services	44150		996 943								74 169	203 517					18 000			1 292 629	1 218 313	74 316	6%
67	Public Relations	44300	3 360	94 359	3 360	3 360	3 360	3 360	3 360	3 360	3 360	3 360	3 360	3 360	36 960	47 040	30 240	43 680	36 960	33 600	359 789	340 406	19 393	6%
68	Recruitment	44350							922 812												922 812	870 577	52 235	6%
69	Redeployment of staff	44400																				26 123	-26 123	-100%
70	Refreshment - Board	44450	40 323																		40 323	38 007	2 316	6%
71	Refreshment - Staff	44500	5 010	28 226	10 493	8 765	15 524	21 101	14 491	17 305	11 327	5 862	80 698	10 093	140 180	111 528	120 087	190 062	101 850	87 254	979 856	924 107	55 751	6%
72	Rental - Office Equipment	44550					418 009						4 110		70 346	404 411	637 214	477 631	280 123	194 586	2 486 430	1 815 676	670 754	37%
73	Security Costs	44600					730 140								251 760	86 505	173 595	66 448	85 775	143 455	1 537 677	1 274 946	262 731	21%
74	Signage& Branding	44700				649 849	6 967									1 486		0	0	0	658 302	623 620	34 682	6%
75	Skills Development Levy	44800	740	2 016	949	2 119	3 617	7 160	4 169	8 773	6 625	2 044	3 827	1 686	71 941	68 263	64 393	110 357	188 462	62 195	609 335	575 155	34 180	6%
76	Software Maintenance	44850							228 938		287 920										516 858	343 602	173 256	50%
77	Staff Bursary	44900							546 806												546 806	515 004	31 802	6%
78	Stakeholders Forum	44950											32 932		91 215	83 175	75 916	121 171	85 432	99 302	589 144	556 645	32 499	6%
79	Storage Costs	45000					168 873								43 260	18 593	311 818	252 940	106 070	57 000	958 554	902 240	56 314	6%
80	Subscription and Members fees	45050	19 685	19 620	3 775	7 724	17 196	16 927	29 304	35 847	11 000	16 653	17 899		185 450	261 270	296 338	272 361	328 937	229 220	1 767 206	1 664 447	102 759	6%
81	Syspro Support	45060						30 000													30 000	30 000		0%
82	Telephone & Fax	45200					1 768 174						451 373		2 021 016	2 288 588	2 425 145	1 668 261	2 064 601	1 846 573	14 533 731	13 772 867	760 864	6%
83	Tools & Equipment	45220	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	55 000	70 000	55 000	65 000	55 000	50 000	410 000	1 566 440	-1 156 440	-74%
84	Travel and other - Committees	45350	344 651																		344 651	325 142	19 509	6%
85	Travel & Subsistence - Staff	45400	44 350	98 320	90 775	57 293	44 350	57 292	57 292	909 000	44 095	120 359	150 295		882 447	1 104 771	641 549	1 475 220	529 573	981 335	7 288 317	6 862 991	425 326	6%
86	Vehicle - Fuel	45500					80 518			17 189					1 207 872	1 148 058	716 738	1 089 118	1 019 425	1 505 183	6 784 102	6 250 057	534 045	9%
87	Vehicle - Licences	45550					1 350			827					22 932	20 681	20 277	24 872	35 185	30 296	156 420	146 878	9 542	6%
88	Vehicle - Maintenance	45450					19 004			12 271					293 084	363 828	288 711	464 104	337 006	357 455	2 133 462	2 022 186	111 276	6%
89	Vehicle - Tracking	45560					1 409 562														1 409 562	1 274 159	135 403	11%
90	Wide Area Network	45650									9 801 138										9 801 138	7 681 600	2 119 538	28%
91	Workmens Compensation	45700						677 918													677 918	639 300	38 618	6%
92	Workshops	45750	119 929	69 819	11 314	14 670	35 514	50 913	20 365	25 456	20 481	15 235	1 103 729	6 365	586 090	529 808	715 212	569 922	555 367	538 053	4 988 240	4 753 918	234 322	5%
	Operating Budget			2 055 669	1 451 651	159 991	5 622 549	8 634 810	17 729 586	6 396 905	1 587 811	21 318 861	5 672 595	3 974 831	135 299	19 711 110	18 697 846	21 704 994	22 929 366	19 190 311	18 841 622	195 825 608	165 068 257	30 757 351	19%
	Total Operating Budget			2 980 195	4 042 368	1 468 887	8 511 453	16 542 485	28 195 251	61 165 779	13 875 786	31 175 874	18 875 932	89 484 865	2 772 456	150 013 739	140 295 550	187 685 080	178 536 050	152 993 138	118 723 592	1 204 110 201	1 141 733 749	62 376 452	5%
	CAPITAL BUDGET																							
93	Computer Hardware	10100		10 996			259 755	95 880	84 346	254 135	157 531	53 222	46 094	32 989	777 479	805 092	1 015 001	921 278	637 394	381 949	5 533 141	22 093 966	-16 560 825	-75%
94	Corporate IT										1 821 554										1 821 554		1 846 517	100%
95	Computer Software	10400									171 000										171 000	508 043	-337 043	-66%
96	Furniture & Equipment	10300																				995 526	-995 526	-100%
97	Leasehold Improvements	10200					816 865								887 750	424 000	861 250	1 378 000	530 000	530 000	5 427 865	5 289 401	138 464	3%
98	Motor vehicles	10050													1 041 087	749 420	856 480	749 420	856 480	535 300	4 788 187	8 629 996	-3 841 809	-45%
	Total Capital Budget			0	10 996	0	0	1 076 620	95 880	84 346	254 135	2 150 085	53 222	46 094	32 989	2 706 316	1 978 512	2 732 731	3 048 698	2 023 874	1 447 249	17 741 747	37 516 932	-19 750 222	-53%
	Total Budget			2 980 195	4 053 364	1 468 887	8 511 453	17 619 105	28 291 131	61 250 125	14 129 921	33 325 959	18 929 154	89 530 979	2 805 445	152 720 055	142 274 062	190 417 811	181 584 748	155 017 012	120 170 841	1 221 851 948	1 179 250 681	42 626 230	4%

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LEGAL AID SOUTH AFRICA
SALARIES BUDGET 2011/2012

Pers. No	Employee Group	New Level 2011/2012	Position	Total CTC
Filled	Permanent Employees	LP-10-10	Senior Litigator	850 465.64
Filled	Permanent Employees	LP-10-7	Senior Litigator	813 378.17
Filled	Permanent Employees	LP-10-6	Senior Litigator	801 377.91
Filled	Permanent Employees	LP-10-7	Senior Litigator	813 378.17
Filled	Permanent Employees	LP-10-2	Senior Litigator	755 129.51
Filled	Permanent Employees	LP-10-7	Senior Litigator	813 378.17
Vacant	Permanent Employees	LP-10-1	Senior Litigator	746 624.88
Vacant	Permanent Employees	LP-10-1	Senior Litigator	746 624.88
Vacant	Permanent Employees	LP-10-1	Senior Litigator	746 624.88

LEGAL AID SOUTH AFRICA
BUDGET 2012/13

Office of the CFO
05 March 2012

LEGAL AID SOUTH AFRICA
2012/2013 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Kwazulu Natal Region	Mpamalanga/ Limpopo Region	Western Cape/ Northern Cape Region	Total 2012/13	Total 2011/12	Variance	%
	DIRECT COSTS																							
1	Basic Salary	30050					2 073 781					4 754 708	6 387 936		100 251 700	88 170 583	115 754 615	95 628 034	73 633 428	111 713 181	598 367 967	561 744 710	36 623 257	7%
2	Bonuses	30100					136 839					327 933	494 151		6 356 954	5 580 626	7 241 830	5 864 797	4 830 025	7 148 097	37 981 252	30 792 364	7 188 888	23%
3	Housing Allowance	30150										6 000	230 400		1 131 250	1 119 871	1 161 082	1 119 593	1 354 948	1 482 614	7 605 758	7 314 759	290 999	4%
4	Medical Aid Contribution	30200					24 336					60 840	292 842		2 201 145	1 765 481	2 184 690	1 901 827	1 857 746	2 068 392	12 357 279	12 343 007	14 272	0%
5	Motor Car Allowance	30450					173 136									348 388	1 025 084	134 843	676 613	412 740	2 770 805	2 923 763	-152 958	-5%
6	Pension Contribution	30550					197 049					472 223	711 577		9 154 014	8 036 101	10 428 235	8 445 308	6 955 236	10 293 259	54 693 002	46 646 276	8 046 726	17%
7	UIF Contribution	30650					7 487					11 979	43 423		490 818	454 726	567 352	495 176	402 762	574 570	3 048 293	2 968 695	79 598	3%
			0	0	0	0	2 612 528	0	0	0	0	5 633 683	8 160 329	0	119 585 882	105 475 757	138 362 887	113 589 579	89 710 758	133 692 854	716 924 357	664 733 574	52 090 783	8%
	ADMIN SUPPORT COST																							
8	Basic Salary	40050	781 790	2 464 726	1 157 479	2 422 735	4 356 987	9 108 431	5 703 107	11 074 660	7 940 169	1 584 330	3 071 926	1 886 257	11 805 812	12 251 706	12 712 801	11 438 108	9 322 189	13 498 223	122 681 437	109 997 699	12 683 738	12%
9	Bonuses	40100	51 545	140 227	68 192	169 032	349 336	688 778	419 033	782 747	643 817	110 040	217 437	165 521	943 456	1 004 732	1 028 224	919 816	752 863	1 086 024	9 531 819	8 155 389	1 376 430	17%
10	Housing Allowance	40150	13 752	9 600	36 000	32 952	201 600	205 752	97 661	78 461	266 726	28 800	67 200	105 600	587 998	625 331	677 831	646 331	485 332	715 701	4 882 626	4 422 127	460 501	10%
11	Medical Aid Contribution	40200	21 789	12 168	12 168	70 461	243 360	310 320	146 016	202 977	224 541	48 672	97 344	133 848	648 889	691 108	775 353	694 774	477 057	663 642	5 474 487	5 074 530	399 957	8%
12	Motor Car Allowance	40450	29 257	49 200	90 000			189 290	298 081	394 008	587 703	72 000	102 000			186 922	159 262		31 373	79 916	2 269 012	2 439 406	-170 394	-7%
13	Pension Contribution	40550	74 225	28 434		175 871	490 083	991 838	474 834	840 209	866 171	158 458	313 110	238 351	1 358 576	1 446 815	1 408 849	1 324 535	1 084 123	1 492 080	12 768 563	10 401 938	2 364 627	23%
14	UIF Contribution	40650	2 995	4 492	1 497	10 482	32 942	44 921	23 958	41 926	37 434	5 989	13 476	16 471	98 992	103 359	112 094	109 448	80 057	119 372	850 915	767 288	83 627	11%
15	Incentives payments - Staff	43000						37 617 539													37 617 539	35 369 034	2 248 505	6%
16	Group Life	43050						15 947 837													15 947 837	13 909 110	2 038 727	15%
			975 352	2 708 847	1 365 336	2 881 533	5 655 308	65 104 703	7 162 690	13 414 989	10 566 560	2 008 290	3 882 495	2 646 048	15 443 723	16 309 973	16 874 414	15 124 012	12 233 004	17 654 958	212 022 237	190 536 519	21 485 718	11%
	OTHER DIRECT EXPENDITURE																							
17	Judicare	35250													9 435 607	10 046 190	22 189 310	16 665 777	6 246 462	14 202 449	78 785 795	93 418 388	-14 632 591	-16%
18	Disbursements	35950													275 871	180 479	716 494	186 714	272 226	387 832	2 019 616	2 501 937	-482 321	-19%
19	Expert Witness	35150													418 937	297 223	606 762	455 329	235 697	295 332	2 309 280	1 279 379	1 029 901	81%
20	Co-operation Agreements	35050										530 000	2 982 239		321 168	109 200	2 539 693		76 003	1 527 407	8 085 710	7 997 235	88 475	1%
21	Impact Litigation	35200										5 081 632									5 081 632	6 142 093	-1 060 461	-17%
22	Travelling and Subsistence-Circuit	36060													80 499	250 545		72 916	94 904	66 820	565 684	1 218 611	-652 927	-54%
23	Case Backlog	35900											32 000 000								32 000 000	0	32 000 000	100%
			0	0	0	0	0	0	0	0	0	5 611 632	34 982 239	0	10 532 082	10 883 637	26 052 259	17 380 736	6 926 292	16 479 840	128 847 717	112 557 641	16 290 076	14%
	OPERATING BUDGET																							
24	Achiever Awards	41060							229 910												229 910	35 504	194 406	548%
25	Advertising	41100				2 104 170		192 145					29 923								2 326 238	4 775 219	-2 448 981	-51%
26	Annual Report	41150	275 904																		275 904	275 904		0%
27	Audit Fees	41250						2 688 139													2 688 139	2 535 980	152 159	6%
28	Bank charges	41350						729 883													729 883	1 123 558	-393 675	-35%
29	Board fees	41450	1 009 805																		1 009 805	904 606	105 199	12%
30	Call Centre Support	41510											201 272								201 272	201 272		0%
31	Call Centre Maintenance Equipment	41520											213 571								213 571	213 571		0%
32	Change Management	41550							473 631												473 631	479 894	-6 263	-1%
33	Cleaning Materials	41600					709 386								883 585	629 465	905 515	761 431	781 596	529 145	5 180 124	4 922 960	257 164	5%
34	Communication	41650				2 553 188															2 553 188	2 688 090	-134 902	-5%
35	Computer - Disaster Recovery	41700									994 771										994 771	904 337	90 434	10%
36	Computer - Maintenance	41750									101 634										101 634	101 634		0%
37	Computer - Software Licences	41800						61 300	1 059 586	120 000	6 698 735										7 939 620	6 534 679	1 404 941	21%
38	Congress & Seminar	41850	22 064	27 035	23 155			42 033	67 324	63 160			21 514								266 285	225 653	40 632	18%
39	Contigencies	41900											0		125 000	131 250	131 250	131 250	131 250	125 000	775 000	1 650 481	-875 481	100%
40	Corporate Governance Training	42100	60 358																		60 358	60 358		0%
41	Depreciation	42200	40 165	68 095		74 502	639 202	4 737 975	108 032	308 453	2 792 986	115 716	355 551		4 559 082	4 057 535	5 540 341	4 923 011	4 889 360	5 251 086	38 461 092	36 479 948	1 981 144	5%
42	Document Exchange	42550					16 300								127 969	135 160	115 122	121 139	121 608	147 819	785 116	834 087	-48 971	-6%
43	Education & Training	42600	8 820	11 688	4 676	12 863	70 722	93 516	401 290	108 780	144 941	2 421 764	136 220	35 280	520 404	823 956	513 196	512 726	414 417	714 185	6 949 443	6 200 311	749 132	12%
44	Employee Assist/counselling(OHS)	42650							227 544												227 544	205 087	22 457	11%
45	Employment Relations	42700							251 385												251 385	131 519	119 866	91%
46	Employment Equity	44750							95 447												95 447	95 447		100%
47	Forensic Investigations	42800								50 000											50 000	38 637	11 363	29%
48	HIV/Aids Management	42900							221 496												221 496	382 138	-160 642	-42%
49	Insurance Short Term	43100						7 866 294													7 866 294	7 424 261	442 033	6%
51	IT Support	43250									1 485 504										1 485 504	3 585 444	-2 099 940	-59%
52	Leadership Programme	43450							1 356 791												1 356 791	1 627 638	-270 847	-17%
53	Legal Fees	43400					399 298														399 298	1 161 344	-762 046	-66%
54	Library & Publications	43450	4 759	4 749	4 759	4 759	4 759	4 759	10 076	4 759	4 759	2 611 159	4 759		72 200	95 036	78 842	63 175	56 050	85 025	3 114 381	2 961 842	152 539	5%
55	Maintenance - Buildings	43500					646 000								126 814	92 608	97 517	49 002	46 277	100 584	1 160 802	1 209 043	-48 241	-4%
56	Maintenance - Office Equipment	43550					97 353					5 000			125 649	107 016	197 542	189 969	224 321	324 618	1 271 468	1 399 922	-127 434	-9%
57	Management Fees - Travel	43560						587 338													587 338	587 338		0%
58	Moving costs	43650					15 000														15 000	167 393	-152 393	-91%
59	Municipal Services	43700					1 305 936								812 910	942 308	1 597 951	1 422 975	1 029 846	1 276 994	8 388 909	7 449 136	939 773	13%
60	Office Rental & Operating costs	43850													7 575 678	5 007 216	6 106 958	5 301 677	5 526 383	7 124 619	36 642 533	32 495 565	4 146 968	13%
61	Postage & Courier	44000				43 035	65 549	239 400			43 890		40 908		77 947	106 817	64 864	154 587	70 490	79 791	987 278	1 374 268	-386 990	-28%
62	Printing & Stationery	44100	119 567	29 395	1 643	8 210	239 137	166 046	24 376	56 000	27 804	187 353	324 948	24 000	625 736	696 571	626 763	645 261	574 939	882 975	5 460 744	6 498 988	-1 038 244	-16%
63	Professional Services	44150	0	996 943								50 000	203 517							18 000	1 268 460	1 267 038	1 422	0%

ANNEXURE A

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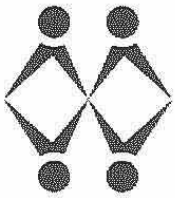
LEGAL AID SOUTH AFRICA
2012/2013 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Western Cape/ Northern Cape Region	Total 2012/13	Total 2011/12	Variance	%
64	Public Relations	44300	3 360	94 359	3 360	3 360	3 360	3 360	3 360	3 360	3 360	24 000	3 360		42 080	45 960	36 960	36 960	33 600	42 960	387 119	357 017	30 102	8%
65	Recruitment	44350							672 641												672 641	1 010 487	-137 846	-14%
66	Redeployment of staff	44400																				24 914	-24 914	-100%
67	Refreshment - Board	44450	40 323																		40 323	40 323		0%
68	Refreshment - Staff	44500	768	28 228	10 493	8 765	15 524	23 076	14 491	10 752	11 327	9 000	80 698	10 093	144 554	141 505	118 247	87 832	92 156	179 495	977 095	917 628	59 377	6%
69	Rental - Office Equipment	44550					628 000						4 110		144 597	279 460	586 562	281 544	486 422	551 239	2 961 934	2 462 098	499 836	20%
70	Security Costs	44600					994 172								103 593	99 585	180 370	89 119	219 629	68 480	1 754 948	1 591 065	163 883	10%
71	Signage& Branding	44700				649 849	7 037														656 886	1 379 108	-722 222	-52%
72	Skills Development Levy	44800	782	2 465	1 157	2 423	6 431	9 216	5 703	11 075	7 940	6 339	9 831	1 986	112 058	100 422	128 467	107 066	88 967	133 406	735 735	831 350	-95 615	-12%
73	Software Maintenance	44850							308 544		287 920										596 464	587 896	8 568	1%
74	Staff Bursary	44900							546 806												546 806	275 959	270 847	98%
75	Stakeholders Forum	44950											32 932		82 279	75 453	88 164	83 543	99 302	118 654	580 327	584 428	-4 101	-1%
76	Storage Costs	45000					168 873								51 843	15 345	284 568	177 393	81 970	197 105	977 098	995 791	-18 693	-2%
77	Subscription and Members fees	45050	44 139	19 620	3 775	7 724	17 196	16 927	29 304	21 800	11 000	18 800	17 899		199 261	301 190	295 188	277 926	199 030	263 007	1 741 787	1 850 065	-108 278	-6%
78	Syspro Support	45060						30 000													30 000	30 000		0%
79	Telephone & Fax	45200					1 768 174								1 871 711	2 189 268	2 581 092	2 026 665	1 651 177	1 828 152	14 116 239	13 629 726	486 513	4%
80	Tools & Equipment	45220	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	55 000	69 992	55 000	55 000	50 000	65 000	409 992	2 858 040	-2 448 048	-86%
81	Travel and other - Committees	45350	344 651																		344 651	424 534	-79 883	-19%
82	Travel & Subsistence - Staff	45400	10 000	98 320	90 775	57 293	44 350	57 292	57 292	1 188 996	44 095	120 000	150 295		803 291	1 121 276	655 248	529 572	981 335	1 497 657	7 507 087	7 791 835	-284 748	-4%
83	Vehicle - Fuel	45500					85 349								1 080 282	1 263 455	768 947	1 081 480	1 505 183	1 298 277	7 080 953	7 356 571	-275 618	-4%
84	Vehicle - Licences	45550					3 500								23 170	20 776	24 009	35 181	30 296	26 112	163 043	198 654	-35 611	-18%
85	Vehicle - Maintenance	45450					20 904								299 208	400 165	304 681	348 034	357 455	400 672	2 129 118	2 493 248	-364 130	-15%
86	Vehicle - Tracking	45560					1 307 779														1 307 779	1 693 925	-386 146	-23%
87	Wide Area Network	45650									11 002 536										11 002 536	9 803 019	1 199 517	12%
88	Workmens Compensation	45700						677 918													677 918	677 918		0%
89	Workshops	45750	119 929	69 819	11 315	14 670	35 514	50 913	20 364	32 200	20 481	15 600	1 103 729	13 800	482 553	531 584	703 791	565 366	549 302	599 559	4 940 489	5 190 159	-249 670	-5%
	Operating Budget		2 110 394	1 455 717	160 104	5 549 810	9 321 806	16 282 530	6 390 393	1 984 334	23 688 681	5 587 731	2 940 037	90 159	21 126 452	19 480 374	22 985 154	20 055 906	20 452 362	23 929 606	205 604 550	206 264 852	-660 302	0%
	Total Operating Budget		3 085 746	4 164 564	1 525 440	8 431 343	17 599 742	83 387 233	13 553 083	15 399 323	34 255 241	18 841 336	49 965 101	2 736 207	166 690 139	152 149 741	204 274 714	166 151 233	129 331 416	191 757 258	1 263 298 861	1 174 092 585	89 206 275	8%
	CAPITAL BUDGET																							
90	Computer Hardware	10100	18 316	0		47 665	18 316	18 316	10 958	18 316	64 223		266 753		274 659	268 037	515 981	175 804	226 984	344 093	2 288 422	7 721 189	-5 432 767	-70%
91	Corporate IT										3 058 961										3 058 961	1 821 554	1 237 407	100%
92	Computer Software	10400																				831 887	-831 887	-100%
93	Building Improvement	10170					816 865														816 865	1 951 473	-1 134 608	-58%
94	Furniture & Equipment	10300																				1 850 291	-1 850 291	-100%
95	Leasehold Improvements	10200													1 338 670	1 994 402	1 248 602	1 194 037	1 292 148	1 404 508	8 472 367	3 814 772	4 657 595	122%
96	Motor vehicles	10050					215 674								1 401 878	970 531	1 294 041	1 725 388	1 401 878	1 833 225	8 842 616	4 439 684	4 402 932	99%
	Total Capital Budget		18 316	0	0	47 665	1 050 855	18 316	10 958	18 316	3 143 184	0	266 753	0	3 015 207	3 232 970	3 058 624	3 095 229	2 921 010	3 581 826	23 479 231	22 430 860	1 048 381	5%
	Total Budget		3 104 062	4 164 564	1 525 440	8 479 008	18 650 597	83 405 549	13 564 042	15 417 639	37 398 425	18 841 336	50 231 853	2 736 207	169 705 346	155 382 711	207 333 339	169 246 462	132 252 426	195 339 084	1 286 778 091	1 196 523 436	90 254 655	8%

LEGAL AID SOUTH AFRICA
SALARIES BUDGET 2012/2013

Pers. No	Employee Group	New level 2012/2013	Position	Total CTC
Filled	Permanent	LP-10-18	Senior Litigator	1 037 404.43
Filled	Permanent	LP-10-12	Senior Litigator	948 871.53
Filled	Permanent	LP-10-8	Senior Litigator	894 092.07
Filled	Permanent	LP-10-15	Senior Litigator	992 148.36
Filled	Permanent	LP-10-3	Senior Litigator	830 056.60
Filled	Permanent	LP-10-8	Senior Litigator	894 092.07
Vacant	Permanent	LP-10-1	Senior Litigator	808 726.61
Vacant	Permanent	LP-10-1	Senior Litigator	808 726.61
Vacant	Permanent	LP-10-1	Senior Litigator	808 726.61



Legal Aid
South Africa

LEGAL AID SOUTH AFRICA
BUDGET 2013/14

Office of the CFO
March 2013

LEGAL AID SOUTH AFRICA
2013/2014 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Western Cape/ Northern Cape Region	Total 2013/14	Total 2012/13	Variance	%
	SALARY COSTS																							
1	Basic Salary	30050	727 111	2 866 971	1 287 386	2 793 003	7 416 770	10 320 295	6 269 190	12 455 206	10 820 758	7 928 975	10 888 404	1 990 763	120 351 018	111 953 087	140 065 172	120 537 253	91 584 472	141 976 374	802 253 211	730 603 759	71 649 451	10%
2	Bonuses	30100	53 686	21 186	0	163 060	394 349	564 980	308 814	632 377	475 260	348 620	665 483	165 897	7 011 639	6 662 750	8 273 569	6 894 052	5 799 645	9 428 060	46 803 431	48 153 967	-1 350 536	-3%
3	Housing Allowance	30150	70 800	10 800	36 000	47 352	194 400	230 952	109 661	142 961	315 228	49 200	478 800	108 000	1 840 387	1 990 718	1 907 652	1 902 626	2 077 570	2 438 408	13 950 616	12 682 529	1 268 087	10%
4	Medical Aid Contribution	30200	22 599	12 168	12 168	85 176	255 168	338 607	158 184	216 927	237 285	119 943	401 301	121 680	2 933 736	2 345 879	2 837 214	2 500 174	2 426 107	2 498 590	17 522 908	18 092 795	-569 888	-3%
5	Motor Car Allowance	30450	60 000	49 200	90 000	168 000	173 136	303 290	298 081	303 689	349 200	72 000	102 000			649 292	1 188 535	127 049	724 887	574 767	5 233 125	5 090 022	143 104	3%
6	Pension Contribution	30550	77 308	30 511	0	169 139	611 556	925 057	400 378	629 221	535 257	506 707	1 072 175	238 892	11 034 410	10 224 528	12 274 605	10 316 718	8 723 610	12 421 485	70 391 558	68 392 600	1 998 958	3%
7	UIF Contribution	30650	2 995	4 492	1 497	10 482	38 635	46 416	23 958	41 348	40 429	19 362	58 315	14 974	577 317	563 522	679 788	595 437	487 909	698 076	3 904 954	3 952 546	-47 591	-1%
8	Incentives payments - Staff	43000							38 402 392												38 402 392	37 617 539	784 853	2%
9	Group Life	43050						15 587 707													15 587 707	15 947 837	-360 130	-2%
10	Improvement in conditions of service								14 432 868												14 432 868	0	14 432 868	100%
11	Increase in legal capacity	30710											5 742 000								5 742 000	0	5 742 000	100%
			1 014 498	2 995 330	1 427 052	3 436 212	9 084 017	28 317 368	60 414 525	14 630 830	12 773 417	9 044 808	19 408 478	2 640 205	143 748 507	134 329 776	167 228 537	142 873 319	111 824 200	169 035 759	1 034 224 767	940 533 593	93 691 174	10.0%
	OTHER DIRECT EXPENDITURE																							
12	Judicare	35250													8 869 471	9 443 419	20 857 951	15 665 830	5 871 674	13 350 302	74 058 647	78 786 795	-4 727 148	-6%
13	Disbursements	35950													266 843	179 759	716 494	188 714	272 226	387 832	2 009 868	2 019 616	-9 748	0%
14	Expert Witness	35150													418 937	297 223	606 782	455 329	235 697	295 332	2 309 280	2 309 280		0%
15	Co-operation Agreements	35050										561 800	3 161 173		321 168	109 200	2 539 693		76 003	1 527 407	8 296 444	8 085 710	210 734	3%
16	Impact Litigation	35200										5 081 632									5 081 632	6 995 351	-1 913 719	-27%
17	Travelling and Subsistence-Circuit	36060													76 477	250 545		72 918	94 904	66 820	561 662	565 684	-4 022	-1%
18	Case Backlog	35900											34 000 000								34 000 000	32 000 000	2 000 000	6%
19	Child Act	35060											2 502 000								2 502 000	2 105 000	397 000	19%
20	Child Justice Act	35070											8 340 000								8 340 000	7 017 000	1 323 000	19%
21	Child Justice centre - Infrastracture																					1 619 000	-1 619 000	-100%
			0	0	0	0	0	0	0	0	0	5 643 432	48 003 173	0	9 952 895	10 280 146	24 720 900	16 380 789	6 550 504	15 627 593	137 159 533	141 502 436	-4 342 903	-3%
	OPERATING BUDGET																							
22	Achiever Awards	41060							229 910												229 910	229 910		0%
23	Advertising	41100				2 104 170		192 145					29 923								2 326 238	2 326 238		0%
24	Annual Report	41150	275 904																		275 904	275 904		0%
25	Audit Fees	41250						3 420 171													3 420 171	2 688 139	732 032	27%
26	Bank charges	41350						729 883													729 883	729 883		0%
27	Board fees	41450	1 070 393																		1 070 393	1 009 805	60 588	6%
28	Call Centre Support	41510											41 272								41 272	201 272	-160 000	-79%
29	Call Centre Maintenance Equipment	41520											213 571								213 571	213 571		0%
30	Change Management	41550							473 631												473 631	473 631		0%
31	Cleaning Materials	41600					751 950								936 600	667 233	944 569	807 117	807 292	560 894	5 475 653	5 180 124	295 530	6%
32	Communication	41650				2 553 188															2 553 188	3 553 188	-1 000 000	-28%
33	Computer - Disaster Recovery	41700									1 050 823										1 050 823	994 771	56 052	5%
34	Computer - Maintenance	41750									101 634										101 634	101 634		0%
35	Computer - Software Licences	41800						64 978	1 123 161	127 200	7 100 659										8 415 997	7 939 620	476 377	6%
36	Congress & Seminar	41650	22 064	27 035	23 155			42 033	67 324	63 160			21 514								266 285	266 285		0%
37	Contigencies	41900	0												125 000	131 250	131 250	131 250	131 250	125 000	775 000	775 000		100%
38	Corporate Governance Training	42100	60 358																		60 358	60 358		0%
39	Depreciation	42200	42 575	72 181		78 972	677 554	4 990 147	114 514	326 960	2 960 565	122 659	376 884	32 107	4 559 082	4 285 081	5 850 600	5 265 440	5 163 164	5 545 147	40 463 632	38 461 092	2 002 540	5%
40	Document Exchange	42550					17 278								134 511	144 573	122 552	129 581	110 481	157 918	816 994	785 116	31 878	4%
41	Education & Training	42600	6 843	11 720	4 688	12 897	70 910	93 764	402 356	109 069	154 046	2 476 545	88 234	35 374	535 112	848 675	535 209	528 108	426 849	735 610	7 076 009	6 949 443	126 566	2%
42	Employee Assist/counselling(OHS)	42650							241 197												241 197	227 544	13 653	6%
43	Employment Relations	42700							251 385												251 385	251 385		0%
44	Employment Equity	44750							95 447												95 447	95 447		100%
45	Forensic Investigations	42800								50 000											50 000	50 000		0%
46	HIV/Aids Management	42900																			221 496	221 496		0%
47	Insurance Short Term	43100						7 483 386													7 483 386	7 866 294	-382 908	-5%
48	IT Support	43250									1 047 723										1 047 723	1 485 504	-437 781	-29%
49	Leadership Programme	43450							1 356 791												1 356 791	1 356 791		0%
50	Legal Fees	43400					399 298														399 298	399 298		0%
51	Library & Publications	43450	4 759	4 749	4 755	4 759	4 759	4 794	10 076	4 759	5 045	2 767 829	4 759		72 200	85 036	78 142	63 175	56 050	85 025	3 270 671	3 114 381	156 290	5%
52	Maintenance - Buildings	43500					648 000								126 814	92 698	97 517	49 002	46 277	100 584	1 160 802	1 160 802		0%
53	Maintenance - Office Equipment	43550					103 194					5 000			121 841	134 329	224 976	194 078	215 894	316 954	1 316 265	1 271 488	44 778	4%
54	Management Fees - Travel	43560						702 578													702 578	587 338	115 240	20%
55	Moving costs	43650					15 000														15 000	15 000		0%
56	Municipal Services	43700					1 384 292								861 684	998 846	1 700 293	1 514 772	1 091 637	1 353 603	8 905 127	8 388 909	516 218	6%
57	Office Rental & Operating costs	43850													7 847 254	5 726 854	7 253 215	6 005 424	6 321 590	7 895 116	41 049 363	36 642 533	4 406 830	12%
58	Postage & Courier	44000				45 617	69 482	253 764			46 523		20 410		83 988	97 128	68 240	159 736	76 958	99 945	1 021 794	987 278	34 516	3%
59	Printing & Stationery	44100	124 350	30 571	1 709	8 538	248 702	172 686	25 351	58 240	30 651	166 400	338 316	24 960	652 836	729 229	861 869	675 535	601 895	924 372	5 674 153	5 460 744	213 409	4%
60	Professional Services	44150		996 943								50 000	203 517							18 000	1 268 460	1 268 460		0%
61	Public Relations	44300	3 427	96 246	3 427	2 612	3 427	3 427	3 427	3 427	3 633	19 200	3 427		43 016	47 090	37 500	37 870	34 426	44 016	389 598	387 119	2 479	1%
62	Recruitment	44350							872 641												872 641	872 641		0%
63	Refreshment - Board	44450	40 323																		40 323	40 323		0%
64	Refreshment - Staff	44500	783	28 793	10 703	8 940	15 834	23 536	14 781	10 967	12 247	9 180	40 800	10 295	151 355	149 159	122 936	92 563	86 691	189 295	978 701	977 005	1 696	0%
65	Rental - Office Equipment	44550					664 037						6 000		220 033	304 679	661 555	291 135	516 278	500 627	3 164 342	2 961 934	202 409	7%

ANNEXURE A

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LEGAL AID SOUTH AFRICA
2013/2014 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Western Cape/ Northern Cape Region	Total 2013/14	Total 2012/13	Variance	%
66	Security Costs	44600					1 053 823								97 448	100 519	196 774	191 364	229 621	75 917	1 855 487	1 754 948	100 539	6%
67	Signage& Branding	44700				623 855	6 755														630 610	656 886	-26 276	-4%
68	Skills Development Levy	44800	877	2 613	1 227	2 568	6 817	9 769	6 045	11 739	8 417	6 719	10 421	2 105	120 300	106 448	137 019	113 491	94 306	141 411	782 290	735 735	46 555	6%
69	Software Maintenance	44850							308 544		287 920										596 464	596 464		0%
70	Staff Bursary	44900							546 806												546 806	546 806		0%
71	Stakeholders Forum	44950											33 713		86 438	79 341	91 050	87 848	104 420	124 768	607 576	580 327	27 251	5%
72	Storage Costs	45000					168 873								83 334	18 936	291 027	161 002	79 552	235 932	1 018 654	977 098	41 557	4%
73	Subscription and Members fees	45050	45 022	20 012	3 851	7 878	17 540	17 266	29 890	22 236	11 893	16 320	12 240		207 312	308 544	305 301	284 715	203 890	269 429	1 783 339	1 741 787	41 551	2%
74	Syspro Support	45060						30 000													30 000	30 000		0%
75	Telephone & Fax	45200					1 803 537														14 544 778	14 116 239	428 539	3%
76	Tools & Equipment	45220	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	55 000	69 992	55 000	55 000	50 000	65 000	409 992	409 992		0%
77	Travel and other - Committees	45350	344 651																		344 651	344 651		0%
78	Travel & Subsistence - Staff	45400	10 200	100 286	92 591	56 439	45 237	58 057	58 438	1 212 776	47 676	101 796	153 301		804 064	1 124 428	657 090	531 061	984 094	1 501 888	7 541 400	7 507 087	34 313	0%
79	Vehicle - Fuel	45500					90 043								1 378 976	1 307 524	793 698	1 119 181	1 557 684	1 343 561	7 590 668	7 080 953	509 715	7%
80	Vehicle - Licences	45550					3 500								23 410	20 776	24 009	35 181	30 296	26 112	163 283	163 043	240	0%
81	Vehicle - Maintenance	45450					20 904								313 368	420 173	319 915	383 336	375 527	420 705	2 233 728	2 129 118	104 611	5%
82	Vehicle - Tracking	45560					1 386 246														1 386 246	1 307 775	78 467	6%
83	Wide Area Network	45650									11 662 688										11 662 688	11 002 536	660 152	6%
84	Workmens Compensation	45700						677 918													677 918	677 918		0%
85	Workshops	45750	125 925	73 310	11 881	15 404	37 280	54 377	21 382	33 810	22 795	3 413	1 158 915	14 490	503 983	558 163	737 168	593 634	532 551	629 537	5 128 028	4 940 489	187 540	4%
	Operating Budget		**2 185 455**	**1 469 459**	**182 985**	**5 532 838**	**9 719 263**	**19 029 683**	**6 479 593**	**2 039 343**	**24 559 936**	**5 750 050**	**2 760 219**	**124 331**	**22 051 130**	**20 826 683**	**24 963 056**	**21 482 628**	**21 839 319**	**25 373 514**	**216 349 696**	**206 604 550**	**9 745 146**	**5%**
	Total Operating Budget		**3 199 953**	**4 464 789**	**1 590 037**	**8 969 050**	**18 803 299**	**47 346 989**	**66 894 118**	**16 670 173**	**37 333 353**	**20 438 300**	**70 171 871**	**2 764 636**	**175 752 533**	**165 436 584**	**216 910 493**	**180 736 926**	**140 214 023**	**210 036 966**	**1 387 733 996**	**1 288 640 580**	**99 093 417**	**8%**
	CAPITAL BUDGET																							
86	Computer Hardware	10100	14 971	14 971		19 415	57 589	147 845	44 914		118 749	40 469	44 914	95 583	1 389 713	1 699 611	2 274 186	512 093	1 963 810	1 602 310	10 041 143	3 952 122	6 089 021	154%
87	Corporate IT										4 013 008										4 013 008	3 058 961	954 047	31%
88	Computer Software (AI Project)	10400									5 349 908										5 349 908		5 349 908	100%
89	Building Improvement	10170					678 847														678 847	857 545	-178 698	-21%
90	Leasehold Improvements	10200													364 468	528 028	376 344	1 465 400	1 246 479	430 793	4 411 513	8 472 367	-4 060 854	-48%
91	Motor vehicles	10050													1 330 921	888 083	888 083	1 533 962	968 818	807 349	6 417 216	8 842 616	-2 425 399	-27%
	Total Capital Budget		**14 971**	**14 971**	**0**	**19 415**	**736 437**	**147 845**	**44 914**	**0**	**9 481 665**	**40 469**	**44 914**	**95 583**	**3 085 102**	**3 115 723**	**3 538 614**	**3 511 455**	**4 179 108**	**2 840 452**	**30 911 636**	**25 183 611**	**5 728 025**	**23%**
	Total Budget		**3 214 924**	**4 479 760**	**1 590 037**	**8 988 465**	**19 539 736**	**47 494 834**	**66 939 032**	**16 670 173**	**46 815 018**	**20 478 769**	**70 216 784**	**2 860 119**	**178 837 635**	**168 552 307**	**220 449 107**	**184 248 383**	**144 393 131**	**212 877 418**	**1 418 645 632**	**1 313 824 190**	**104 821 442**	**8%**

LEGAL AID SOUTH AFRICA

2013 2014 SALARIES BUDGET

Pers no.	Employee Group	New level 2013/2014	Position	Total CTC
Filled	Permanent Employees	LP-10-19	Senior Litigator	1 132 911.37
Filled	Permanent Employees	LP-10-13	Senior Litigator	1 036 217.16
Filled	Permanent Employees	LP-10-9	Senior Litigator	976 385.55
Filled	Permanent Employees	LP-10-16	Senior Litigator	1 083 487.45
Filled	Permanent Employees	LP-10-4	Senior Litigator	906 448.30
Filled	Permanent Employees	LP-10-9	Senior Litigator	976 385.55
Vacant	Permanent Employees	LP-10-1	Senior Litigator	870 121.72
Vacant	Permanent Employees	LP-10-1	Senior Litigator	870 121.72
Vacant	Permanent Employees	LP-10-1	Senior Litigator	870 121.72

Legal Aid
South Africa

LEGAL AID SOUTH AFRICA
BUDGET 2014/15

Office of the CFO
30 October 2013

LEGAL AID SOUTH AFRICA
2014/2015 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Western Cape/ Northern Cape Region	Total 2014/2015	Total 2013/14	Variance	%	
	DIRECT COSTS																								
1	Basic Salary	30050					2 462 791					6 099 861	7 021 326		117 193 526	110 736 222	141 104 268	117 619 976	87 891 332	141 207 143	731 358 446	678 409 077	52 949 369	8%	1
2	Bonuses	30100					53 116					245 774	503 858		6 290 021	5 741 286	7 389 858	6 036 640	6 887 398	7 269 614	40 437 564	37 828 227	2 609 337	7%	2
3	Housing Allowance	30150										6 000	331 200		1 129 423	1 254 699	1 081 188	1 057 797	1 514 306	1 368 217	7 742 830	8 500 920	-758 090	-9%	3
4	Medical Aid Contribution	30200					24 138					73 008	314 766		2 235 858	1 691 743	2 093 882	1 924 406	1 968 232	1 931 076	12 255 109	12 087 682	167 427	1%	4
5	Motor Car Allowance	30450					173 136								80 615	499 233	1 057 008	126 247	696 437	448 502	3 081 179	3 077 147	4 032	0%	5
6	Pension Contribution	30550					123 110					352 547	725 556		10 541 241	9 529 034	11 757 685	10 039 653	8 135 769	11 489 946	62 694 541	57 357 113	5 337 428	9%	6
7	UIF Contribution	30650					8 782					14 277	49 915		578 499	559 045	687 165	592 826	491 347	692 060	3 673 918	3 117 052	556 866	18%	7
8	Cell Phone Allowance	30760					28 800					76 800	38 400		498 192	542 424	526 128	498 192	467 928	633 216	3 310 080		3 310 080	100%	8
9	Increase in legal capacity	30710											7 553 471								7 553 471		7 553 471	100%	9
				0	0	0	2 893 873	0	0	0	0	6 868 268	16 536 492	0	138 547 375	130 555 687	165 697 183	137 895 738	108 050 748	165 059 774	872 107 137	800 377 216	71 729 919	9%	
	ADMIN SUPPORT COST																								
10	Basic Salary	40050	911 497	3 042 822	1 365 496	3 244 734	5 229 740	11 207 558	7 010 453	13 158 991	12 398 513	1 967 664	4 712 836	2 171 436	13 854 582	14 242 582	14 676 161	13 009 107	10 256 090	15 490 441	147 979 693	138 265 005	9 705 688	7%	10
11	Bonuses	40100	57 747	22 947	0	118 157	403 644	555 320	258 044	588 002	391 621	138 220	264 800	180 953	982 081	1 102 006	1 126 202	1 010 542	781 536	1 176 118	9 157 940	8 970 050	187 890	2%	11
12	Housing Allowance	40150	10 800	10 800	36 000	47 352	194 400	230 952	120 461	109 661	354 428	43 200	97 200	108 000	651 414	695 226	752 873	700 991	518 825	781 074	5 463 658	5 610 084	-146 426	-3%	12
13	Medical Aid Contribution	40200	23 634	12 168	12 168	83 772	231 192	314 964	169 650	168 948	229 590	50 138	133 846	121 680	605 832	724 159	763 279	685 334	453 920	626 058	5 420 335	5 496 707	-76 372	-1%	13
14	Motor Car Allowance	40450	0	49 200	90 000	168 000	0	303 290	282 481	150 089	349 200	72 000	102 000	0	0	34 841	157 390	0	42 534	78 977	1 880 001	2 156 137	-276 136	-13%	14
15	Pension Contribution	40550	83 156	33 043	0	199 858	581 247	933 173	446 753	715 779	541 091	199 037	503 341	260 573	1 586 480	1 657 251	1 621 731	1 497 643	1 125 412	1 631 758	13 616 327	12 962 066	654 261	5%	15
16	UIF Contribution	40650	3 569	5 354	1 785	12 492	36 143	55 306	30 042	48 529	48 185	8 648	21 282	17 676	108 783	112 787	122 075	105 572	81 802	126 960	946 991	839 771	107 220	13%	16
17	Cell phone Allowance	40760	28 400	28 400	16 800	36 000	35 000	103 200	64 800	141 600	129 600	16 800	36 000	9 600	136 048	154 495	126 824	126 824	117 600	145 271	1 450 262		1 450 262	100%	17
18	Incentives payments - Staff	43050						41 827 981													41 827 981	37 093 238	4 734 743	13%	18
19	Group Life	43050						16 989 993													16 989 993	15 859 970	1 130 023	7%	19
20	Long service Awards	40750							97 500												97 500	165 000	-67 500	-41%	20
21	Annual leave Provision	21750							6 349 068												6 349 068	5 906 110	442 958	7%	21
22	Other Improvement in conditions of ser	40850							9 692 768												9 692 768	8 361 757	1 331 011	16%	22
			1 116 803	3 202 734	1 542 239	3 909 365	6 712 366	72 521 737	24 522 020	15 081 609	14 442 228	2 505 708	5 871 307	2 859 920	17 925 220	18 723 347	19 346 534	17 136 013	13 377 720	20 056 656	260 863 517	241 685 895	19 177 622	8%	
	OTHER DIRECT EXPENDITURE																								
23	Judicare	35250													7 889 885	9 290 982	20 420 478	15 253 837	5 732 159	14 382 197	72 969 539	76 431 092	-3 461 553	-5%	23
24	Disbursements	35950													456 036	199 696	804 226	289 008	304 689	260 574	2 314 230	2 009 868	304 362	15%	24
25	Expert Witness	35150													441 560	313 273	639 527	264 216	247 718	311 280	2 217 573	2 309 280	-91 707	-4%	25
26	Co-operation Agreements	35050													1 236 000	946 750	2 422 838	742 921	880 877	1 778 936	8 008 322	8 296 444	-288 122	-3%	26
27	Impact Litigation	35200										5 897 825					120 000				6 017 825	14 997 065	-8 979 240	-60%	27
28	Travelling and Subsistence-Circuit	36060													160 469	491 061		75 000	99 744	67 611	893 885	561 662	332 223	59%	28
29	Case Backlog	35900											36 039 000								36 039 000	34 000 000	2 039 000	6%	29
30	Child Act & Child Justice Act	35060											10 444 000								10 444 000	9 760 000	684 000	7%	30
				0	0	0	0	0	0	0	0	5 897 825	46 483 000	0	10 183 949	11 241 762	24 407 069	16 624 993	7 265 187	16 800 598	138 904 374	148 365 411	-9 461 037	-6%	
	OPERATING BUDGET																								
31	Achiever Awards	41060							239 902												239 902	229 910	9 992	4%	31
32	Advertising	41100				2 195 617		200 496					31 223								2 427 337	3 298 641	-871 304	-26%	32
33	Annual Report	41150	287 895																		287 895	275 904	11 991	4%	33
34	Audit Fees	41250						3 568 812													3 568 812	3 420 171	148 641	4%	34
35	Bank charges	41350						761 604													761 604	729 883	31 721	4%	35
36	Board fees	41450	1 116 912																		1 116 912	1 070 393	46 519	4%	36
37	Call Centre Support	41510											43 066								43 066	41 272	1 794	4%	37
38	Call Centre Maintenance Equipment	41520											222 853								222 853	213 571	9 282	4%	38
39	Change Management	41550							494 215												494 215	473 631	20 584	4%	39
40	Cleaning Materials	41600					751 950								898 373	743 357	971 316	907 427	919 421	631 241	5 823 086	5 475 653	347 433	6%	40
41	Communication	41650				2 664 150															2 664 150	2 553 186	110 952	4%	41
42	Computer - Disaster Recovery	41700									1 104 415										1 104 415	1 050 823	53 592	5%	42
43	Computer - Maintenance	41750									105 749										105 749	101 634	4 115	4%	43
44	Computer - Software Licences	41800						116 487	1 135 811	134 069	7 462 792										8 849 159	8 415 997	433 162	5%	44
45	Congress & Seminar	41850	23 023	28 210	24 161			43 860	70 250	65 905			22 449								277 858	266 265	11 573	4%	45
46	Contigencies	41900													147 917	131 250	130 495	131 250	130 495	118 250	789 656	775 000	14 656	2%	46
47	Corporate Governance Training	42100	62 981																		62 981	60 358	2 623	4%	47
48	Depreciation	42200	44 874	75 079		82 404	677 554	5 257 507	120 698	344 616	3 120 435	128 915	397 236	33 841	4 787 037	4 414 124	6 166 531	5 208 802	5 441 975	5 844 584	42 147 211	40 463 632	1 683 579	4%	48
49	Document Exchange	42550					17 278								134 980	153 924	131 546	190 931	116 114	136 667	881 440	816 894	64 446	8%	49
50	Education & Training	42600	9 228	12 229	4 892	13 457	70 722	97 839	419 843	113 609	160 283	2 602 849	92 068	36 911	419 756	647 472	503 278	588 960	436 324	534 210	6 764 126	8 967 942	-2 203 816	-25%	50
51	Employee Assist/counselling(OHS)	42650							254 221												254 221	241 197	13 024	5%	51
52	Employment Relations	42700							262 310												262 310	251 385	10 925	4%	52
53	Employment Equity	44750							99 595												99 595	95 447	4 148	4%	53
54	Forensic Investigations	42800								52 173											52 173	50 000	2 173	4%	54
55	HIV/Aids Management	42900							231 122												231 122	221 496	9 626	4%	55
56	Insurance Short Term	43100						7 887 489													7 887 489	7 483 386	404 103	5%	56
57	IT Support	43250									1 101 157										1 101 157	1 047 723	53 434	5%	57
58	Leadership Programme	43450							1 415 757												1 415 757	1 356 791	58 966	4%	58
59	Legal Fees	43400					399 298														399 298	399 298		0%	59
60	Library & Publications	43450	5 016	5 005	5 012	4 966	4 759	5 053	10 620	5 016	5 302	3 108 339	5 016		33 500	43 815	41 999	33 376	27 864	40 072	3 384 730	3 321 464	63 266	2%	60
61	Maintenance - Buildings	43500					648 000								33 000	66 860	88 376	73 769	48 637	46 000	1 004 641	1 160 802	-156 161	-13%	61
62	Maintenance - Office Equipment	43550					103 194					5 000			94 600	201 616	463 739	227 403	214 652	366 650	1 677 054	1 316 265	360 789	27%	62
63	Management Fees - Travel	43560						740 518													740 518	702 578	37 940	5%	63
64	Moving costs	43650					15 000														15 000	15 000		0%	64

ANNEXURE A

LEGAL AID SOUTH AFRICA
2014/2015 BUDGET - NATIONAL CONSOLIDATED

		GL Code	Board Secretariate	CEO's Office	COO's Office	Communications	Corporate Services	Finance	Human Resources	Internal Audit	Information Technology	Legal Development Services	National Operations	Payment Processing Unit	Eastern Cape Region	Free State /North West Region	Gauteng Region	Kwazulu Natal Region	Mpumalanga/ Limpopo Region	Western Cape/ Northern Cape Region	Total 2014/2015	Total 2013/14	Variance	%	
65	Municipal Services	43700					1 384 292								896 544	1 203 086	1 651 646	1 532 301	1 141 310	1 532 544	9 341 722	8 905 127	436 595	5%	65
66	Office Rental & Operating costs	43850													7 680 429	6 191 050	7 330 363	5 452 577	5 774 420	8 690 079	43 118 919	41 247 363	1 871 556	5%	66
67	Postage & Courier	44000				47 599	69 482	267 467			48 896		21 512		122 729	90 101	51 922	125 043	64 059	171 443	1 080 253	1 021 794	58 459	6%	67
68	Printing & Stationery	44100	131 065	32 222	1 801	8 909	239 137	182 013	26 720	61 385	32 214	174 866	354 480	28 308	647 100	714 381	804 335	714 534	637 321	780 823	5 569 632	5 722 153	-152 521	-3%	68
69	Professional Services	44150	0	1 040 270								50 000	212 362							17 820	1 320 452	1 341 201	-20 749	-2%	69
70	Public Relations	44300	2 000	100 429	3 576	2 000	2 000	2 000	2 000	2 000	2 000	20 179	2 000		22 000	39 742	35 569	24 996	36 182	26 500	325 173	389 598	-64 425	-17%	70
71	Recruitment	44350							910 566												910 566	872 641	37 925	4%	71
72	Refreshment - Board	44450	42 075																		42 075	40 323	1 752	4%	72
73	Refreshment - Staff	44500	817	30 044	11 168	9 329	15 524	24 560	15 423	11 444	12 743	9 648	42 573	10 742	165 233	145 416	133 060	141 618	96 309	168 592	1 044 243	990 581	53 662	5%	73
74	Rental - Office Equipment	44550					665 680						6 324		292 584	444 424	830 376	432 106	542 608	412 779	3 626 882	3 164 342	462 540	15%	74
75	Security Costs	44600					1 053 820								82 415	114 627	103 254	112 178	241 332	78 538	1 786 167	1 855 487	-69 320	-4%	75
76	Signage& Branding	44700				650 968	6 755														657 723	630 610	27 113	4%	76
77	Skills Development Levy	44800	1 010	2 754	1 384	3 136	6 817	11 211	6 689	12 497	12 243	7 062	11 844	2 112	128 494	123 507	133 957	116 255	103 201	158 698	842 871	796 861	46 010	6%	77
78	Software Maintenance	44850							321 953		299 578										621 531	596 464	25 067	4%	78
79	Staff Bursary	44900							570 570												570 570	546 806	23 764	4%	79
80	Stakeholders Forum	44950											35 179		75 996	80 768	99 031	87 000	107 550	118 080	603 604	607 578	-3 974	-1%	80
81	Storage Costs	45000					168 673								86 994	37 171	338 841	207 371	83 609	155 815	1 076 574	1 018 654	58 020	6%	81
82	Subscription and Members fees	45050	46 978	20 862	4 018	8 221	17 196	18 016	31 189	23 202	12 375	20 000	12 772		507 315	413 698	564 877	411 285	219 018	586 158	2 917 200	1 832 839	1 084 361	59%	82
83	Syspro Support	45060						31 620													31 620	30 000	1 620	5%	83
84	Telephone & Fax	45200					962 374								1 984 330	1 947 395	1 764 539	1 657 845	1 447 719	1 292 426	11 056 628	14 803 894	-3 747 266	-25%	84
85	Tools & Equipment	45220	5 000	5 000	5 000	4 950	5 000	5 000	5 000	5 000	5 000	5 000	5 000	5 000	55 000	65 003	64 350	55 007	50 000	60 000	409 310	469 298	-59 987	-13%	85
86	Travel and other - Committees	45350	359 630																		359 630	344 651	14 979	4%	86
87	Travel & Subsistence - Staff	45400	10 643	105 400	96 614	60 979	44 350	60 581	60 978	1 265 483	49 606	106 998	159 963		946 270	1 089 625	676 813	603 554	978 431	1 552 440	7 868 728	7 541 400	327 328	4%	87
88	Vehicle - Fuel	45500					90 043								1 462 806	1 542 307	784 447	958 480	1 473 413	1 646 241	7 957 737	7 590 668	367 069	5%	88
89	Vehicle - Licences	45550					3 500								36 500	21 799	27 240	48 606	25 154	26 537	189 336	163 283	26 053	16%	89
90	Vehicle - Maintenance	45450					20 904								591 000	404 465	276 843	389 556	319 520	320 000	2 322 229	2 233 728	88 501	4%	90
91	Vehicle - Tracking	45560					1 386 246														1 386 246	1 386 245		0%	91
92	Wide Area Network	45650									13 865 515										13 865 515	13 192 688	672 827	5%	92
93	Workmens Compensation	45700						707 380													707 380	677 918	29 462	4%	93
94	Workshops	45750	125 369	70 821	11 022	8 036	17 757	27 797	10 930	17 283	11 620	15 000	638 727	7 407	284 763	303 922	355 214	365 961	252 280	324 410	2 848 319	5 169 278	-2 320 959	-45%	94
	Operating Budget		2 274 516	1 529 344	168 648	5 784 723	8 847 508	20 017 309	6 716 364	2 113 882	27 411 922	6 253 876	2 316 646	122 321	22 617 865	21 374 844	24 521 954	21 798 192	21 928 918	25 837 598	221 616 430	221 547 188	69 243	0%	
	Total Operating Budget		3 391 319	4 732 078	1 710 887	9 674 088	18 453 747	92 539 045	31 238 383	17 195 482	41 854 159	21 525 676	71 209 446	2 992 241	189 274 410	181 895 640	233 972 741	193 454 925	150 622 573	227 754 626	1 493 491 458	1 411 975 712	81 515 746	6%	
	CAPITAL BUDGET																								
95	Computer Hardware	10100	35 094	12 039	19 178		188 513	388 197	24 272	366 242	268 402	117 081	195 246	113 061	1 119 011	1 955 186	672 820	1 425 939	1 741 846	1 526 289	10 168 417	22 878 841	-12 708 424	-56%	95
96	Corporate IT	10100									1 571 804										1 571 804	4 013 008	-2 441 204	-61%	96
97	Computer Software (e LAA Systems)	10400									1 500 000										1 500 000	10 973 908	-9 473 908	-86%	97
98	Land & Building	10150																				6 000 000	-6 000 000	-100%	98
99	Building Improvement	10170					816 865														816 865	678 847	138 018	20%	99
100	Furniture & Equipment	10300																				266 180	-266 180	-100%	100
101	Leasehold Improvements	10200					7 182 935														7 182 935	4 713 958	2 468 977	52%	101
102	Motor vehicles	10050					558 076								3 326 555	1 114 613	506 479	2 152 536	1 519 437	1 646 057	10 823 753	6 548 970	4 274 783	65%	102
	Total Capital Budget		35 094	12 039	19 178	0	8 746 389	388 197	24 272	366 242	3 340 206	117 081	195 246	113 061	4 445 566	3 069 799	1 179 299	3 578 475	3 261 283	3 172 346	32 063 774	56 071 712	-24 007 939	-43%	
	Total Budget		3 426 414	4 744 118	1 730 065	9 674 088	27 200 136	92 927 242	31 262 655	17 561 723	45 194 356	21 642 757	71 404 692	3 105 301	193 719 976	184 965 439	235 152 040	197 033 400	153 883 856	230 926 972	1 525 555 232	1 468 047 424	57 507 808	4%	

ANNEXURE A

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LEGAL AID SOUTH AFRICA

2014 2015 SALARIES BUDGET

Pers. No	Employee Group	New level (2014/2015)	Position	Total CTC
Filled	Permanent Employees	LP-10-20	Senior Litigator	1 223 669.12
Filled	Permanent Employees	LP-10-14	Senior Litigator	1 119 243.17
Filled	Permanent Employees	LP-10-10	Senior Litigator	1 054 629.67
Filled	Permanent Employees	LP-10-17	Senior Litigator	1 170 290.72
Filled	Permanent Employees	LP-10-5	Senior Litigator	979 094.84
Filled	Permanent Employees	LP-10-10	Senior Litigator	1 054 629.67
Vacant	Permanent Employees	LP-10-1	Senior Litigator	926 000.96
Vacant	Permanent Employees	LP-10-1	Senior Litigator	926 000.96
Vacant	Permanent Employees	LP-10-1	Senior Litigator	926 000.96

Subscriber login (email address): Login

Search

Advanced **Search**

Employment Opportunity

Position: Senior Litigator

Salary: Negotiable

Location: Kimberley, South Africa

Description:
The Legal Aid Board is an autonomous statutory body with the primary objective of rendering or making available legal aid to poor persons. The National Footprint of the Legal Aid Board covers more than 58 Justice Centres spread throughout the country. Applications are invited from persons interested to fill the position of Senior Litigator.

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

The above-mentioned position exists at the Kimberley Justice Centre. The successful candidate will report to the relevant JCE and will be appointed on a permanent basis.

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

Requirements:
* Admitted Attorney/Advocate
* B Proc or LLR degree, with right of appearance in the High Court
* An LLM degree will be an advantage
* Minimum of ten (10) years' post-admission litigation experience, inclusive of at least five years' High Court experience as well as litigation experience as an Attorney and Advocate.

To Apply:
* Should you not hear from us within one month from the closing date, please accept that your application was unsuccessful.
* A detailed curriculum vitae reflecting practical application of the position, outputs and required skills as advertised must be submitted, quoting the relevant reference number, to:

Contact Name: Lee Swanepoel, Human Resource Department
Fax: 021 - 886 8657
Email: LyonelleS@legal-aid.co.za

Reference No: WCNC 05/05

Closing Date: 10 June 2009

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Legal Aid South Africa

Kimberley Justice Centre

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8301

P. O. Box 846
Kimberley
8301

Docex 4
Kimberley

Tel: 053 832 2348
Fax: 053 832 2356

www.legal-aid.co.za

Our reference: NP Maduba
Your reference: ROE

17/11/2009

Brian Nair

National Operations Executive

National Office

MOTIVATION TO MOVE THE SENIOR LITIGATOR POSITION AT THE KIMBERLEY JUSTICE CENTRE TO ANOTHER REGION

Background

Kimberley Justice Centre has a High Court Unit and has a Senior Litigator position allocated in it as well. Since the allocation of the Senior Litigator position to the Kimberley Justice Centre, the position was never filled up. The primary objective to base the Senior Litigator position at the Kimberley Justice Centre was to service all the Justice Centres that are located in the Northern Cape i.e Colesberg, Kimberley and Upington Justice Centres. In all the time since the allocation of this position, there has never been a demand for the services of the Senior Litigator from all the Justice Centres in the area of the Northern Cape, except with two cases which have very recently arisen and which are currently being investigated to establish if there are merits in them.

The Senior Litigator position has never been filled. The position had been advertised 3 times already, both internally and externally and the adverts could not attract candidates who meet the minimum criteria to fill up the position.

It has become necessary to relook at the possibility of transferring the position to a region where it is mostly needed or where there are prospects of the high demand for the position as well as where, there are prospects of attracting candidates who will meet the minimum criteria.

Current situation

All the 3 Northern Cape Justice Centres fall under the Western Cape/Northern Cape Region. Currently the Region has an appointed Senior Litigator (Advocate Mornay Calitz) based at the Cape Town Justice Centre. Currently,

the two (2) possible cases where the services of a Senior Litigator are required have been referred to the Senior Litigator at Cape Town Justice Centre(in the absence of a Senior Litigator in Kimberley).

Dealing with the demand

As mentioned above all the three Northern Cape Justice Centres rely on the Senior Litigator based in Cape Town for assistance in any matters that have the prospect of the need for services of a Senior Litigator.

For any of the cases that may arise from the Northern Cape Justice Centres, the jurisdiction to hear their cases will be the Northern Cape Division and be held at the Kimberley High Court. Kimberley High Court is 156km away from Bloemfontein. Further, to deal with the demand that may arise in the Northern Cape Justice Centres, assistance can be sought as well from the Bloemfontein Justice Centre as this justice centre has an appointed Senior Litigator as well.

To deal with the issues of the Right of Appearance in the Northern Cape Division of both Senior Litigators, from the Free State and the Western Cape, it would be ideal if they were both Advocates as they can appear anywhere is country's courts. However, if one of them is an Attorney (as is the case of Pieter Nel), he will have to enroll himself in the Northern Cape Division to enable him to appear there.

The reallocation of this post has been canvassed with all the Northern Cape Justice Centres concerned and they have no objections to the reallocation of this post to another region.

Financial implication

The will be no financial implications that will result from the movement of the position as there will only be a transfer of the budget to be done.

Recommendation

It is recommended that the Senior Litigator post allocated to Kimberley Justice Centre be reallocated as per the National Operations Executive's discretion to the any other region that might be require same.

WC/NC Region

17 November 2009

Legal Aid South Africa

Minutes of the
Legal Services Technical Committee
Held on 25th February 2010, 6th Floor, Legal Aid House

MEMBERS PRESENT:

Chairperson:
Brian Nair (NOE)

Members:
Jerry Makokoane (COO), Vela Mdaka (VM), Thembile Mtati (TM), Martha Mbhele (Martha), Wilna Lambley (WL), Patrick Hundermark (LDE), Michael Miller (MM), Upkaar Mungar (UM), Dick Khubana (DK)

Board Members:
No Board member required

Invited Attendees:
Bee-Mari Schoeman [Legal Service Delivery] (BS), Rupert Roos [Legal Service Delivery – Data Unit] (RR), Ajanta Dheda (AD) and Peter Brits (PB) [Legal Support]

SECRETARIAT:

Nadeen Long

1.	Welcome and Apologies
1.1.	**Welcome:** The meeting was declared open and all present were welcomed.
1.2.	**Apologies:** Apologies were received from Cordelia Robertson (CR) who was booked off and Vincent Mayisela (VNM) who couldn't get a flight out to make the meeting. Patrick Hundermark was excused to attend to a meeting until 13h00.

2.	Minutes	Responsible Person	Due Date
2.1.	**Minutes of the previous meeting dated 28 January 2010:** The minutes were confirmed and accepted.		
2.2.	**Corrections: Minutes of the previous meeting held on the 28 January 2010:** There were no amendments.		
2.3.	**Matters Arising:** Please refer to the LSTC decision sheet. All members were requested to update progress, on the u-drive before the meeting.		

SECTION A – Co-Operation Agreements

3.	Co-Operation Agreements:		
3.1.1	**Administration of Estates: Children - Pilot Project Statistics:** The report was noted.		
3.1.2	**Update on Administration of Estates: Children – Pilot Project:** The high numbers of matters coming in was noted. Mr Mayisela was requested to consider the current staffing provisions and its ability to	VNM	Immediate

	meet the high demand for this service.		
3.1.3.	**Co-Operation Agreement Partner Regional Monitoring:** The reports from the cooperation agreement partners were received and noted.		
3.1.4.	**Co-Operation Agreement Partner Regional Audits:** The narrative reports from the cooperation agreement partners were received and noted. ROEs have confirmed that all audits have taken place.		
3.1.5.	**Co-Operation Agreement Budget Schedule:** The budget schedule was noted.		
3.1.6.	**Co-operation Agreement discussions with Department of Rural Development and Land Reform:** The meeting notes between Legal Aid SA and Dept of Land Affairs were noted. We have proposed a cooperation partner agreement with them to fund us to deal with land matters on their behalf. A letter to this effect has been sent to them. It will now be left to the DLA to decide how they would like to proceed on this matter.		
3.2.	**Agency Agreements:**		
3.2.1.	**Agency Agreement – Stats and Financial Recon:** Mr Roos will send out stats via email. ROEs were requested to provide a monthly report on the progress of these agreements and to give feedback for the first three months. It was noted that the ROEs/JCEs are to meet with local Justice cluster stakeholders to discuss if there are any challenges with regards the implementation of this agreement.	RR ROE	Soonest Next meeting
3.3	**Proposal for Renewal of Co-Operation Agreement:**		
3.3.1	**New Co-Operation Agreement – Gap Analysis from Regions:** It was noted that the ROEs must do a gap analysis on the needs in their regions so that new proposals for cooperation agreements can be considered.	ROEs	Soonest

SECTION B – FOR DISCUSSION AND DECISION

4.	**Legal Services delivery – Increasing quality**		
4.1.	**Quality Intervention /Monitoring Programmes**		
4.1.1.	**Civil Legal Aid – Increasing Access and Improving Quality (Civil Units):** It was noted that as soon as the Board decides on this matter, the decision will be made available to all. Once Board approval for the implementation of the civil strategy is obtained, ROEs were requested to prioritise this implementation by working closely with their JCs to ensure recruitment of all new posts as well as facilitate the cluster relationship. JCEs were also required to inform their staff of this revised strategy decision.	ROEs	Soonest
4.1.2.	**Client Relationship Management:** Deferred to next meeting.	Martha	Soonest
4.1.3.	**Risk Based Management – Criteria Review:** It was noted that this was reviewed for PAs. RR to update the scoring sheet and notify all of the availability of this webpage for scoring once refined. It was noted that this revised scoring must be done before the end of this quarter. ROEs to communicate at the JCE Forums that this must be attended to.	RR ROEs	Early March JCE Forums

4.1.4.	**CA – Board Exams – February 2010:** The report was noted. ROEs were requested to ensure that all JCs have registered CAs who wrote this exam on our web page. The data unit was requested to do an analysis of the results once available and submit to LSTC.	DU	Soonest
4.1.5.	**Regional Legal Audits – FY 2009/2010 and FY 2010/2011:** ROEs were requested to start planning for the 2010/2011 FY. They are to sit with their legal teams and plan their audit/support coverage plan for the next financial year. A significant number of file audits must be done per JC. This must also align with what Internal Audit is doing. BS to develop a template to track the planning process, with the following columns: 1. Number of practitioners 2. Criminal/Civil Split 3. Number of files RR to launch the Quality Intervention Webpage by 05 March 2010. Comments must be filled in. RR must update with a regional comment going forward.	ROEs BS RR RR	Soonest Soonest 05 Mar Soonest
4.1.6.	**Regional Legal Audit Scores Q4 FY 09/10:** Concern was raised with regards the fact that the Q4 scores have not yet been updated. It was noted that this is a good monitoring tool. BS was requested to update this sheet for the new FY with each audit separately and to put *n/a* instead of "*No*" where a particular aspect is not applicable.	BS	01 April
4.1.7.	**Backlog Courts Coverage:** It was noted that BS has a tracking sheet and that there should be one practitioner per court unless otherwise motivated. It was also noted that all contracts are to be with BS to verify and give to the NOE to sign.	BS ROEs	Soonest 26 Feb
4.1.8.	**New JCEs Induction Programme:** DK was requested to draft a SOP on JCE Inductions focusing on inducting new JCEs on the operational requirements of their position. (JCE Legal Induction Programme). It was also noted that there should be a separate SOP for Principal Attorneys, HCU Managers and SPAs.	DK	Soonest
4.1.9.	**LQAU Findings – Regional Support Programmes:** The update was noted.		

5.	**Legal Services delivery – Increasing access**		
5.1.	**Criminal Courts Coverage**		
5.1.1.	**Court Room Ratio April 2010:** It was noted that we need to move towards a court coverage report which indicates the percentage of days that a court is covered by Legal Aid SA. Target: • RC: 100% • DC: 80% per day		
5.1.2.	**HCU New Matters:** The report was noted.		
5.2	**Children's Matters:**		
5.2.1.	**Children Awaiting Trial January 2010:** The report was noted.		
5.2.2.	**CAT – Pending Details – Children longer than 3 months January 2010:** The report was noted. RR was requested to sort by region from the	RR	Next

	highest to the lowest.		meeting
5.2.3.	**CAT Detailed Report January 2010:** The report was noted.		
5.3	**Additional Delivery Mechanisms**		
5.3.1.	**Walk-in Clients Webpage Report:** RR was requested to revise this report.	RR	Next meeting
5.3.2.	**General Advice Stats – Monthly Service Differentiation report:** The report was noted.		
5.4.	**Special Projects:**		
5.4.1.	**Backlog Court Stats:** It was noted that the stats for Backlog Courts does not look complete. It seems that the JCs are not capturing everything. ROEs to ensure that this is rectified. BS to send out and finalise the Backlog Court Survey to be presented at the next national Backlog Court TT Meeting.	ROEs BS	Soonest 02 Mar

6.	**General**		
6.1.	**Update on AI Enhancements:** It was noted that AI development programme must prioritise the ~~quality enhancement and thereafter the external website.~~		
6.2.	**Motivation to move Senior Litigator post from Kimberley JC:** The motivation to move the Senior Litigator post from Kimberley JC to another region was noted and agreed. ROEs were requested to motivate if they have a need for a senior litigator at any of their provinces which have not been allocated such a post. These motivations must be included in the March LSTC meeting.	ROE	Next meeting
6.3.	**~~Minutes of the meeting between LSSA and Legal Aid SA:~~** The minutes were noted.		
6.4.	**Reduction in reject rates by PPU – January 2010:** The report was noted.		
6.5.	**Indigenous Language Project – Impact Assessment:** The report was noted.		

SECTION C – LEGAL DEVELOPMENT ISSUES

7.	**Legal Training**		
7.1.	No items for discussion.		

8.	**Legal Research**		
8.1.	**Client Profile Analysis:** The report was noted. It was further noted that MM was to update the report to reflect the use for this research and also to mention that Brazil was looked at. The updated report will be tabled at LSTC again.	MM	April 2010
8.2.	**Reasons for Refusal of Legal Aid:** The report was noted. MM was requested to concentrate on both sentenced and un-sentenced accused.		
8.3.	**Proposed Questions:** The report was noted. And a second questionnaire is to be developed and circulated for comment.	MM	Soonest

9.	**Legal Support**		
9.1.	**Training webpage:** A training SOP is currently being developed. A web page is also planned for development before the end of this quarter.		
9.2.	**Legal SOPs:**		

	The first SOP review meeting was held and the next meeting will be held soon. All the SOPs will be finalised and published before the end of this FY. RR was requested to work with AD and PB to put the documents into http: format and to add the index to AI. Knowledge Management for AI: UM was requested to update AI with a Legal Support Index and have compartments per category.	RR/AD/PB UM	Soonest Soonest
9.3.	**Implementation of Children's Act:** It was noted that we need to ensure that we are ready for the implementation. (Implementation: 01 May 2010.) LDD to develop a training programme to ensure that JCs are provided guidance on what they need to do. National Ops will ensure that we track this roll out at JCs.	LDE	Immediate
9.4.	**Implementation of Child Justice Act:** It was noted that this is to be implemented with effect from 01 April 2010. MM was requested to do a newsletter for practitioners on the Implementation of the Child Justice Act. LDD to develop a training programme to ensure that JCs are provided guidance on what they need to do. National Ops will ensure that we track this roll out at JCs.	MM LDE	Soonest Soonest
9.5.	**Library services Regional Offices and National Office:** The report was noted. It was also noted that this is for implementation in the 2011/2012 FY.		
9.6.	**ISCCJ report:** The report was noted.		
9.7.	**Foundation for Human Rights Paralegal project:** It was noted that this links well with our advice office linkage programme. DK was requested to attend the next meeting.	UM/DK	Next meeting
9.8.	**Standard booklist – revised:** It was noted that all JCs should have these books. RR was requested to assist with getting the JCs to specify which books they have and which books they still need.	UM/RR	Soonest

10.	**Legal Development – For Comment and Noting**		
10.1.	**Legal Training:**		
10.1.1.	**Legal Training Hours and Attendees – January 2010:** The report was noted.		
10.1.2.	**Legal Training Programme:** The report was noted.		
10.2.	**Legal Research:**		
10.2.1.	**Research Agenda 2009/10:** The report was noted.		
10.2.2.	**Practices causing Postponements:** The report was noted.		
10.2.3.	**Legal Practice Bill:** The report was noted.		

SECTION D – FOR COMMENT AND NOTING

11.	**Legal services delivery – Increasing access**		
11.1.	**Criminal Courts Coverage**		
11.1.1.	**Tracking of Prisoner Letters Summary:** The report was noted. Follow up outstanding matters.		

11.1.2.	**High Court Review Stats:** The report was noted.		
11.1.3.	**Sexual Offences Courts Reports as at 23 February 2010:** The report was noted.		
11.2.	**Children's Matters**		
11.2.1.	**Children's Matters – Criminal: Al stats on legal aid in criminal matters granted to children – January 2010:** The report was noted.		
11.2.2.	**Children's Matters – Civil: Al stats on legal aid in civil matters granted in respect of children – January 2010:** The report was noted.		
11.3.	**Appropriate Staffing Levels Maintained**		
11.3.1.	**% Recruitment Status 31 January 2010:** The analysis was noted.		
11.3.2.	**Recruitment Stats as at end of January 2010:** The report was noted.		
11.3.3.	**Conversion of PA to SPA – SO FY09/10:** This is to be updated and tracked until all conversions have been completed.	BS	Soonest
11.4.	**Justice Centre Productivity**		
11.4.1	**JC Pending Matter Stats – Internal January 2010:** The report was noted. This is to be tracked.		
11.5	**Delivery Infrastructure**		
11.5.1	**Satellite Offices Roll Out – Progress:** The report was noted.		

SECTION E – FOR INFORMATION

12.	**Minutes: Constitutional Case Management Committee Meeting – 04 February 2010:** The report was noted.		
13.	**Legal Aid SA Fleet Management – National Report:** The report was noted.		
13.1.	**Regional Distance Exception Report:** The report was noted.		
13.2.	**Regional Driving Pattern Analysis Report:** The report was noted.		
13.3.	**Regional Fleet Exception Report:** The report was noted.		

CLOSURE: 16h00

Chairperson: Mr Brian Nair **Signature:** _____ **Date:** _____

Secretary: Ms Nadeen Long **Signature:** _____ **Date:** _____

Legal Aid South Africa

15 March 2010

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REPORT TO LSTC

SUBJECT: ALLOCATION OF SENIOR LITIGATOR POSITION

1. BACKGROUND

At its meeting of the 25th February 2010, LSTC resolved that interested Regions should compile a written motivation providing reasons why the Senior Litigator position should be allocated to a particular Justice Centre. This position has become available after Kimberly Justice Centre declared it redundant. Two Regions raised an interest for the position being Limpopo/ Mpumalanga and the Eastern Cape. The motivation that follows is that of the Eastern Cape.

2. MOTIVATION

2.1. History of the Eastern Cape

The Eastern Cape was pre 1994 subdivided into three, namely, the Transkei, Ciskei and the Eastern Cape which fell within the Republic. Transkei and Ciskei were so called independent States. There were different laws governing the three "countries" until in 1994 when they were amalgamated into one. They are all currently referred to as the Eastern Cape.

2.2. High Courts' Jurisdiction

There are four High Court seats in the Eastern Cape, namely, Port Elizabeth, Grahamstown, Bhisho and Mthatha. It is only Port Elizabeth that is a local Division and can thus not hear appeals. All the other three still operate independent of each other.

All High Court cases of the former Transkei area including those of Butterworth JC are being heard at Mthatha or Circuit Court coming from Mthatha.

We currently have one Senior Litigator who is stationed at Port Elizabeth. It is a huge challenge for this one person to provide support to the whole Region. Hereunder are distances from the nearest Justice Centres where the other three High Courts are based. The distances are calculated on a one way trip and all from Port Elizabeth where our Senior Litigator is based:

Name of Justice Centre	Name of High Court	Distance from PE
Mthatha	Mthatha HC	652
King Williamstown	Bhisho HC	264
Grahamstown	EC Provincial Division	130

2.3. Benefits at allocating position at Mthatha

Mthatha JC will support the whole Transkei area including Butterworth, Sterkspruit and parts of Queenstown.

It should be mentioned that Transkei still has the Transkei Penal code (equivalent but different to Criminal Procedure Act) together with Transkei Attorneys Act of 1934. These Acts operate parallel to other Acts in the Republic and need to be challenged.

Transkei is very rural in nature and there is still a lot of abuse for citizens under the pretext of African Law. The case of King Dalindyebo wanting to secede the Thembu land from the Republic is a point of reference.

3. Recommendation

It is recommended that the vacant position of Senior Litigator be allocated to Mthatha Justice Centre and that it supports the Justice Centres and areas mentioned on paragraph 2.3 above.

Prepared by:

Eastern Cape

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IN THE MAGISTRATES COURT FOR THE DISCTRICT OF ESHOWE

HELD AT ESHOWE

Case No. 1005/15

In the matter between:-

ANTHONY ROBIN BRINK Applicant

and

BRIAN NAIR N.O.

DEPUTY INFORMATION OFFICER,

LEGAL AID SOUTH AFRICA Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

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42. Due to the length of the said letter which, I submit, was not necessary and meant only to insult and demean me, I then instructed our attorney of record to request an extension in terms of section 26 of the Promotion of Access to Information Act 2 of 2000 as amended, which was granted by the Applicant. See annexures F and G of the Applicant's founding affidavit.

43. I then prepared the answer which I gave to the Applicant on 13 February 2015 and annexed to his application as annexure H.

44. The substance of the answer that I gave to the Applicant was that I declined to grant him access to the information he sought therein fundamentally on two basis namely:

44.1. I am aware that the Applicant instituted an unfair discrimination action out of the Labour Court, Durban seeking all sorts of relief including that the Court order that Legal Aid SA employ him to a position of a Senior Litigator to which he had applied but which post was aborted for operational reasons.

44.2. At the time the Applicant sent his above request for access to information, the above matter was pending before the Court. Although closing argument had been made, judgment was outstanding.

44.3. As it is apparent from the request he made to Legal Aid SA, it all related to information that was dealt with in the evidence before Court. Applicant

147. I submit one or more of my preliminary objections holds true and this application falls to be dismissed on any of those objections.

148. I submit that the conduct by the Applicant as set out more specifically in my preliminary objections deserves punitive cost orders.

149. I cannot be dragged into litigation that has no merit, that is scandalous, vexatious and in flagrant disregard of the law and processes of Court.

WHEREFORE it may please the court to dismiss the application with punitive costs.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at Johannesburg on this the 2nd October 2015. The regulations contained in the Government Notice No. 1258 dated 21st July 1972 (as amended) and Government Notice No. 1648 dated 19th August 1977 (as amended) having been complied with.

COMMISSIONER OF OATHS
PRACTISING ATTORNEY
MOBANGOLE ATTORNEYS
131 BOSMAN AVENUE
MONDEOR

R55
71

THE PROMOTION OF ACCESS TO INFORMATION ACT (PAIA)

ANNUAL REPORT 2011/12

925
2801

The protection aspect requires the Commission to assist members of the public to assert their right to access information through the request mechanisms outlined in PAIA, and to act on behalf of a requester where necessary, using powers conferred upon the Commission by PAIA and the Human Rights Act 54 of 1994[1]. Assistance provided by the Commission includes lodging request for information on behalf of requesters. This comes in the form of consultations, advisory meetings with requesters and where necessary, assisting requesters to obtain access to the information requested. An example of this is the ongoing advisory role that the Commission is playing in a prolonged matter between a Complainant and Legal Aid South Africa (LASA). The requester had previously sought assistance from the Commission to obtain information he had requested from LASA relating to a job application. A number of related records were released in part and others refused. The requester was however not satisfied with LASA's general response to his request and brought the inaccuracy of LASA's section 32 report to the Commission's attention particularly with regard to some of his requests that had not been reported on. The requester has since proceeded to Court to litigate this matter against LASA. The Commission continues to monitor the developments in this matter.

Assistance extends to DIOs and private sector actors as well. DIOs are often assisted in applying and interpreting PAIA, providing legal opinions and responding to general enquiries on PAIA.

Private sector assistance is primarily based on the compliance requirement in section 51 of PAIA. This reporting period saw an influx in private sector enquiries due to the moratorium that was set to expire in December 2011.

Monitoring and assessment of requests for assistance enables the Commission to identify trends in the use of PAIA and the extent to which PAIA is used.

[1] Section 9 of the Human Rights Commission's Act 54 of 1994

	2003/2004	4
	2004/2005	6
	2005/2006	8
	2006/2007	11
	2007/2008	48
	2008/2009	33
	2009/2010	25
	2010/2011	20
	2011/2012	69

Challenges

The challenges across all tiers of government remain unchanged. Resource constraints (human and capital), lack of awareness and buy-in are common challenges in the public sector.

Compliance monitoring carried out during the course of this reporting period consistently reveal a disregard for PAIA. This is evident in the fact that public institutions do not take initiatives to carry out their duties in terms of PAIA. While resource constraints remain a challenge, research conducted by the Commission in previous years identified the Limpopo Department of Health and Social Development as a department that initiated compliance and PAIA implemenation in the absence of resources. By incorporating PAIA into the strategic objectives of the department and creating systems within the department to implement PAIA, the department was rated as an institution that demonstrated best practice.

The example cited above is evidence of the ability to implementPAIA despite resource constraints. Proper and efficient implementation of PAIA can be achieved if there is a will to make the change.

However, on the other side of the coin are institutions that still find section 32 reporting difficult despite training. The Commission has discovered that public institutions do not accurately report on section 32. A case in point here is the report from Legal Aid South Africa (LASA) where a complainant brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA's 2010/11 section 32 report despite the fact that the requests were made in that financial year. The complainant was advised by the Commission that LASA's 2011/12 report would be monitored to assess the accuracy of their statistical reporting. The Commission engaged with LASA and remains concerned about the accuracy of section 32 reporting by LASA, a problem which is also likely to exist with other public institutions. In the light of the case above, the Commission recommends that a review of section 32 reporting is undertaken. Such review should consider an expansion of section 32 reporting obligations to include substantive reporting, disaggregation of request type, an extension of the Commission's powers to penalize non-compliance and inaccurate reporting as well as a duty on heads of public bodies to include section 32 reports in their reports to Parliament, over and above the reports submitted by the Commission. Also, public bodies should bear the costs incurred by the Commission in

instances it chooses to audit the veracity of reports submitted to it by the public body in question. In sum the commission recommends:

- the provisions of section 32 be expanded to substantive reporting;
- the Commission be provided with resources, alternatively, that if public bodies were to be audited, they should provide the resources for the audit of reports and files to be conducted;
- that the Commission be given the powers to penalize inaccurate reporting and non-compliance with the provisions of section 32 in terms of enabling provisions on enforcement in PAIA;

It is clear that despite training, a great deal of confusion remains about section 32 reporting. For example, in the context of the case above,

- officials are not clear whether requests for different but related documents submitted on one form constitutes a single request;
- officials are not certain on how to capture requests submitted at the end of March and they respond in the new year;
- officials are not certain about when discovery rules of court will apply in a matter being litigated and when PAIA can be used.

Since the first complaint on LASA, the SAHRC has trained LASA officials on PAIA. The Commission intends auditing LASA fully in the course of the 2012/13 financial year.

Trends

Trends on usage of PAIA are established through the analysis of the data provided in the section 32 report. Below is a detailed anaylis of requester trends for the period 2011/2012.

A total of 24 857 requests were lodged with national government departments. The bulk of these requests were submitted to the South African Police Services, the Department of Justice and Constitutional Development and the Department of Home Affairs.

The Department of Home Affairs received a total of 139 requests. An interesting point to note is that the department was reported as non compliant in the previous reporting period. Having complied with its reporting obligations in 2011/2012, the number of requests reflected in its report is high and warrants a cause for concern with the manner in which the department is processing and tracking requests.

Requests received in the provincial departments have increased when compared to previous statistics. For this reporting period, requests in provinces totaled 11 972. The province with the highest number of requests is KZN, its department of health alone processed 9809 requests. This level of activity indicates an increase in awarenes and development of systems in public bodies to capture statistics correctly.

Local governments have also in this reporting period shown increased activity, with the Western Cape municalities processing a total of 375 requests.

OTHER BODIES	Number of request for access received s32(a)	Number of request for access granted in full s32(b)	Number of requests granted despite there being a ground of refusal but granted in the public interest	Number of requests for access:(a) refusal in full (b) refused partially (c) number of times each provision of the act was relied on to refuse access in full or partially S32(d)			Number of cases in which the period stipulated in s25(1) were extended in terms of s26 (1) S32(e)	Number of internal appeals (a) lodged with the relevant authority	(b) number of cases in which as a result of an internal appeal access was given s32(f)	Number of internal appeals which were lodged on the ground that a request for access was regarded has having been refused in terms of s27 section 32 (g)	Number of applications to a court which were lodged on the ground that internal appeal was regarded as having been dismissed in terms of section 77 (7) s32 (h)	Other information
OTHER BODIES				A	B	C						
Accounting Standards Board	0	0	0	0	0	0	0	0	0	0	0	
South African Reserve Bank	1	0	0	1	0	1	0	0	0	0	0	
Agri SETA	0	0	0	0	0	0	0	0	0	0	0	
Airports Company SA	03	0	0	02	0	02	0	0	0	0	0	They use in house counsel to implement PAIA

Amafa/Heritage KZN	0	0	0	0	0	0	0	0	0	0	0	
Auditor General SA	01	0	0	0	0	0	0	0	0	0	0	The one request received was transferred
Eskom	52	21	0	09	10	0	15	4	03	0	0	5 requests pending
Free State Gambling Board	01	0	0	0	0	0	0	0	0	0	0	
Gauteng Gambling Board	0	0	0	0	0	0	0	0	0	0	0	
Independent Quality Assurance Agency	0	0	0	0	0	0	0	0	0	0	0	
Industrial Development Corporation	1	1	0	0	0	0	0	0	0	0	0	
Ithala Development Finance Corporation Ltd	01	01	-	-	-	-	-	-	-	-	-	Late report
KZN Growth Fund Trust	0	0	0	0	0	0	0	0	0	0	0	
Land Bank	01	01	0	0	0	0	0	0	0	0	0	Late Report
Legal Aid South Africa	01	01	0	0	0	0	0	0	0	0	0	
Magistrates Commission	05	03	0	0	02	0	01	0	0	0	0	
MerSETA	04	03	0	01	0	01	0	0	0	0	0	
Mining Qualifications Authority	0	0	0	0	0	0	0	0	0	0	0	

25 Baker Road
Prestbury
Pietermaritzburg 3201
30 November 2010

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

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

And to:

The Board of Directors: Legal Aid South Africa

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

Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

And to:

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

Dear Judge Mlambo

Pietermaritzburg Senior Litigator post:

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

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

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

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

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

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

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

16. In my letters to Vedalankar and Makokoane mentioned above, I'd assumed political prejudice against me – something I'm accustomed to. (Bundle, page 11, paragraphs 5.1–14 and pages 93–99 (a letter to Adv Paul Hoffman SC, director of the Institute for Accountability in Southern Africa, including information intended for the unwritten 'Postscript' mentioned in paragraph 58 of my letter to Makokoane)). I've recently appreciated, however, though I doubt it, that the prejudice may simply be racial, albeit no less illegal, inasmuch as my selection and recommendation for the appointment in question might have been inconvenient for the targets set out in LASA's 'Employment Equity Plan for 2010-2015'.
17. Arising from the 'behaviour' in question, I filed an extensive request for records under the Promotion of Access to Information Act ('PAIA') with Vedalankar as LASA's information officer ex officio on 30 August. (Bundle, pages 49–69)
18. On 29 September, the day before the end of the month provided by the Act for compliance with my request, and not having received any response to it, not even an acknowledgement of receipt, I approached the South African Human Rights Commission ('SAHRC') with a plea for assistance.
19. Kindly taking the matter up for me, the director of the SAHRC's PAIA Unit Chantal Kisoon ably negotiated an undertaking from LDE Patrick Hundermark to deal with my records request. Although Vedalankar was out of time for compliance (there was a mix-up over the computation of the period prescribed), I didn't mind, I was just glad that my request would be given attention at last.
20. On 18 October I received a letter from Vedalankar rejecting my request. (Bundle, pages101–108)

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

> The test to be applied to a request for information in terms of the PAIA, as laid down by the court in the case of *National Teachers Union v Superintendent General: Department of Education & Culture, Kwazulu-Natal and Another (D38/08) [2008] ZALC 18, is as follows:*
>
> a) *In dealing with a request in terms of the Act, the question is not whether the requester is entitled to information but about whether the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure.*

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

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

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

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

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

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

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

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

Anthony Brink

From: Chris Rawlins [cfmrawlins@telkomsa.net]
Sent: 10 November 2012 08:40 AM
To: Anthony Brink
Subject: Fw: Maree

Categories: Red Category

----- Original Message -----
From: arbrink@iafrica.com
To: cfmrawlins@telkomsa.net
Sent: Sunday, December 12, 2010 12:21 PM
Subject: Maree

Receipt of your letter is acknowledged.
JJ MAREE

----- Original Message -----
From: JAN
To: 'Jan Maree'
Sent: Friday, December 10, 2010 2:58 PM
Subject: FW: Legal Aid South Africa

_____
From: arbrink@iafrica.com [mailto:arbrink@iafrica.com]
Sent: 09 December 2010 03:58 PM
To: jan@schoemanmaree.co.za
Subject: Legal Aid South Africa

Dear Mr Maree

I have written to Judge Mlambo and the Board of Directors of Legal Aid South Africa in an extraordinarily serious matter.

I'm emailing away from home and am having trouble with attaching files to email, so I'd be obliged if you would download the letter and its annexure from the following secure private website:

www.tig.org.za/LASA
username: lasa
password: LASA2010

Yours sincerely

Adv Anthony Brink

Legal Aid South Africa

Your voice. For justice.

National Office
29 De Beer Street
Braamfontein
2017
Tel: 011-877-2000
Fax: 011-877-2222
www.legal-aid.co.za

11 April 2012

C/o Chantel Kisson

The South African Human Rights Commission

Email paia@sahrc.org.za

SUBMISSION OF THE REPORT ON REQUEST FOR ACCESS TO RECORDS OF LEGAL AID SOUTH AFRICA IN TERMS OF SECTION 18(1) OF THE PROMOTION OF ACESS TO INFORMATION ACT 2 OF 2000

Dear Chantel

Please find the report in respect of all requests submitted during the financial year 2011/12.

I hope you find this in order

Regards

Mr Thembile Mtati

Corporate Services Executive

Legal Aid South Africa

Tel: 011 877 2003

South African Human Rights Commission Report 2011/12 Final

List of matters in which information was requested in terms of Promotion Access to Information Act 2 of 2000

Name of requester	Type of request	Outcome of the request	Comments	Date when request made.	Date when the request responded to.	Regional Office	Justice Centre	Who responded
Leston Sampson	Request for information in terms of section 18(1) relating to the refusal to grant legal aid assistance, which included amongst others, the merit report, correspondence between Regional Operations Executive and the Justice Centre Executive relating appeal process for legal aid application as well as record of telephone calls.	The information requested were granted to the requester.	No further enquiry was made by the requester.	22/06/2011	28/06/2011	Western Cape and Northern Cape	Athlone	Mark Gaffley-Justice Centre Executive

11/4/2012

867
2820

R55
74

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Justice and Correctional Services

03 December 2012

Chairperson: Mr L Landers (ANC)

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Meeting Summary

The Portfolio Committee on Justice and Constitutional Development received a briefing from the South African Human Rights Commission (SAHRC) on the Promotion of Access to Information Act 2011/2012 Annual Report. The Commission noted that considerable resources were directed towards training for the testing of compliance with the Promotion of Access to Information Act (PAIA). There was a consistent lack of compliance from public bodies. There was also a lack of appreciation of the importance to comply with the right to access to information, particularly at local government level, where service delivery was most important. Five core constitutional and statutory mandates of the SAHRC were identified. These were the promotion of the right of access to information, the need to assist public and private institutions to comply with the PAIA, the need to conduct training, which was done by training over 1 000 Deputy Information Officers in the last year, including training on the Protection of Personal Information Bill, the need to hold management briefings, including senior management from public institutions, and the conducting of compliance audits. These audits would help the SAHRC to gain insight into what was still needed, so that it could develop effective interventions and internal systems aimed at supporting public institutions.

The SAHRC set out its findings with a comparison also of the last five years. Only 25% of public officials knew who their Deputy Information Officers were, or knew of the correct procedures, and 87% of frontline officials were not aware of the Promotion of Access to Information Act procedures. In the 2009/10 reporting period, the Commission had spent a lot of money developing a frontline manual which was distributed to all state institutions. 60% of audited public institutions did not have a designated Information Officer. Only 15% of audited public institutions had a Promotion of Access to Information Act project. Many public institutions did not grant requests for information, for example the Office of the Presidency, National Treasury (NT) and the Department of State Security. It was not known why the requests were denied. The Commission had recommended the amendment of Section 32 of PAIA, so as to include substantive reporting, as well as the expansion of the Commission's powers... These amendments have been proposed to the Department of Justice and Constitutional Development, but there had been no response.

The Committee expressed disappointment that the SAHRC had not included the Protection of Personal Information in its reporting. The Committee was also disappointed that the Commission said it was still awaiting clarity on its role when the Protection of Personal Information was enacted, even though there were clear transitional arrangements. The Committee asked for the views of the SAHRC on the constitutionality of the Protection of State Information Bill, as well as whether the provisions of the Promotion of Access to Information Act that related to the training of magistrates should be removed. More detail on the compliance monitoring audits was sought. Members raised questions on the reporting on Legal Aid South Africa, questioned the role of the Organisation for Institutions Supporting Democracy in assisting the Commission, and asked if the National Archives and Record Keeping Act was working properly. The Committee recommended that the report of the SAHRC should be adopted by the House, with a recommendation from the Committee that national departments should report directly to the National Assembly, and that provincial departments should report to the National Council of Provinces were concerned. The Committee was concerned about the lack of implementation and ratification of international obligations that fell upon South Africa. The Committee would communicate with the Minister of Justice and Constitutional Development on the international obligations that fell under its purview. The Committee recommended that, in future, the SAHRC should also audit Parliament as well as provincial legislatures. It was noted that the Committee would pursue, with the Standing Committee on Appropriations, its recommendation for further appropriations for the Commission.

Meeting report

South African Human Rights Commission 2011/12 Annual Report on Promotion of Access to Information Act

Mr Fola Adeleke, Manager: Promotion of Access to Information, South African Human Rights Commission, noted that the South African Human Rights Commission (SAHRC or the Commission) directed a lot of its resources towards training on the Promotion of Access to Information Act (PAIA). There was a consistent lack of compliance with PAIA, on the part of public bodies. There was also a lack of appreciation of the right to access to information, particularly at local government level, where service delivery was so important. The Commission had set up a specialist unit to monitor the compliance by public institutions. SAHRC had also identified five core mandates that it had as part of its constitutional and statutory obligations have been identified. The mandates were the promotion of the right to access information, the need for SAHRC to assist public and private institutions to comply with PAIA, and the need to conduct training. In this regard, Mr Adeleke noted that over 1 000 deputy information officers were trained. The Protection of Personal Information Bill (PPI) was also incorporated in the training. SAHRC had held management briefings that included senior management from public institutions. Finally, it had to conduct compliance audits. The objective of the audits was to provide insight for the Commission so that it could then develop effective interventions and internal systems aimed at supporting public institutions.

Mr Adeleke noted the SAHRC's findings over the last five years. Only 25% of public officials knew who their Deputy Information Officers were or on procedures, and 87% of frontline officials were not aware of PAIA procedures. In the 2009/10 reporting period the Commission spent a lot of money developing a frontline manual which was distributed to all state institutions. 60% of audited public institutions did not have a designated Information Officer. Only 15% of audited public institutions had a PAIA project.

The Commission's work included the provision of capacity building tools, recruitment opportunities and the showcasing of best practices. The provincial Information Officers Forums had been successful where the Commission had held them - for example in the Free State (FS) and Western Cape (WC) there has been 100% compliance. In other provinces, compliance ratings had improved. 39 200 Section 32 (of the Constitution) requests that were received by government institutions. This figure may not be accurate, as the reporting from public institutions was poor. About 32 000 PAIA requests were granted. The South African Police Service (SAPS) received the most PAIA requests, over 20 000, and their compliance was good. A lot of public institutions did not grant requests for information, for example the Office of the Presidency, National Treasury (NT) and the Department of State Security, but it was not known why the requests were denied. The SAHRC had recommended the amendment of Section 32, so as to include substantive reporting as well as the expansion of the Commission's powers. The SAHRC developed a model law for access to information for the rest of Africa, in partnership with the Centre for Human Rights (CHR).

SAHRC outlined that it faced several challenges, which included budgetary constraints. This impacted on its ability to enforce compliance, as well as to conduct community training sessions. Sustaining the political will of senior leadership for the compliance with PAIA was a problem. The amendments to PAIA had been proposed to the Department of Justice and Constitutional Development (DoJ&CD), but there had been no response.

Discussion

Mr J Jeffery (ANC) said that his main frustration with the PAIA report was that the SAHRC did not include reports on the Protection of Personal Information (PPI) Bill, as opposed to the Protection of State Information Bill (PSI). The amendments that the Commission wanted to effect, to PAIA, had been done in the PPI, and he pointed out in this regard that when the Committee had discussed amending PAIA during its deliberations on the PPI, the SAHRC had not given input, and in the end the Committee relied on information submitted by the Open Democracy Advice Centre (ODAC). It was worrying that the SAHRC was seemingly not aware of the provisions that related to its functions, in the new PPI Bill. The Committee had been engaging with the DOJ&CD on the issue of magistrates and their training on PAIA, yet this was another aspect not covered in the SAHRC's report. He said this was an important issue that the Commission should be following up.

Mr Jeffery asked for more detail on the compliance monitoring audits. The Commission complained about Legal Aid South Africa (LASA) on page 29 of the report, yet when this point was raised with LASA, it had responded that it was not happy with the SAHRC report, and disputed the findings.

Mr Jeffery thought that a reporting format that listed departments that did not comply should be adopted.

Mr Jeffery asked how the Commission had arrived at the 25% figure for officials that were not aware of PAIA.

Ms D Schäfer (DA) asked if the Commission would support the removal of the requirement for magistrates to be trained for PAIA. She asked if the SAHRC had engaged with the Public Protector (PP) regarding any PAIA complaints that this office had received. She noted the comment on the amendments but asked what the SAHRC itself had done to get the Department of Justice to respond. Finally, she called for the SAHRC's view on the current version of the PSI Bill that was passed by the National Council of Provinces (NCOP).

Mr S Swart (ACDP) asked if Parliament had to report according to Section 32. He agreed that it would make sense for the requirement for the training of magistrates to be removed, for the purposes of PAIA implementation. He was concerned that this Annual Report highlighted high levels of non-compliance by public bodies and felt that the Committee and the SAHRC needed to take further steps. He wondered if the unit for Organisation for Institutes

Supporting Democracy (OISD) been supporting the Commission. He also asked if, given its financial constraints, the SAHRC could work with other organisations for litigation purposes. He too wanted to know about the final version of the PSI Bill, particularly the "trumping" clause 1(4) and the lack of a public interest defence specifically.

Ms D Smuts (DA) said that the Commission, in 2010, had correctly pointed out that the Minister of State Security sat "like a big spider with many tentacles" at the heart of the system. The Commission had also correctly pointed out that there was already a law that provided for recording keeping and there was thus no need to include the archives and record keeping in the PSI Bill. She wondered if the Commission could assess whether the National Archives and Record Keeping Act was working, and if the SAHRC was not aware of this at the moment, then it should find out. This could yet be another reason why getting access to information was difficult in South Africa. She noted that the SAHRC was quite correct in the view that Section 46 of PAIA was too stringent and should be amended. However, she wanted to clarify whether the Commission had had a response from the DOJ&CD on the request for the amendment of Section 46 of PAIA?

Advocate Lawrence Mushwana, Chairperson, SAHRC, said that the Commission would need more time to look into and send through a response on section 46 of the PAIA amendment, as well as the implementation of the National Archives and Record Keeping Act.

He noted that the Head of OISD has been ill since February 2012, and the Acting Head had since left. The SAHRC did not receive a lot of help from this unit, and it was dysfunctional. There was an attempt from Chapter 9 Institutions to meet with the Speaker to voice concerns over OISD, as there had been little assistance received from it.

Ms Pregs Govender, Deputy Chairperson, SAHRC, said that the Commission had, at a previous meeting, raised queries as to what this Committee had done with reports where the question of non-compliance with PAIA was raised, and the Chairperson had responded that the Committee would attend to the matter seriously. The SAHRC had developed a plan of action on that point.

Mr Jeffery said that he had been raising this issue, and he proposed that the House should be asked to adopt the SAHRC report, with a recommendation from the Committee that departments must report in future to Parliament. This was not a plan of action; the Commission could then refer a report to the NCOP, for the same proposal to apply to provincial departments.

Adv Mushwana added that he was not sure that the Commission had done everything that its Act allowed it to do. The Commission did have some powers and perhaps it was not using them fully. It would try to do more.

Ms Govender added that the SAHRC had come to the decision that it must use its powers fully, such as power to issue subpoenas, and it had begun to do that in more cases.

Ms Govender said, in relation to the questions around the PPI Bill, that the SAHRC wanted more clarity on the transitional provisions of the PPI, especially for budgetary planning purposes.

The Chairperson said that the Committee had stated, in its Budgetary Review and Recommendations Report (BRRR), that it should have a strategic planning session on the issues raised by Mr Jeffery in the following year. One of the issues raised by the Commission in writing to the Committee had raised the question of international conventions. International Conventions were an Executive prerogative, and Parliament's role was to endorse these. There were constraints on Parliament to take these forward.

Mr Jeffery said that a complaint from the public was that it took exceptionally long for a Bill to be introduced to Parliament, following signature of an international instrument – for example, the length of time between signature of the United Nations Convention on Combating and Prevention of Torture (UNCAT) and the introduction of the Bill. The Committee should write to the Director General of the DOJ&CS for reports on all conventions that fell upon that Department to implement.

Mr Swart agreed that this was a concern, and Parliament did have an oversight role. The Covenant on Civil and Political Rights (CCPR) was dated in 2000 and was still outstanding, and this indeed indicated a serious problem. South Africa had received a negative score from other international bodies on this, as well as on other obligations, and this could not continue.

The Chairperson said that he would like to afford OISD an opportunity to respond to some of the questions raised about its role.

Adv Nonkosi Cetshwayo, Head, OISD, said that the responsibility of the unit was to support and advise the Committee in relation to the Chapter 9 institutions that reported to it. OISD had read the annual reports from the SAHRC, and had analysed them for purposes of advising the Speaker to which Committee they should be referred. OISD had been looking to bringing together all stakeholders that were considered important in the work of OISD. She, in her capacity as Head of OISD, had also held meetings with the Directors General and the Presidency, to deal with the international responsibilities where Chapter 9 Institutions in South Africa played a role.

Mr Jeffery suggested that the Chairperson should write to the Minister or Director General in relation to each treaty

for which the DOJ&CD was responsible, setting out the problem of the outstanding reports and seeking more clarity on where the process was for implementation of the treaties.

Adv Mushwana said that at the last conference in Geneva, a lot was said on South Africa, and referred the Committee to the Universal Periodic Review Report.

Mr Adeleke responded to other questions. He noted that the 25% figure was obtained via the compliance audits. The Commission had considered the period between April 2011 and March 2012 for the purpose of this latest report. During this period there was no engagement with the Parliament on PPI, which was the reason why this was omitted from the Report.

Mr Jeffery said that it was better to leave the matter at that, and for the SAHRC to acknowledge that this should have been done. The figure of 25% was still doubtful.

Mr Adeleke agreed.

Continuing with the answers to questions, he noted that the PPI only amended Section 51, and the presentation had specified that there should be clarity on Section 51, not that there should be an amendment. The Commission was concerned that there were over one million manuals that had not yet been processed. The contracts of the staff who were hired to attend to would lapse at the end of the year, and the SAHRC was concerned about the transitional arrangements in the PPI, what would happen to the manuals and the SAHRC's responsibilities.

The Chairperson said that the Commission should not abandon its mandate.

Mr Adeleke said that the Commission's request for funding to extend the contracts of the data capturers had been refused, and essentially there would not be anybody in the SAHRC who would be able to continue with that work.

Mr Jeffery said that the amendment to Section 51 would mean that the SAHRC could require that the manuals be made available, but not necessarily submitted. The SAHRC could take the lead from the judges of the Supreme Court of Appeal (SCA), who had concluded that it was unduly onerous to require of them that they read an entire record of a trial, in order to consider a petition for leave to appeal. They had simply decided that they would not read the record, and were waiting for the law to be amended. The SAHRC could perhaps follow the same principle, especially since the PPI amendments had already gone through the National Assembly (NA). The SAHRC should not review the Section 51 manuals.

Mr Adeleke continued to state that the consolidated audit reports had been highlighted and recommendations were made. The Commission did have more detailed information on specific institutions, but had not included everything to avoid the documentation being too bulky.

Mr Jeffery said that information on the Department of Justice only was required.

Mr Adeleke answered the question of the LASA disputing the SAHRC's report. He said that LASA could not dispute the finding, because the Commission had shown the PAIA report that they had omitted. The PAIA request was sent to LASA, and it was requested to report on it. However, LASA maintained that this request should have been done during the last reporting period, whereas SAHRC held the view that this fell within the current reporting period.

Mr Jeffery said that the detail was useful and the Committee should get more information and put it to LASA.

Ms L Adams (COPE) said that the North-West (NW) had not been complying for the last three years. The SAHRC had admitted today that it was not, in the past, using its powers as it should, and she asked why the Committee could be expected to take the SAHRC seriously when it did not ensure that it would get compliance. North West was only one example. It seemed that once again it would fail to comply.

Mr Adeleke said that the recommendation for the amendment of Section 90, to enforce Section 32 reporting, was made because the SAHRC would no longer be responsible for PAIA. The envisaged Information Regulator (IR) in the PPI would have far more powerful and broader powers.

Ms Adams asked if Mr Adeleke was suggesting that everything should be left as it was until better systems came into force.

Mr Adeleke said that the SAHRC was unable to enforce Section 32 reporting.

Ms Adams asked if this was not for the courts to decide.

Mr Adeleke said that the most the SAHRC could do was to constantly write and seek the cooperation of departments.

Ms Adams said that surely Section 90(2) and (3) were in place to ensure compliance. She believed that it should be left to the Court to decide whether they were strong enough, rather than for the Committee and SAHRC to engage in

academic debate on the point. She believed that the SAHRC should follow the steps. Somebody had to take responsibility if the North West failed to comply for three years.

Mr Adeleke said that the SAHRC could not simply bring a government department before the Court.

Adv Mushwana said that the Commission had admitted that it had not done enough in the past, and had acknowledged that it did have the powers and it was a question of using them in future.

Adv Adams said that this was the whole point, but she wanted to hear when the SAHRC would be using those powers.

Adv Mushwana said that it was up to the SAHRC to do what Ms Adams suggested.

Mr Adeleke noted that, in relation to the training of magistrates, the SAHRC was of the view that PAIA was very technical and it was necessary to ensure that judicial officers had the skills to apply it.

Mr Jeffery said that the Committee had been chasing this up with the DOJ&CD.

The Chairperson agreed and stated that a letter would be written to the Director General of the DOJ&CD.

Mr Adeleke said that when the Information Regulator was established, it would not be a Chapter 9 Institution, and there was some question whether or not it would have access to classified information. Letters written to the DOJ&CD on this point had been met with a mild response. The current PSI Bill as passed by the NCOP was welcomed in the sense that PAIA had been reinstated to full recognition, and that Chapter 9 Institutions would not be restricted in their access to classified information.

Ms Govender cautioned that the SAHRC Commissioners still had to sit as a collective and engage on the views that it might express on the PSI Bill.

Ms Govender answered the questions on whether PAIA should apply to Parliament by saying that the Commission had interpreted a public body, in terms of PAIA, as applying to the Executive arm of government and perhaps not Parliament. However Parliament had an Information Officer and thus should submit reports as well, although it had not done so in this period.

The Chairperson said that in that case Parliament had to be summoned and answer.

Mr Jeffery said that his reading of the section was that Parliament indeed fell under the definition of a public body, and asked then why it was not included in the Report as not having complied.

Mr Adeleke responded that this was because the reporting format included national and provincial bodies as well as municipalities and other public bodies. It was an omission on the part of the Commission.

Mr Jeffery asked why provincial legislatures had not been included.

Mr Adeleke said that the Commission had largely focused on the Executive since a lot of requests went to public bodies, and not legislatures.

The Chairperson suggested that legislatures could be included, for the purposes of highlighting importance of PAIA.

Adv Mushwana confirmed that the Commission did share resources with other institutions such as drafting of legal documents.

Mr Swart agreed that this was correct, as long as there was no conflict of interest.

Adv Mushwana agreed with this point.

Mr Adeleke commented on the questions around records. Some departments had submitted that they did have file plans, but that some were outdated and not submitted to archives for approval. Some institutions did not have file plans at all.

Ms Smuts added that the PSI Bill perpetuated the problem, because it had intermingled requirements around classification and plain record keeping. There was also a conflicting situation of the National Archives Act, the Archivist, the Minimum Information Security Standards and the PSI Bill all standing alongside each other, and she cautioned that it was necessary to keep an eye on the handling of these records in the future.

Ms Govender said that the SAHRC should keep this in mind.

Mr Adeleke said that the Commission could have record keeping as one of its functions next year.

Mr Jeffery said that it would be useful to know the compliance of all Chapter 9 Institutions. The Section 14 categories were difficult to understand, from the Commission's reporting card. He also wanted to know the difference between 'easily accessible', 'accessible' and 'fairly accessible'.

Ms Govender said that this could easily be rectified and clarified.

Mr Jeffery noted that the Committee had, in the BRRR, specifically recommended further allocations for the SAHRC, but understood that National Treasury may either have refused the request or not responded. He suggested that the Committee should pursue the point with the Standing Committee on Appropriations

the Chairperson asked if National Treasury should not have responded to the Committee.

Mr Jeffery said it was not clear if National Treasury had replied, and this had to be pursued further through the budget process of Parliament.

The Chairperson agreed.

Adv Mushwana thanked the Committee for its efforts. He wanted to let the Committee know that the SAHRC had retained its international "A" rating as a human rights organisation.

The Committee congratulated the Commission.

The meeting was adjourned.

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COMPLAINT TO THE AUDITOR-GENERAL REGARDING MAJOR ONGOING BREACHES OF THE PUBLIC FINANCE MANAGEMENT ACT INVOLVING MANY MILLIONS OF RANDS AND OTHER MATERIAL IRREGULARITIES INCLUDING CRIMES COMMITTED IN A CORRUPTION COVER-UP BY PAST AND CURRENT HIGH OFFICERS OF LEGAL AID SOUTH AFRICA

I, Anthony Robin Brink, affirm:

1. I am an adult male, 60, an advocate of the High Court of South Africa, admitted to practice on 12 April 1983, and a former magistrate of the District- and Regional Courts, specialising in civil law. I reside at 36 Pearson Street, Eshowe, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 083 779 4174.

EXECUTIVE SUMMARY

2. This complaint identifies major ongoing contraventions of the Public Finance Management Act 1 of 1999 ('PFMA'), some criminal, committed in a cover-up of top-level recruitment corruption at Legal Aid South Africa ('LASA') entailing unauthorised expenditure of around thirty million rands since 2010, hitherto undetected and unreported by LASA's external auditor PWC.

3. The complaint further identifies multiple instances of 'material irregularity' as defined by section 1 of the Public Audit Act 25 of 2004 ('PAA'), some criminal, committed by LASA's top officers prior to and in the course of the cover-up, in which the express wishes of both Parliament and the Justice Minister were defied, to the massive detriment of critical service delivery to the country's indigent.

4. Part Two and other parts of this complaint to follow will detail further material irregularities in the form of procedural and ethical corruption of staff

recruitment at LASA, and further ethical and criminal misconduct in covering it up.

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The supporting documents referenced herein are accessible online in PDF at illegal-aid.co.za/AG. For easy copying, reprinting, transmission by email, and reading on a portable device, copies of this complaint are available in PDF, MS Word, and HTML at the same site.

INTRODUCTION

5. The 'biggest law firm on the African continent', as its internet website bills it, LASA enjoys a sterling reputation as a model of good practice and probity in corporate governance, management and financial administration in South Africa, and it is officially lauded as the standard for emulation by other public entities. Then Deputy Minister of Justice and Constitutional Development Andries Nel enthused in 2011: 'The world would be a better place if it were run by Legal Aid'[1] and Minister of Justice and Correctional Services Ronald Lamola

[1] *Business Day*, 12 January 2011.

recently crooned in tune: 'This is one of the best-run entities of government. We have had clean audits for the past 18 years. There is a well-established culture [of proper corporate governance at LASA]. ... So it is an institution of best practice, not only in SA but in the whole world'.[2]

6. The Auditor-General's 'clean audits for the past 18 years' have generated the universal impression that LASA is 'squeaky clean'[3] and have served to 'beatify' it and give it a 'saintly status'.[4] In fact, as this complaint will demonstrate, LASA is profoundly corrupt. Under the stewardship of former Board chairperson Dunstan Mlambo JP and former CEO Vidhu Vedalankar (both of whom retired in 2019)[5] and with the active complicity of Chief Legal Executive Patrick Hundermark (now also a Board member), National Operations Executive Brian Nair (now also a Board member), and Human Resources Executive Amanda Clark, proper corporate governance and the rule of law at LASA seriously broke down, with criminal lawlessness becoming the norm.

7. Chief Operations Executive Jerry Makokoane (now also a Board member) and Chief Financial Officer Rebecca Hlabatau turned a blind eye to the corruption called to their attention, as did Board member Pieter du Rand,[6] then and still representing the Department of Justice and Correctional Services ('the Department') on the Board, thus betraying his fiduciary duty to LASA and his watching brief from the Department. Board Secretary Langa Lethiba failed to

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[2] News24, 1 August 2019.

[3] The phrase Chief Justice Mogoeng Mogoeng used ironically in paragraph 104 of *Public Protector v South African Reserve Bank* [2019] ZACC 29 (22 July 2019) in relation to the Reserve Bank as it operated during apartheid.

[4] Against which general danger Mogoeng CJ warned in a talk quoted by *The Mercury* on 18 July 2019: 'We have got to make it our business not to beatify others at the expense of others, not to make others untouchable, and not to allow anybody, including me, to be awarded an undeserved saintly status.'

[5] Although Mlambo JP and Vedalankar have been succeeded by new chairperson Makume J and new CEO Kola, *brevitas causa* they'll continue to be cited in this complaint as chairperson and CEO respectively.

[6] Thus all breaching section 15.1.5 of LASA's Code of Conduct and Ethics (Bundle 2, page 780): 'All employees must ... report any harmful activity they observe in the workplace'. The correspondence they disregarded will be put up with and treated in another part of this complaint to follow.

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inform the Board of the illegalities brought to his attention, thereby preventing it from acting to remedy them.[7]

8. The wholesale corruption at LASA addressed in this complaint[8] had its beginning in non-executive[9] Board chairperson Mlambo JP's illegal intrusion into and interference with senior professional staff recruitment[10] – in so doing, lawlessly disregarding and flouting LASA's internal regulations precisely governing job candidate selection[11] and approval,[12] which give him zero role or say in such operations and decision-making[13] – and then in participating in an elaborate criminal cover-up of a particular case of ethical recruitment corruption[14] in which he was centrally involved, escalated to the Minister of Justice and Constitutional Development (now the Minister of Justice and Correctional Services, 'the Minister'), to the National Assembly, and to the courts,[15] in a classic instance of the multiplying dynamic of a disintegrating

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[7] See note 7 above.

[8] Given the egregious corruption and ethical turpitude at LASA reported in this complaint, uncovered by a limited investigation only of recruitment corruption and its cover-up, a comprehensive general forensic audit of LASA is likely to uncover much more.

[9] LASA's annual report 2010/11 explains: 'Legal Aid South Africa is governed by a Board of non-executive members commonly referred to as the Board of Directors. ... COMPOSITION OF THE BOARD AS AT 31ST MARCH 2010: JUDGE DUNSTAN MLAMBO ... Chairperson of the Board of Directors for Legal Aid South Africa since October 2002.' Bundle 2, page 756. LASA's annual report 2011/12 sets out the 'Role and Function of the Board of Directors': 'The Board ... is responsible for providing strategic direction and leadership, ensuring good corporate governance and ethics, determining policy, agreeing on performance criteria and delegating the detailed planning and implementation of policy to the Management Executive Committee.' Bundle 2, page 1053, section 2.2.3. As chairperson Mlambo JP explained in LASA's annual report 2010/11, the Board of non-executive directors plays an 'oversight role'. Bundle 2, page 1056.

[10] President Cyril Ramaphosa deplored this common evil at public entities in his State of the Nation Address on 16 February 2018: 'We have found ... that board members get involved in operational measures. ... We will remove board members from any role in [them].'

[11] Per LASA's Policies and Procedures on Recruitment, Induction, Probation and Relocation. Bundle 1, pages 228–34.

[12] Per LASA's Approval Framework. Bundle 1, pages 225–7.

[13] Besides approving the appointment of LASA's CEO, COO and NOE, in committee with the rest of the Board. Bundle, page 226, section 8.2.1.

[14] In favour of a professional colleague of his – to be canvassed in another part of this complaint to follow.

[15] The Judicial Conduct Committee ('JCC') of the Judicial Service Commission (JSC') is currently seized with eight gross misconduct complaints made under section 14 of the Judicial Service Commission Act 9 of 1994 against Board chairperson Mlambo JP concerning *inter alia* (a) his active collusion in and connivance at CEO and information officer Vedalankar's (nominal, actually Hundermark's) persistent illegal and unconstitutional suppression of records duly requested under section 18 of the Promotion of Access to Information Act 2 of 2000 ('PAIA') since 2010, and (b) his dishonest and deceptive false 'confidential' written report to the Minister and then to the Justice Portfolio Committee to successfully pervert their separately and

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cover-up, starting with lies and eventually spiralling out into the commission of crimes. All this will be closely detailed with reference to supporting documents in this and other parts of this complaint to follow.[16]

9. Over the past decade, LASA's top officers have determinedly obstructed the investigation and exposure of their procedural, ethical and criminal corruption by scorning LASA's information transparency obligations imposed by section 32 of the Constitution, and by repeatedly falsely reporting[17] to evade being held to account for it;[18] and then, as this passive obstruction strategy was failing, by endeavouring to end the investigation with a multi-pronged attack to neutralise this investigator by moving to destroy him professionally, strangle him financially, and have him deprived of his essential basic civil rights guaranteed

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independently instituted enquiries (i) into the top-level recruitment corruption at LASA in question, in which report he advanced demonstrably objectively false reasons for the abortion of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments (one false reason later retracted after being refuted and exposed, the other substituted with novel contradictory reasons); and (ii) into the said illegal and unconstitutional suppression of records exposing this corruption – later forced out of LASA through multiple pre-trial document discovery processes and multiple applications to court under section 78 of PAIA, the first five of them conceded by LASA at court. The complaints, Mlambo JP's response to them, and the complainant's invited comments on it can be accessed online at illegal-aid.co.za/JSC. Further complaints to the JCC against Mlambo JP will be lodged upon LASA's release, under court order, of other duly requested documents that Hundermark has illegally and unconstitutionally refused, initially in the name of his former immediate subordinate, Legal Executive Thembile Mtati, and others, but more recently, since Mtati's resignation, by Hundermark directly and personally.

[16] The submission of this complaint, commenced years ago, has long been delayed by Hundermark's determined concealment of incriminating records needed to complete it, followed by meritless, dilatory opposition to numerous necessary applications to court brought to compel their production, and by corruptly-motivated litigation he unsuccessfully brought to derail an application to compel full and proper compliance with his surrender treaty recording his total capitulation to the said first five applications – to be detailed in a another part of this complaint to follow, regarding irregular, fruitless and wasteful expenditure. Several further High Court applications to compel Hundermark's surrender of subsequently requested records are pending in the High Court. To avoid further delay, this complaint will be presented in separate parts, as and when the illegally and unconstitutionally withheld documents are disgorged by court order.

[17] Annually to the South African Human Rights Commission ('SAHRC') under section 32 of PAIA, for the misinformation of the SAHRC's annual section 84 reports to the National Assembly on public body compliance with PAIA, and in a special confidential report submitted to the Justice Portfolio Committee in June 2011. In this fraudulent manner, LASA has misinformed the National Assembly about its compliance or otherwise with PAIA requests, and has defeated its constitutional oversight function, thereby evading being held to account for hiding information illegally and unconstitutionally. All this is comprehensively dealt with in a 'Special Report' on LASA's chronic PAIA delinquency filed with the SAHRC in late 2016, and is further described in court papers in litigation subsequently launched under PAIA to compel LASA's delivery of duly requested records. The 'Special Report' and the said court papers are accessible online at illegal-aid.co.za/PAIA.

[18] As then Board member Ela Gandhi put it appositely in *The Mercury* on 23 November 2011, 'It's only when people have something they are not proud of that they try to hide things.'

and entrenched by sections 32 and 34 of the Constitution, i.e. to access information held by the state and to approach the courts to compel its production when in a corruption cover-up it's illegally and unconstitutionally suppressed.[19]

10. Detailed and vouched in this complaint, the continuing pervasive, systemic corruption in LASA's top echelons has metastasized through virtually the entire governing- and national management structures, with audacious, confident, high-toned, practised lawyerly mendacity having become normal in engagement with their executive and oversight authorities, evincing a complete collapse of ethical standards among them. Indeed, detailed separately in a complaint currently pending before the Judicial Service Commission, LASA's most senior officers' brazen corruption and contempt for the law has reached such gross proportions that it has even polluted the judiciary.[20]

PROVISIONS OF THE PFMA, THE PAA, AND THE CONSTITUTION GENERALLY RELEVANT TO THE COMPLAINT

11. Section 3(1)(b) of the PFMA provides that the Act 'applies to ... public entities listed in Schedule ... 3',[21] including '49. Legal Aid Board' (now LASA); and section 2(1) of the Legal Aid South Africa Act 39 of 2014 accordingly describes LASA as 'a national public entity as provided for in the Public Finance Management Act'.

12. Section 2 of the PFMA states that 'The object of this Act is to secure transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to which this Act applies.'

13. Under section 1 of the PFMA, **'"executive authority"** ... (c) in relation to a national public entity, means the Cabinet member who is accountable to Parliament for that public entity or in whose portfolio it falls' – *in casu*, the Minister.

14. Section 4 of the PAA, 'Constitutional functions', provides in subsection (3):

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[19] All this will be detailed in another part of this complaint to follow.
[20] Supported by the hard written evidence of this discovered in a court file, the complaint to the JSC about it, the judge's response, and the complainant's invited comments on it, identifying the likely perpetrator on the probabilities, can all be accessed online at illegal-aid.co.za/JSC.
[21] Here, as elsewhere in this complaint, ellipsis in quotation is the complainant's.

> The Auditor-General may audit and report on the accounts, financial statements and financial management of–
>
> (a) any public entity listed in the Public Finance Management Act[.]

15. Under section 1 of the PAA, 'Definitions',

> **"material irregularity"** means any non-compliance with, or contravention of, legislation, fraud, ... or a breach of fiduciary duty identified during an audit performed under this Act that resulted in or is likely to result in ... the misuse ... of a public resource or substantial harm to a public sector institution or the general public[.]

16. Section 5(1A) of the PAA provides:

> The Auditor-General may, as prescribed, refer any suspected material irregularity identified during an audit performed under this Act to a relevant public body for investigation, and the relevant public body must keep the Auditor-General informed of the progress and final outcome of the investigation.

17. Section 5(1B) provides:

> The Auditor-General has the power to–
>
> (a) take any appropriate remedial action[.]

18. Section 5(3) of the PAA provides:

> The Auditor-General may, in the public interest, report on any matter within the functions of the Auditor-General and submit such a report to the relevant legislature and to any other organs of state with a direct interest in the matter.

19. Section 5A of the PAA requires:

> The Auditor-General must, within a reasonable time after the issuing of an audit report in terms of section 20, follow up on whether the accounting officer or accounting authority has implemented the recommendations

contained in the audit report relating to any material irregularity, within the time-frame stipulated in the audit report.

20. Section 11 of the PAA prescribes that 'Part 3: Accountability' 'applies to all audits of auditees which the Auditor-General – ... (b) opts to perform in terms of section 4(3).

21. Section 15 of the PAA provides:

> When performing an audit under section 11, the Auditor-General or an authorised auditor has at all reasonable times full and unrestricted access to–
>
> (a) any document, book or written or electronic record or information of the auditee which or which reflects or may elucidate the business, financial results, financial position or performance of the auditee;
>
> (b) ... or
>
> (c) any staff member or representative of the auditee.

22. Section 20 of the PAA provides:

> (1) The Auditor-General must in respect of each audit referred to in section 11 prepare a report on the audit.
>
> (2) An audit report must reflect ... an opinion, conclusion or findings on–
>
> (a) ...
>
> (b) compliance with any applicable legislation relating to financial matters, financial management and other related matters; and
>
> (c) reported performance of the auditee against its predetermined objectives.
>
> (3) In addition, the Auditor-General may report on whether the auditee's resources were procured economically and utilised efficiently and effectively.

23. Section 216 of the Constitution, 'Treasury control', provides in subsection (2):

> The national treasury must enforce compliance with the measures established in terms of subsection (1), and may stop the transfer of funds to an organ of state if that organ of state commits a serious or persistent material breach of those measures.

The 'measures established in terms of subsection (1)' mentioned in subsection (2) are *inter alia* 'uniform treasury norms and standards.'

24. LASA's 'serious [and] persistent material breach' over the past decade of 'uniform treasury norms and standards', some criminal, will be particularised with reference to specific contraventions of the PFMA cited and quoted below. A multitude of unlawful material irregularities within the purview of section 1 of the PAA, some criminal, will likewise be detailed in this first part of the complaint and in other parts to follow.

LASA'S CREATION OF ITS SENIOR LITIGATOR POSTS, AND ITS REASON FOR DOING SO

25. In November 2006, LASA CEO Vedalankar, NOE Nair and their Management Executive Committee colleagues submitted a 'Report to Board' in which they proposed 'Increasing Senior Litigation capacity' 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.[22]

26. Nine such Senior Litigator posts were proposed,[23] for which the motivation recorded there was 'Funding available'.[24]

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[22] Bundle 2, pages 990–1, paragraph 2.7.
[23] Bundle 2, page 992, item 7.

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27. On 24 November 2006, the Board approved the proposal,[25] and the posts were duly created and subsequently advertised.[26]

28. In view of their high population densities and corresponding greater need for them, KwaZulu-Natal and Gauteng were allocated two Senior Litigator posts each.[27] Particularly relevant to the KwaZulu-Natal posts, NOE Nair has pointed out that it's in the 'rural areas' that the 'demand [for] civil legal aid ... was bigger';[28] and chairperson Mlambo JP has 'agreed that there was still much to be done in reaching the rural poor'.[29]

29. At grade LP10[30] (formerly 'level 13'),[31] Senior Litigators are the most 'Senior Professional staff'[32] in LASA's legal professional staff establishment;[33] and LASA classifies a Senior Litigator post as a 'critical position'[34] accordingly.

30. Section 53 of the PFMA provides:

> (1) The accounting authority for a public entity listed in Schedule 3 which is not a government business enterprise must submit to the executive authority responsible for that public entity, at least six months before the start of the financial year of the department designated in terms of subsection (2) ..., a budget of estimated revenue and expenditure for that financial year, for approval by the executive authority.

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[24] *Ibid*: page 992, item 7. 'Funding available' noted in the right margin; page 989, second paragraph; and pages 704–6.
[25] Bundle 2, page 702. In paragraph 4.1 of its answer to a pre-trial conference agenda listing facts for formal admission in case LC D529/11, LASA confirmed in October 2011 that 'the Senior Litigator positions were created by Management and approved by the Board'. (More accurately, they were 'proposed' by management. Bundle 2, page 990, paragraph 2.7.)
[26] Bundle 1, page 537.
[27] Bundle 2, page 690.
[28] Bundle 1, page 433, penultimate paragraph.
[29] Bundle 1, page 441, thirteenth paragraph.
[30] Bundle 2, page 1021, paragraph 16.
[31] Bundle 2, page 690.
[32] Bundle 2, page 1036, section 8.2.2 (b).
[33] Bundle 2, page 733: 'through positions such as senior litigator' for 'employees to advance into'.
[34] Bundle 1, page 253. Paragraph 2.2.b of this 'Report to Board' distinguished between 'critical positions' and LASA's many public defender posts serving the lower criminal 'District Courts and Regional Courts.' Paragraph 48.9 of LASA's original response (plea) to the original statement of claim in case LC D529/11 referred in to 'the critical position of High Court [senior] litigator'. In paragraph 43.1 of its answer to the facts listed for admission in the pre-trial conference agenda, LASA 'Agreed' the proposition that 'The Pietermaritzburg Senior Litigator post is "a critical position"'.

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(2) The budget must be submitted to the executive authority through the accounting officer for a department designated by the executive authority, who may make recommendations to the executive authority with regard to the approval or amendment of the budget.

31. In due compliance with section 53(1) of the PFMA, LASA specifically budgets for salaries for all nine of its Senior Litigator posts,[35] and provision in LASA's budgets for the employment of nine Senior Litigators has from inception to date been (i) annually approved by the Minister on the advice of the Department's accounting officer, (ii) voted by the National Assembly, and (iii) received by LASA from the Treasury via the Department's Third Party Funds Directorate.[36]

32. In short, LASA's nine Senior Litigator posts have always been and remain funded; which is to say in plain terms that LASA has always had and still has the money to employ nine Senior Litigators at seats of the High Court around the country.

THE JUSTICE PORTFOLIO COMMITTEE'S REPEATEDLY EXPRESSED CONCERN ABOUT INADEQUATE LEGAL EXPERTISE AVAILABLE TO THE PUBLIC AT LASA; LASA'S REPEATED CONCESSION OF THE PROBLEM; AND THE JUSTICE PORTFOLIO'S SPECIFIC CONCERN THAT LASA EMPLOY SENIOR LITIGATORS TO REMEDY IT

33. Six months after the Board resolved to create its new Senior Litigator posts, but before they were advertised, LASA's parliamentary oversight authority at

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[35] Bundle 3, pages 1073–92: These documents are LASA's consolidated budget applications and its specific budget applications for Senior Litigator salaries over the period February 2010 to October 2013. Duly requested under PAIA, other such budget applications for other years have been illegally and unconstitutionally suppressed by Hundermark to obstruct this corruption investigation, and litigation is pending in the Pietermaritzburg High Court to compel their production (case 5239/18P). Meanwhile the Auditor-General has 'full and unrestricted access to' these further financial records under section 15 of the PAA.

[36] Bundle 3, page 1093. These employment statistics show LASA's employment of six Senior Litigators as at March 2012. (The falsity of the 'frozen' entry for the Durban, Pietermaritzburg and Kimberley Senior Litigator posts is discussed below.) Hundermark is also hiding payment vouchers reflecting the Department's transfer to LASA of its baseline budgets, and High Court litigation is pending to compel their production (case 5239/18P). As said, under section 15 of the PAA the Auditor-General can readily access these records to confirm that all nine of LASA's Senior Litigator posts have always been and still are funded by the Treasury via the Department's Third Party Funds directorate .

the time, the National Assembly's Select Committee on Safety and Security[37] pertinently enquired at its meeting with Board chairperson Mlambo JP and CEO Vedalankar on 30 May 2007 'if the LAB [the Legal Aid Board, now LASA] 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'. Mlambo JP responded by admitting, 'The LAB was aware of constant criticism that they employed inexperienced lawyers to do the work.'[38]

34. Again the Justice Portfolio Committee raised its concern about the quality of legal expertise available at LASA when on 5 August 2009 it 'asked if the Board [i.e. LASA] was working on improving public perceptions about itself.'[39] Mlambo JP responded by again conceding that LASA bore 'a legacy' of 'bad public perceptions'.[40] (Mentioned in paragraph 27 above, LASA resolved to create nine new Senior Litigator posts three months later.)

35. Again at its meeting with LASA on 11 October 2010,[41] 'The Committee wanted to know about the experience levels of Legal Aid South Africa practitioners as well as their ability to compete with lawyers from ... private practice'.[42]

36. Again on 3 November 2010, the 'Chairperson [of the Portfolio Committee] remarked that public perceptions of Legal Aid SA were important.' Then Legal Development Executive, now CLE Hundermark repeated Mlambo JP's concession that there were still 'remnants' of 'the perception' of poor legal service delivery by LASA.[43]

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[37] This Select Committee was the precursor of the Portfolio Committee on Justice and Constitutional Development, now named the Portfolio Committee on Justice and Correctional Services.
[38] Bundle 2, page 816.
[39] Bundle 2, page 1048, penultimate paragraph.
[40] Bundle 2, page 1049, first paragraph.
[41] Reported on 12 October 2010.
[42] Bundle 2, pages 960 and 962.
[43] Bundle 2, page 1003.

37. Again in its pleadings in the Durban Labour Court in 2013, LASA conceded that its 'public image ... has, for the most part, been negative due to a perception of incompetence and lack of vital court skills.'[44]

38. Again in its Strategic Plan 2012–17, LASA identified among its 'strategic risks' the 'Quality of legal services offered by Legal Aid SA' and the 'Attraction and retention of expertise and specialist skills'.[45]

39. Again in its current Strategic Plan 2015–20, LASA confessed this real problem – as well as other serious problems germane to this complaint – now in the most direct and frank terms to date:

> The organisation has assessed the strategic risks that have to be mitigated during the strategic plan period and these are as follows: ... Lack of capacity to deliver on the demand for legal services. ... Poor quality of the legal services provided by the Justice Centres ... Unethical, corrupt or fraudulent practices or acts. ... Lack of engagement with the organisational values and culture by employees.[46]

40. 'Lack of capacity to deliver on the demand for legal services' and 'Poor quality of the legal services provided by the Justice Centres' as a result of 'Unethical, corrupt or fraudulent practices or acts' by LASA's top officers named in paragraph 6 above, and their 'Lack of engagement with the organisational values' of LASA – ethical, legal, and constitutional – prescribed by LASA's Code of Conduct and Ethics[47] – a lack displayed also by the officers named in paragraph 7 – is precisely the subject of this complaint.

THE JUSTICE PORTFOLIO COMMITTEE'S REPEATEDLY EXPRESSED CONCERN THAT VACANT POSTS IN THE JUSTICE CLUSTER BE FILLED, ESPECIALLY CRITICAL POSTS

41. On 4 May 2010, the Justice Portfolio Committee raised the fact that it:

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[44] Paragraph 9 of LASA's original response to the original statement of claim in LC D529/11.
[45] Bundle 3, page 1108.
[46] Bundle 3, page 1110.
[47] Bundle 2, pages 770–80.

> 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.[48]

THE JUSTICE MINISTER'S SPECIFIC CONCERN STATED TO LASA'S CHAIRPERSON THAT LASA SHOULD FILL ITS VACANT POSTS AND NOT FREEZE ANY, AND THAT IT SHOULD MAINTAIN ITS DELIVERY OF LEGAL SERVICES AS PLANNED

42. On 16 July 2010, COO Makokoane[49] submitted a 'Report to Board'[50] recording that:

> the Executive Authority [i.e. the Minister] has ... in a meeting with the Legal Aid SA Board Chairperson expressed his wish to have Legal Aid SA service delivery maintained and that DoJ should make funds available to cover the OSD shortfall through the mid-year budget adjustments in September/October 2010.[51]

43. COO Makokoane was referring to the fact that funding for salary increases for legal staff under Phase 1 of the Occupational Special Dispensation (OSD) scheme hadn't been included in LASA's baseline budget for 2010/11, as LASA learned in March 2010;[52] but as undertaken by the Minister to chairperson

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[48] Bundle 2, page 820.
[49] LASA volunteered that it was 'a report by the COO to the Board' in paragraph 17 of its original response to the original statement of claim in case LC D529/11.
[50] Bundle 1, pages 253, paragraph 2.2.(a); and page 254, paragraph 4.II.
[51] Bundle 1, page 252, paragraph 1.2.
[52] Bundle 1, page 236, paragraph 6.

Mlambo JP, provision for this additional funding was indeed made[53] in the national mid-term budget in October 2010[54] and it was paid to LASA on 15 December 2010.[55]

44. Addressing the Justice Portfolio Committee on 11 October 2010 and informing it that the OSD funding issue had just been resolved with the Minister's assistance by including provision for it in the national mid-term budget, CEO Vedalankar reported the Minister's wishes, originally stated to Mlambo JP, that he 'didn't want' LASA to 'freeze ... posts' and that he'd 'said that we needed to continue with the business'[56] of providing legal services to the country's indigent in accordance with LASA's Strategic Plan2009–12 by filling LASA's budgeted and funded vacant legal posts.

THE EMPLOYMENT OF SENIOR LITIGATORS AS A KEY COMPONENT OF LASA'S STRATEGIC PLAN 2009–12

45. As LASA explains in various documents, the Board 'is responsible for providing strategic direction ... and delegating the detailed planning and implementation of policy to the Management Executive Committee.'[57] This 'strategic direction' and 'policy' is set out in the Board's Strategic Plan for LASA's future operations; and LASA's annual Business Plan ('also referred to as ...the Annual Performance Plan'),[58] based on the Strategic Plan,[59] sets out the 'detailed planning and implementation of policy [by] the Management Executive Committee.'[60]

46. The National Treasury states in its 'Framework for Strategic Plans and Annual Performance Plans':

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[53] Bundle 2, page 849, last paragraph.
[54] Bundle 2, page 847.
[55] Bundle 2, page 713.
[56] Bundle 1, page 184.
[57] Bundle 2, page 1053.
[58] Bundle 1, page 435, last paragraph.
[59] Bundle 2, page 452, second point.
[60] Bundle 2, page 1053.

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> Strategic Plans identify strategically important outcomes-orientated goals and objectives against which public institutions' medium-term results can be measured and evaluated by Parliament ... and the public.[61]

47. LASA states consistently: The 'Strategic Plan sets a clear Vision and Mission as well as Outcomes and Strategies that the organisation aims to achieve.' It's 'key to Legal Aid South Africa's operations' and 'complies with National Treasury Regulations', requiring it to 'outline how it will use its resources optimally to achieve its vision and outcomes.'[62]

48. Section 3.2.1.a of the Charter of LASA's Board Executive Committee stipulates that 'approval of the strategy, business plans and annual budgets and any subsequent changes in strategic direction or material deviations in business plans' at LASA are 'reserved for Board decision'.[63]

49. Chaired by NOE Nair,[64] LASA's Legal Services Technical Committee has (per the Legal Aid Guide) the 'collective responsibility' for 'managing the legal services delivery programme' and 'the execution of all Board strategy, policies, programmes and plans relating to the legal services delivery programme of the Legal Aid South Africa'.[65]

50. In CEO Vedalankar's parliamentary presentation titled 'Briefing of Justice Portfolio Committee 5 August 2009',[66] a couple of months before she and her fellow management executives proposed that LASA's Board approve the creation of the new Senior Litigator posts, she mentioned among LASA's 'Legal Delivery Challenges' its 'Limited capacity to render civil legal aid services'[67] – hence the organisation's resolution in its 'Way Forward' to 'Increase Legal Aid SA's capacity to render civil legal aid services.'[68]

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[61] Bundle 3, page 1113.
[62] Bundle 3, page 1107.
[63] Bundle 3, page 1101.
[64] Bundle 2, page 767, section 2.3.
[65] Bundle 2, page 767–8.
[66] Bundle 1, page 427.
[67] Bundle 1, page 426, penultimate paragraph.
[68] Bundle 1, page 429.

51. LASA elaborated more specifically its lack of capacity to undertake complex, high-level litigation in its draft 'Strategic Plan 2009–2012', issued about a year earlier on 5 September 2008,[69] namely its 'Lack of specialised legal skills' and 'Lack of capacity to provide impact litigation'[70] – which is why the Strategic Plan 2009–12 stated that 'the Legal Aid Board should capacitate for specialised skills'.[71]

52. Accordingly, the objects of LASA's Strategic Plan 2009–2012 in this regard were:

- 'To develop a full appreciation of the civil justice needs of the poor and provide more civil representation';[72]
- 'To undertake targeted impact litigation';[73]
- 'To improve access to justice through impact litigation';[74]
- To 'recruit specialist skills';[75]
- To effect 'increased capacity of LAB ie more legal specialists'; [76] and,
- To 'capacitate civil units ie more staff and more supervision'.[77]

53. In September 2009,[78] LASA's Strategic Plan 2009–2012 was presented to the Minister, being LASA's 'executive authority' under section 1 of the PFMA; and on 13 April 2010[79] to the Justice Portfolio Committee, LASA's oversight authority under section 55(2)(b)(ii) of the Constitution.

54. The Strategic Plan 2009–12 doesn't mention Senior Litigator posts by name, but LASA has expressly acknowledged that the engagement of Senior Litigators was integral to the plan to develop and increase LASA's capacity to deliver expert litigation services to indigent litigants by creating a pool of specialist

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[69] Bundle 1, page 444.
[70] Bundle 1, page 445, sections III and IV.
[71] Bundle 1, page 445, section XIV.
[72] Bundle 1, page 446, 'Client & Community'.
[73] *Ibid.*
[74] Bundle 1, page 447, Programme P5.
[75] Bundle 1, page 450, Programme P23.
[76] Bundle 1, page 450, Programme P24.
[77] *Ibid.*
[78] Bundle 1, page 452.
[79] Bundle 1, page 431; and bundle 2, page 821.

professionals to attend to complex matters in specialist and High Courts, including the Supreme Court of Appeal and the Constitutional Court.[80]

55. LASA's current Strategic Plan 2015–20 puts a point on it:

> To give content to the Constitution through impact litigation – which is able to address Constitutional rights and socio-economic rights and develop jurisprudence on social justice matters.[81]

56. LASA's several advertisements for Senior Litigators in the period 2007–2010 precisely envisaged their conduct of such 'specialised, complex or impact'[82] litigation, and stated LASA's aim to 'Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff', that is, to 'provide support for practitioners in more complex matters',[83] as LASA's annual report for 2009/10 puts it, and, as announced in a press release in March 2012, for 'protecting the rights of women and children' in accordance with LASA's, 'vision as an organisation ... for the implementation of a child-centred justice strategy that ensures the best interests of the child in all legal matters. ... In very complex matters, our Senior Litigators provide support and advice to practitioners that need it.'[84]

57. In their Foreword to LASA's current Strategic Plan 2015–20, Mlambo JP and Vedalankar likewise emphasised 'Priority to civil legal aid assistance in Constitutional rights related matters'[85] – exactly the province of 'professional staff that are senior enough to take on ... cases of a highly complex nature', namely 'senior litigators ... able to undertake more complex work'[86] as Vedalankar and her executive management colleagues envisaged in their motivation for the creation of the nine Senior Litigation posts, approved by Mlambo JP and the rest of the Board.

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[80] Bundle 2, page 898, section 3; and paragraphs 2.2–3 of LASA's response to paragraph 3.2 of first amended statement of claim in case LC D529/11.
[81] Bundle 3, page 1111, section S4, P4.
[82] Bundle 1, pages 43, 45, 46, and 537; and Bundle 2, page 732.
[83] Bundle 1, page 142, paragraph 153.
[84] Bundle 2, pages 825–6.
[85] Bundle 3, page 1109.
[86] Bundle 2, pages 990–1, paragraph 2.7.

58. Quoted below, LASA would repeatedly vaunt the employment of Senior Litigators as a key achievement in its 'Report on Completion of Strategic Plan 2009–2012', both in the Board's 'Annual Performance Report 2011–12' and in Vedalankar's CEO report for that year.

THE CONCEALED ILLEGAL ABORTION OF LASA'S STRATEGIC PLAN 2009–12 IN REGARD TO THE EMPLOYMENT OF SENIOR LITIGATORS BEFORE IT WAS COMPLETED, UNLAWFULLY LEAVING A THIRD OF THESE CRITICAL BUDGETED AND FUNDED POSTS VACANT, IN CONTRAVENTION OF THE PFMA, AS THE CONSTITUTIONAL COURT HAS NOTED

59. In October 2007, four months after Parliament enquired whether LASA 'employed senior litigators',[87] LASA advertised to recruit applicants for appointment to its nine newly created Senior Litigator posts,[88] after which the candidates selected for the Johannesburg, Pretoria, Cape Town and Port Elizabeth posts were approved on 8 December 2008[89] and appointed.[90] The Bloemfontein and Mahikeng posts were filled later on.[91] No appointments were made to the Pietermaritzburg, Durban and Kimberley posts pursuant to the

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[87] Bundle 2, page 816.
[88] Bundle 1, page 537.
[89] Bundle 3, pages 1094 and 1097. Material irregularities in the approval process will be canvassed in another part of this complaint to follow.
[90] Bundle 3, page 1093.
[91] Bundle 3, pages 1073 and especially 1076 compared with pages 1077 and especially 1080. These two budget applications show five Senior Litigator posts were vacant in February 2010, and that the vacancies dropped to three in February 2012, which means two of them were filled after February 2010 (at Bloemfontein and Mahikeng). To obstruct the complainant's investigation and determination of the date(s) on which these latter two appointments were made (sometime after February 2010, well after the irregular abortion of the Pietermaritzburg and Durban recruitments in November 2009; see paragraphs 67 and 68), Hundermark is hiding the records of 'All six Senior Litigator appointments'. These were duly requested on 1 August 2016 under section 18 of PAIA, and after they were illegally and unconstitutionally refused in September, were sued for, along with other documents, two weeks later in October 2016 under section 78 of PAIA (case 11187/16P). The case was eventually argued in the Pietermaritzburg High Court on 30 August 2019, nearly three years later, after being repeatedly held up by various dilatory tactics, and reserved judgment is pending. Once they've been disgorged by order of court, the withheld documents will be used in support of further parts of this complaint to follow, concerning several instances of 'material irregularity' as defined by section 1 of the PFMA, including 'fraud'.

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initial advertisement and recruitment process, and LASA readvertised the three posts in 2009.[92]

60. The re-advertisement of the Kimberley post in May 2009[93] failed to attract a suitable applicant,[94] and on 24 March 2010, LASA's Legal Services Technical Committee accepted that the vacant post was 'redundant'[95] since there'd 'never been a demand for' it[96] and resolved to abolish it and transfer its budget to a second Senior Litigator post to be created for the Eastern Cape at Mthatha,[97] on the basis cogently argued by the Regional Operations Executive for the region[98] that 'We currently have one Senior Litigator who is stationed at Port Elizabeth. It is a huge challenge for this one person to provide support to the whole Region' with its 'four High Court seats [at] Port Elizabeth, Grahamstown, Bhisho and Mthatha',[99] the latter three many kilometres distant from Port Elizabeth.

61. The two vacant Pietermaritzburg and Durban posts in KwaZulu-Natal were simultaneously readvertised in June 2009[100] and again two months later in August.[101]

62. Just as they'd done before the original advertisement of the nine Senior Litigator posts in 2007, LASA's responsible management executives duly 'determined [that] a "real" need exists for the position[s] to be filled before [the] process of recruitment [was] initiated'[102] before readvertising the Pietermaritzburg and Durban posts in 2009, in due compliance with their obligation to do so under section 3.1 of Chapter 2 on 'Recruitment' in the Senior Management Services Public Service Handbook[103] ('SMS Handbook') issued by the Department of Public Service and Administration. LASA's own 'Policies and

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92 Bundle 1, pages 43, 45, and 537; and Bundle 2, page 732.
93 Bundle 2, page 732.
94 Bundle 2, page 736, 'Background', second paragraph.
95 Bundle 2, page 738, paragraph 1.
96 Bundle 2, page 736, 'Background', first paragraph.
97 Bundle 2, page 709, paragraph 4.1.7.
98 Bundle 2, page 738, header; and page 740, final entry.
99 Bundle 1, page 739, paragraph 2.2.
100 Bundle 1, pages 43–44.
101 Bundle 1, page 45.
102 Bundle 2, page 789.
103 Bundle 2, pages 787–801.

Procedures on Recruitment, Induction, Probation and Relocation'[104] ('Recruitment code') states its conformity with the SMS Handbook: 'This policy and procedure aims at ensuring that appropriate recruitment procedures are followed, in line with statutory legislation and business practices[105] ... [It] provides the Legal Aid Board with clear guidelines to be followed when a vacancy exists.'[106]

63. Section 3.3 of the SMS Handbook requires that such responsible management executives ensure that 'the position is budgeted for'[107] and Note 17 of LASA's Approval Framework applicable at the time mandated consistently: 'It is the responsibility of the line function Executive to ensure that such [appointment] is provided for in the budget and MTEF and that a vacancy exists in respect of the post concerned.'[108]

64. The 'line function Executive'[109] in regard to Senior Litigator posts is NOE Nair, and before the recruitment processes for the Pietermaritzburg and Durban Senior Litigator were recommenced in 2009, he would have duly confirmed that the two posts had been budgeted for – as indeed LASA's recruitment/vacancy/budget statistics for November 2009[110] show they were.

65. Four of the candidates attracted by the re-advertisement of the Pietermaritzburg and Durban Senior Litigator posts in 2009 were shortlisted;[111] and on 12 November 2009[112] they were duly interviewed by a duly constituted selection panel of LASA's most senior lawyers in the region,[113] following which two suitably qualified and experienced candidates were duly and unanimously

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[104] Bundle 2, page 717.
[105] Bundle 1, page 228, section 1.1.2.
[106] Bundle 1, page 228, section 1.1.3.
[107] Ibid.
[108] Bundle 2, page 1040.
[109] Bundle 1, page 19.
[110] Bundle 2, pages 1028 and 1029: 'Vacant' and 'Budget' columns.
[111] Bundle 1, page 245.
[112] Bundle 1, page 244. The date of the interviews is incorrectly recorded on the recommendation report as 6 November 2009; in fact they were held on the 12th.
[113] Bundle 1, page 248.

selected and recommended by the panel, one for each of the Pietermaritzburg and Durban posts[114] for which they'd respectively applied.[115]

66. In sum, the selection and recommendation process was conducted impeccably properly in compliance with LASA's Recruitment code and with similar official codes of recruitment practice in the public sector observed by LASA.[116]

67. The two candidates duly recommended for the Pietermaritzburg and Durban posts were not appointed, however, and the approval process to finalize their recruitments governed by the Approval Framework[117] was silently aborted by national-level officers of LASA,[118] no reason initially given.[119]

68. In a confirmatory affidavit put up in legal proceedings for the true information of the trial judge, NOE Nair corroborated[120] then Corporate Services

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[114] Bundle 1, page 247, paragraph 6.
[115] Bundle 2, page 827.
[116] The irregular manner in which the selection panel framed its recommendations of the two candidates after duly selecting them will be discussed in another part of this complaint to follow, as will the many unlawful irregularities committed by LASA's national executives in the matter, *inter alia* by unlawfully gerrymandering the qualifying criteria for the posts in a failed attempt to bias the process in favour of one of the applicants, Ngcamu AJ (as he used to be), a long-time judicial colleague of LASA chairperson Mlambo JP, who was then head of the Labour- and Labour Appeal Courts, and who'd repeatedly got him appointed as an acting judge of the Labour Court over a period of about six years prior to the interviews. To be discussed in another part of this complaint to follow, this long suppressed, determinedly concealed, critically relevant information was finally forced out of LASA through PAIA litigation in April 2016, years after the trial of and judgment in the misconceived, correctly dismissed labour action mentioned above (LC D529/11), which had been wrongly founded on unfair discrimination.
[117] Bundle 2, page 1036. Under section 8.2.2.b of the Approval Framework, the NOE (Nair) has 'Final approval' authority, provided that the CEO (then Vedalankar) 'Must agree' with the appointment.
[118] To be identified in light of relevant documents in another part of this complaint to follow.
[119] Bundle 1, page 19. This is a letter by NOE Nair on 3 August 2011, under pressure of the complainant's enquiry more than seven months after the silent abortion of the Pietermaritzburg and Durban Senior Litigator recruitments, alleging that 'the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [*sic*] put on hold due to various reasons. I can now confirm we will not be proceeding with the filling of any of these posts.' The mendacity of Nair's first allegation will be exposed in another part of this complaint to follow. The mendacity of his second allegation is exposed in paragraph 88 below; in sum, Nair, Vedalankar and Clark have all admitted on oath that no record whatsoever exists to show that LASA duly took any such decision not to fill the posts. Discussed in paragraphs 83–5 below, such a decision would anyway have been *ipso facto* unlawful under the PFMA, as the Constitutional Court confirmed in the *Zungu* case.
[120] Annexure 'DM15' to Mtati's answering affidavit in the application to subpoena Mlambo JP for cross-examination at the trial of case LC D529/11. (LASA neglected to annex this confirmatory affidavit to the answering affidavit provided to the complainant, and only furnished it after the trial. So if it's not in the court file LASA will have a copy, otherwise the complainant can make his copy available.

Executive Thembile Mtati's truthful evidence on affidavit, given *qua* attorney on Mlambo JP's instructions, that the Pietermaritzburg and Durban 'recruitment ... was aborted immediately after the first round of interviews.'[121] In other words (LASA's words), it was 'immediately after the first round of interviews' that 'the decision to abort the recruitment of the Senior Litigator, Pietermaritzburg'[122] was taken, and with it the recruitment process for the Durban Senior Litigator post – off the record, without authority, and therefore unlawfully, as discussed below.

69. Many months later, under persistent, rising pressure to account – ultimately to the Minister and to the chairperson of the Portfolio Committee, both of whom had separately and independently instituted enquiries into the matter, and after that to several courts – LASA's top officers advanced a shambles of manifestly untruthful, shifting, vacillating, radically contradictory, mutually exclusive and destructive excuses, all objectively demonstrably false, for not completing the Pietermaritzburg and Durban Senior Litigator recruitments, and several months later for cancelling the transfer of the Mahikeng Senior Litigator to the new Mthatha Senior Litigator post, for which he'd been selected and recommended in May 2010. Another part of this complaint to follow will quote and refute, in light of LASA's own records, the profusion of chaotically inconsistent changing lies told by LASA's top officers to falsely justify the off-the-record, unauthorized, unlawful abortion of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments, and to cover ethical recruitment corruption (jobs for pals) in the case of the Pietermaritzburg post – starting with 'there was a funding shortage at the time that [the complainant] had applied for the Senior Litigator post',[123] i.e. on 2 October 2009,[124] which is to say 'there was no ... funding ... to fill the vacant posts'[125] – which blatant lie was afterwards substituted with other completely different contradictory blatant lies.

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[121] Paragraph 13.4 of Mtati's answering affidavit in the application to subpoena Mlambo JP in LC D529/11.
[122] Paragraph 28 of LASA's original response to the original statement of claim in LC D529/11.
[123] Paragraph 48.3.1 of LASA's original response in LC D529/11.
[124] Bundle 2, page 827.
[125] Paragraph 49.6 of LASA's original response in LC D529/11.

70. The result of the illegal abortion of the three substantially complete recruitment operations for the Pietermaritzburg, Durban and Mthatha Senior Litigator posts, and the unlawful deliberate failure to complete LASA's Strategic Plan 2009–12 regarding the employment of Senior Litigators, is that these then and still budgeted and funded top critical specialist legal professional posts have unlawfully deliberately been left vacant for a decade since the due selection and recommendation of suitable candidates for the Pietermaritzburg and Durban posts in November 2009, and the irregular selection and recommendation of a suitable candidate for internal lateral transfer[126] and appointment[127] to the Mthatha post on 24 May 2010.[128]

71. LASA isn't a government department in the 'public service' according to the definition in sections 1 and 8 of the Public Service Act 103 of 1994, so neither the Public Service Regulations nor the SMS Handbook's 'Recruitment'[129] chapter applies directly to LASA as a public entity listed in Schedule 3 of the PFMA, but as quoted in paragraph 62 above, LASA's Recruitment code states that LASA's recruitment operations must be conducted in accordance with such regulations.

72. Official 'business practices'[130] for public sector recruitment prescribed by the Public Service Regulations, both in Part IV, section C.1A.2, of the former Regulations applicable in 2009 and 2010, and in section 65(7) of the new Regulations promulgated in 2016, with which LASA's Recruitment code is 'in line',[131] are: 'A funded vacant post ... shall be advertised within six months after becoming vacant and be filled within 12 months after becoming vacant.'[132] Indeed, LASA has acknowledged that 'the recruitment process for the senior litigator positions' was required to 'be completed within a reasonable time'[133] – in default of which, section C.1A.3 of the Regulations, applicable at the material

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[126] Paragraph 99.5 of Mtati's answering affidavit in the application to subpoena Mlambo JP in LC D529/11.
[127] Paragraph 92.1 of LASA's answer to pre-trial conference agenda in LC D529/11.
[128] Bundle 2, pages 994 and 996. The several material irregularities in the Mthatha recruitment will be addressed in another part of this complaint to follow.
[129] Bundle 2, pages 787–801.
[130] In the language of section 1.1.2 of LASA's Recruitment code. Bundle 1, page 228.
[131] Bundle 1, page 228, section 1.1.2.
[132] Bundle 3, pages 1115 and 1117.
[133] Bundle 1, page 381, paragraph 15.

time, required that 'the reasons for the non-compliance shall be recorded in writing.'[134] In breach of the Regulations, the Pietermaritzburg, Durban and Mthatha Senior Litigator posts were deliberately not filled 'within 12 months after becoming vacant' or at all, and no 'reasons for the non-compliance' were 'recorded in writing'.[135]

73. In unlawful contravention of official 'business practices' prescribed for the conduct of recruitment operations in the public sector – which LASA's Recruitment code, approved by the Board,[136] requires LASA's management executives to observe – three budgeted and funded Senior Litigator posts at LASA have been vacant since their creation in November 2006,[137] for over thirteen years now.

74. Very much more serious than unlawfully failing to comply with codified recruitment practice in the public service, and irrespective of the mess of contradictory lying excuses later forged and uttered by CLE Hundermark, CEO Vedalankar, NOE Nair and chairperson Mlambo JP under pressure to explain why the selected and recommended candidates for the critical Pietermaritzburg, Durban and Mthatha Senior Litigator posts weren't appointed, LASA's

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[134] Bundle 3, page 1115.

[135] In November 2011, two years after the abortion of the Pietermaritzburg and Durban Senior Litigator recruitment processes 'immediately' after the candidate recommendations were made in November 2009, followed by the abortion of the Mthatha recruitment several months later as CEO Vedalankar and NOE Nair came under pressure to finalise the Pietermaritzburg appointment – even as the Bloemfontein and Mahikeng Senior Litigator recruitments proceeded and were finalised with appointments made – NOE Nair made a 'Report to Board' (Bundle 2, page 869) alleging absolutely falsely that the three Senior Litigator posts at Pietermaritzburg, Durban and Mthatha 'have remained vacant due to recruitment challenges.' Nair compounded his lie to the Board by making up a second quite different, also absolutely false reason, unsupported by any records: 'We have since decided not to fill the remaining positions until we are satisfied that our objectives determined for this position [*sic*] is [*sic*] being achieved by the current incumbents.' Nair's lying spree continued with a third outright fabrication in which he absolutely falsely and slanderously alleged, contradicted by LASA's professional quality assessment reports, that LASA's incumbent six Senior Litigators were incompetent and underperforming and needed urgent professional auditing 'by a retired judge', which blatant lie he told about them Nair later retracted under oath in court. The several different lies Nair told the Board to justify not filling the Pietermaritzburg, Durban and Mthatha Senior Litigator posts, and his 'operational reasons' perjury in a subsequent affidavit, will be addressed and refuted with reference to material documents in another part of this complaint to follow.

[136] Bundle 1, page 228, footnote.

[137] As mentioned in paragraph 60 above, the original Kimberley Senior Litigator post was abolished and a new post created at Mthatha, with the budget for the former transferred to the latter.

deliberate failure to fill these budgeted and funded critical posts, and its failure to duly apply the salary revenue it budgets for the posts and receives for them from the Treasury via the Department, has unlawfully contravened and continues to unlawfully contravene the PFMA.

CRIMINAL AND OTHER CAPITAL CONTRAVENTIONS OF SECTIONS 53(3), 53(4), 55(1)(a) & 55(2)(a) OF THE PFMA, READ WITH SECTION 86 'OFFENCES AND PENALTIES'; AND CRIMINAL CONTRAVENTIONS OF SECTION 17(2) OF THE POWERS, PRIVILEGES AND IMMUNITIES OF PARLIAMENT AND PROVINCIAL LEGISLATURES ACT 4 OF 2004 IN FALSELY REPORTING TO MISLEAD THE JUSTICE PORTFOLIO COMMITTEE

75. Section 1 of the PFMA defines **'unauthorised expenditure'** *inter alia* as 'expenditure not in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the purpose of the main division'.

76. Presenting the then recently enacted PFMA to the Finance Portfolio Committee of the National Assembly on 19 March 2001, the Treasury explained the gravity of 'underexpenditure' as a form of unlawful 'unauthorised expenditure':

> [T]he definition of unauthorised expenditure is ... also not spending according to the programme description of the specific department. ... The Minister [of a Department; or, in the case of a public entity, its Board as accounting authority][138] must ensure budget is spent in accordance with the original budget plan. ... [N]o one is allowed to have unauthorised expenditure. ... National Treasury ... will ... follow up should there be any indication of ... underexpenditure.[139]

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[138] Quoted in paragraph 79 below, section 1 of the PFMA identifies the Board as LASA's 'accounting authority', and LASA stated accordingly in its annual report 2011/12: 'The Board is the accounting authority of Legal Aid South Africa under the Public Finance Management Act 1 of 1999 (as amended).' Bundle 2, page 1053, paragraph 2.2.3.

[139] Bundle 3, page 1119. The transcript of the meeting doesn't identify which Portfolio Committee the Treasury representative addressed, but it looks certain to have been the Finance Committee.

77. When a member of the Portfolio Committee deplored that 'there are a few departments that repeatedly engage in underspending. This results in poor delivery', and he 'asked how the Act addresses this situation for the people on the ground who are suffering', the Treasury representative responded: 'The Minister must ensure that the budget is spent in accordance with the original budget plan. ... Should there be any underexpenditure, the Minister must report to the Cabinet.'[140]

78. LASA isn't a department of state, but the point is the same: 'underexpenditure' by a public entity like LASA and the failure of its Board to 'ensure that budget is spent in accordance with the original budget plan' is extraordinarily serious; indeed, shown below, it constitutes financial misconduct and a breach the PFMA. Aggravating this particular case, it 'results in poor delivery' and 'people on the ground who are suffering', namely the indigent in KwaZulu-Natal completely deprived, and in the Eastern Cape substantially deprived, of access to complex constitutional and other specialist litigation services pertinently envisaged by LASA's Strategic Plan 2009–12 and the two plans following it. The effect of this unlawful underexpenditure, as a result of corruption in LASA's top governing and executive ranks, is that these 'people on the ground ... are suffering' from 'poor delivery' of expert legal services, despite financial provision for them in LASA's annual budgets, met by the Treasury. Causing substantial harm to ... the general public' (per the definition of 'material irregularity' in section 1 of the PAA), LASA's corrupt and complicit officers named paragraphs 6 and 7 of this complaint have effectively denied any hope of 'social justice'[141] to these 'people on the ground who are suffering' when their 'Constitutional rights and socio-economic rights'[142] are violated, inasmuch as their state-funded access to the courts, which they can't themselves afford, has been practically blocked in furtherance of a cynical corruption cover-up.

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[140] *Ibid.*
[141] Quoted in paragraph 55 above, LASA's Strategic Plan 2015–20 aims 'To give content to the Constitution through impact litigation – which is able to address Constitutional rights and socio-economic rights and develop jurisprudence on social justice matters.'
[142] *Ibid.*

79. Under section 1 of the PFMA, **"'accounting authority"** means a body or person mentioned in section 49', which section provides:

> (1) Every public entity must have an authority which must be accountable for the purposes of this Act.
>
> (2) If the public entity–
>
> (a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity[.]

80. Section 56(1)(a) of the PFMA provides: 'The accounting authority for a public entity may ... in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity'; and accordingly on 24 November 2007 the Board as LASA's accounting authority duly 'delegate[d] to the Chief Executive Officer all the powers entrusted or delegated to the accounting authority in terms of the Act'.[143]

81. Section 56(2)(c) of the PFMA provides that the delegation 'does not divest the accounting authority of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.' That is, the Board remains ultimately responsible for ensuring that the funds LASA receives from the Treasury are spent as budgeted, recommended, and approved.

82. Section 53 of the PFMA prescribes:

> ...
>
> (3) A public entity which must submit a budget in terms of subsection (1), may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the National Treasury has been obtained.
>
> (4) The accounting authority for such a public entity is responsible for ensuring that expenditure of that public entity is in accordance with the approved budget.

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[143] Bundle 2, page 1040, Note 30.

83. In contravention of section 53(3), LASA has been engaging in unauthorised expenditure in the form of underexpenditure, and in this manner accumulating millions of rands in unauthorised surplus over the past decade, by budgeting for nine Senior Litigator posts but only filling six of them with the salary budget received for them, and deliberately not filling its remaining three vacant Senior Litigator posts – following an unrecorded, unauthorised, backroom decision taken illegally (discussed below).

84. The Constitutional Court has unanimously affirmed in *Sibongile Zungu v Premier of the Province of KwaZulu-Natal and Others* [2018] ZACC 1 (22 January 2018) that deliberately not filling a budgeted and funded post in the public sector, and not spending the salary budget received for it on employing a suitable officer to fill it, contravenes the PFMA. Indeed, our apex court noted that this trite principle was beyond issue and common cause between the parties:

> [8] ... The Premier submitted that, had the position ... been left vacant, he would have been in breach of the provisions of the Public Finance Management Act (PFMA) which preclude him from leaving the position ... vacant. ...
>
> [9] ... The Labour Court further stated that the defence by the Premier that he was bound by the PFMA was not challenged by the applicant. ...

85. CEO Vedalankar's contravention of section 53(3) of the PFMA in not applying LASA's Senior Litigator budget to the employment of suitably qualified and experienced trial lawyers in its Pietermaritzburg, Durban and Mthatha Senior Litigator posts amounts to financial misconduct – for which Mlambo JP and the Board are ultimately responsible – in that section 83 of the PFMA provides:

> (1) The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently–

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(a) fails to comply with a requirement of section ... 53 ... or 55; or

(b) ...

(2) If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.

(3) An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.

(4) Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation.

86. Section 55(1)(a) of the PFMA prescribes:

> The accounting authority for a public entity ... must keep full and proper records of the financial affairs of the public entity.

87. Consistently with this provision, section 12 of LASA's Code of Conduct and Ethics requires:

> Accurate and reliable records of many kinds are necessary to meet the LEGAL AID BOARD's legal and financial obligations and to manage the affairs of the LEGAL AID BOARD. The LEGAL AID BOARD's books and records should reflect all business transactions ... and the employees responsible for accounting and record-keeping functions are expected to be diligent in enforcing proper practices.[144]

88. NOE Nair has repeatedly conceded,[145] and CEO Vedalankar[146] and HRE Clark[147] have likewise confirmed – all under oath – that no record whatsoever

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[144] Bundle 2, page 778, paragraph 12.
[145] Bundle 1, page 381, paragraphs 14, 15 and 16; page 382, paragraph 22; page 383, paragraph 29; page 385, paragraph 35.
[146] Bundle 1, pages 390–1.
[147] Bundle 1, pages 392–3.

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exists of any decision taken by any competent authority at LASA,[148] or indeed by anyone at all,[149] to abort LASA's substantially completed recruitment processes for its critical Senior Litigator posts at Pietermaritzburg, Durban and later on at Mthatha, for which suitable candidates had been selected and recommended, and to 'freeze'[150] the posts, for any reason.[151]

89. In sum, for ten years three budgeted and funded critical specialist legal professional posts have unlawfully deliberately been kept vacant without any record of any decision of this extraordinarily important financial and operational decision involving many millions of rands and hugely affecting critical service delivery.[152] Besides contravening section 12 of LASA's Code of Conduct and Ethics, this gross irregularity in not making and keeping a record of the decision

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[148] Annexure W to the Legal Aid Guide, titled 'Legal Services Technical Committee Terms of Reference', explains: 'The Board delegates authority to the CEO, the Management Exco [Management Executive Committee], LSTC ['Legal Services Technical Committee'], other committees and officials through its Approval Framework.' Bundle 2, page 767, section 3.2.3. Section 5 of the Guide specifies the 'Responsibilities of LSTC': 'The LSTC shall have collective responsibility for: ... 5.3. the execution of Board strategy, policies, programmes and plans relating to the legal services delivery programme of the Legal Aid South Africa.' Bundle 2, pages 775–6. To be addressed in another part of this complaint to follow, a variety of false, contradictory claims have been made about who took the decision to abort the recruitments and to freeze the posts, and who was consulted about it. (About which no records exist.)

[149] To be discussed in another part of this complaint to follow, Vedalankar claimed (Hundermark almost certainly ghost-writing for her) that she and Nair decided this 'in July [2010]' – untruthfully and anyway *ultra vires* their powers and therefore illegally. *First*, as mentioned just above, the Legal Services Technical Committee is LASA's decision-making authority in regard to the implementation of Board policy to hire Senior Litigators – as illustrated by its abolition on 24 March 2010 of the Kimberley Senior Litigator post and its creation of the Mthatha one. *Second*, contradicting and refuting her (Hundermark's) claim that she was party to the original unrecorded, unauthorised decision to abort the Pietermaritzburg and Durban Senior Litigator recruitments, Vedalankar's email records show that by late July 2010 she wasn't even aware of the decision, not until October 2010, nearly a year later, when she wrote to the complainant (Hundermark almost certainly ghost-writing) alleging that she and Nair had taken this decision.

[150] *Ipso facto* illegal under the PFMA, as the Constitutional Court confirmed in *Zungu*.

[151] To be quoted and discussed in another part of this complaint to follow, the several untruthful, mutually contradictory and objectively contradicted, totally different reasons fabricated and advanced – including on affidavit, to the Minister, to the Portfolio Committee, and to the courts – have zigzagged wildly over time, ultimately criminally.

[152] Until the selection and recommendation of suitable candidates for appointment to the Pietermaritzburg and Durban Senior Litigator posts in November 2009, when the recruitment process was quietly halted, LASA had repeatedly tried filling the posts, as required by the PFMA and the Public Service Regulations, and had advertised them repeatedly: first in 2007 and twice again in 2009 (Bundle 1, page 537, and pages 43 and 45). Created in March 2010 (Bundle 2, page 709, paragraph 4.1.7; and Bundle 3, page 1120), the Mthatha Senior Litigator post was advertised the following month in April (Bundle 3, page 1111: 'Closing date – 07 May 2010'), and after the short-listing of applicants in May (Bundle 3, pages 1122–3), interviews were held and a selection and recommendation made on 24 May (Bundle 3, page 1122; and Bundle 2, pages 994–7).

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to abort the recruitments and 'freeze' the posts (for wildly disparate reasons given much later under pressure to account) contravenes section 55(1)(a) of the PFMA and constitutes criminal financial misconduct under section 86(2):

> An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.

90. The unauthorised, off-the-record decision to abort the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments after the selection and recommendation of suitable candidates for appointment to the posts, and the indefinite and practically permanent 'freezing' of the top professional posts – for a decade now – was a major change to LASA's Strategic and Business Plans. Section 1.1 of the Approval Framework required the Board's 'Final approval'[153] for any change to LASA's 'Strategic Plan', and section 1.2 required that the Board 'Must be consulted (before)'[154] executive management changed the 'Business Plan'. But as NOE Nair confirmed on affidavit in April 2011: 'The Board was ... not informed of the decision'.[155] That is, the unrecorded decision was taken without necessary authority under the Approval Framework[156] (an internal regulation, a form of subordinate legislation) and was consequently illegal for that reason as well – and hence a 'material illegality' as defined by section 1 of the PAA and accordingly of concern to the Auditor-General.

91. Section 55(2)(a) of the PFMA prescribes:

> The annual report and financial statements ... must ... fairly present the state of affairs of the public entity, its business, its financial results, its

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[153] Bundle 2, page 1034.
[154] Ibid.
[155] Bundle 1, page 385, paragraph 36.
[156] In November 2011, two years after the illegal, concealed abortion of the Pietermaritzburg and Durban Senior Litigator recruitments in November 2009, NOE Nair mentioned incidentally in a 'Report to Board' that the posts hadn't been filled – not because of lack of budget for them, as originally falsely alleged, but for other equally false reasons enumerated in footnote 135 above. All the chopping and changing excuses for not filling the three vacant posts will be treated in another part of this complaint to follow.

performance against predetermined objectives and its financial position as at the end of the financial year concerned.

92. In its Annual Performance Report 2011–12 presented to the Portfolio Committee on 9 October 2012,[157] LASA's Board[158] misleadingly stated in its 'Report on Completion of Strategic Plan 2009–2012': 'Senior Litigators employed are working on complex matters and matters in higher courts'.[159] Vedalankar repeatedly made the same misleadingly allegation in her CEO Report included in LASA's Annual Report 2011/12, presented to the Portfolio Committee on the same day: 'Senior Litigators employed are working on complex matters in the higher courts.'[160] Again in her discussion of 'the completion of our three-year Strategic Plan period 2009–12', she claimed: 'To a large extent we were able to make the strategic shift that we mapped for the 2009–12 Strategic Plan (SP) period as indicated below ... We employed Senior Litigators who are working on complex matters and matters in higher courts.'[161]

93. These statements about the employment of Senior Litigators made by the Board in LASA's Annual Performance Report 2011/12, prefaced by Mlambo JP's chairperson's report, and by Vedalankar in her CEO report for 2011/12, were intended to imply to the Portfolio Committee and to induce it to believe that LASA's Strategic Plan 2009–12 regarding the recruitment of Senior Litigators to handle complex constitutional and other specialist litigation and to mentor LASA's legal staff in conducting it had been successfully implemented and completed. Indeed, Vedalankar's claim that 'Senior Litigators employed are working on complex matters in the higher courts'[162] was immediately preceded by the statement: 'Our specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts and children's matters is in place and practitioners are continuously trained in handling these specialist matters.'[163]

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[157] Bundle 2, page 897.
[158] Bundle 3, paragraph 3.2.3.c.
[159] Bundle 2, page 897.
[160] Bundle 2, page 902.
[161] Bundle 2, page 1054.
[162] Bundle 2, page 902.
[163] Ibid.

94. In truth and in fact, contrary to Vedalankar's false claim about this, such 'specialist capacity' wasn't 'in place', inasmuch as three of LASA's nine budgeted and funded Senior Litigator posts were still unfilled, then six years after the creation of the nine posts in 2006. As a result of recruitment corruption and a now disintegrated attempt to cover it up, KwaZulu-Natal had and still has no such 'specialist capacity' at all, and the Eastern Cape's 'specialist capacity' was and remains seriously constrained – ten years after the selection and recommendation of suitable candidates for appointment to the Pietermaritzburg, Durban and Mthatha Senior Litigator posts.

95. For the same reason, Vedalankar lied in her CEO Report in implying that in KwaZulu-Natal LASA's legal 'practitioners are continuously trained in handling these specialist matters', as in other provinces, because as a result of recruitment corruption and its fumbled cover-up, KwaZulu-Natal has no Senior Litigators at all to 'train' them, i.e. to 'Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff' as envisaged in the advertised job description;[164] to 'provide support for practitioners in more complex matters', as the respondent's Annual Report 2009/10 puts it;[165] and for 'protecting the rights of women and children ... In very complex matters, our Senior Litigators provide support and advice to practitioners that need it.'[166]

96. Mlambo JP and the Board well knew that these claims – that Senior Litigators had been employed in fulfilment of LASA's Strategic Plan 2009–12, and that specialist legal professional capacity was now in place for the conduct of complex litigation and for training LASA's practitioners – were false, because a year earlier in November 2011, NOE Nair presented a 'Report to Board' with the soporific title 'Senior Litigators Reporting Relationships and Job Clarification',[167] in which he advanced new, quite different untruthful excuses (unsupported, contradicted and refuted by LASA's own records) having nothing whatsoever to do with the budgetary insufficiency story initially falsely alleged (also

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[164] Bundle 1, page 45.
[165] Bundle 1, page 142, paragraph 153.
[166] Bundle 2, pages 825–6.
[167] Bundle 2, page 869.

unsupported, contradicted and refuted by LASA's own records) to justify his failure (as chairperson of the Legal Services Technical Committee) to fill LASA's remaining three Senior Litigator posts with the candidates recommended for them by approving the selection panels' recommendations (his responsibility),[168] after the collapse, when tested and exposed, of the bogus financial insufficiency cover-story for 'freezing' the three vacant Senior Litigator posts at point that the recruitment processes had been completed. (All the different, clashing, chopping and changing cover-stories variously told in correspondence, on affidavit, to the Minister, to the Portfolio Committee, and in court will be quoted and treated in other parts of this complaint to follow.)

97. In short, in making their false annual report to the Minister and to the Portfolio Committee, Mlambo JP and the other members of the Board well knew, as CEO Vedalankar did, that their claims in it were substantially false and misleading, and accordingly they all contravened section 55(2)(a) of the PFMA (fully quoted above), requiring that their 'annual report and financial statements ... fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned.'

98. Section 83 of the PFMA (fully quoted above) provides that 'The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently ... fails to comply with a requirement of section ... 55' for which 'every ['board'] member is individually and severally liable[169] ... An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty. ... Financial misconduct is a ground for dismissal or suspension'.

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[168] Under section 8.2.2.b of the Approval Framework, NOE Nair has 'Final approval' authority, subject to the assent of the CEO (then Vedalankar); she 'Must agree'. Bundle 2, page 1036.
[169] The Department's representative on the Board, Pieter du Rand, was then and is still a member.

99. Having since retired from LASA, Mlambo JP and Vedalankar can't be dismissed or suspended under section 83,[170] but they remain exposed to criminal prosecution under section 86 of the PFMA, 'Offences and penalties', subsection (2) of which provides:

> An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.

100. In sum, by dishonestly misrepresenting 'the state of affairs of [LASA], its business, its financial results, its performance against predetermined objectives [set out in its Strategic Plan 2009–12] and its financial position as at the end of the financial year concerned' in LASA's 'annual report and financial statements' for 2011/12, so as to mislead and defraud LASA's constitutional oversight authority, the Justice Portfolio of the National Assembly, and induce it to believe wrongly that (i) LASA's Strategic Plan 2009–12 regarding the employment of Senior Litigators had been implemented and that such specialist legal service delivery capacity was now in place, (ii) LASA had filled its vacant posts, especially its critical posts, and (iii) LASA was applying its Senior Litigator budget to the employment of Senior Litigators, Board chairperson Mlambo JP, his fellow directors in October 2012,[171] and CEO Vedalankar all committed financial misconduct and criminally contravened section 55 of the PFMA, for which they're liable to be jailed under section 86(2).

101. In deliberately falsely reporting to and misleading the Justice Portfolio Committee in LASA's annual report for 2011/12, prefaced with Vedalankar's CEO report, Mlambo JP, other members of the Board at the time and CEO Vedalankar furthermore criminally contravened section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of

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[170] Du Rand can be.
[171] Including Du Rand.

2004 ('Powers, Privileges and Immunities Act'),[172] for which they're liable to be jailed:

> 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.

102. Mlambo JP's and the Board's and CEO Vedalankar's fraudulent deception of the Minister and the National Assembly regarding the employment of Senior Litigators and specialist legal professional capacity being in place additionally failed to comply with 'Strategy C4' of the respondent's Strategic Plan 2009–12, namely 'To timeously account to Parliament and the Executive Authority so they are well informed of Legal Aid South Africa strategy and programmes' – a material irregularity. 'Strategy C4' specifically required 'Timeous and Accurate ... Interaction with Minister' and 'Accurate ... Interaction with Parliamentary Committees'.[173] And section 1 of the PAA includes 'fraud' as a 'material irregularity' of concern to the Auditor-General.

103. Displaying a similar flagrant contempt for the truth[174] in her[175] entry in LASA's 'Business Plan 2011/12' in section P26–10 headed 'Talent acquisition and retention', HRE Clark dishonestly concealed from the Board, to which the plan was submitted for review,[176] that a third of LASA's critical Senior Litigator posts

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[172] Under section 1 of the PAA, a 'material irregularity' includes 'any ... contravention of ... legislation', and under section 5(1A) this statutory crime is of direct concern to the Auditor-General.

[173] Bundle 2, page 1058. More examples of their dishonestly false, criminal reporting to the Portfolio Committee on other occasions will be canvassed in other parts of this complaint to follow.

[174] Clark's deposition to conflicting false affidavits, a crime, will be treated in another part of this complaint to follow.

[175] Bundle 2, page 877, 'Responsible Executive': 'HRE'.

[176] Bundle 3, page 1104, paragraph 6.1.

had long been vacant since their creation in November 2006,[177] despite the selection and recommendation of suitable candidates for appointment to them in November 2009[178] and May 2010.[179] To the contrary, full well aware that the posts hadn't been filled, and in a fraud on the Board, and hence a 'material irregularity', Clark deliberately falsely claimed: 'No longstanding vacancies'.[180]

104. Profoundly aggravating Mlambo JP's and the Board's and CEO Vedalankar's criminal contraventions of the PFMA and of the Powers, Privileges and Immunities Act in their and their colleagues' fraudulent cover-up of ethical recruitment corruption (jobs for pals) gone wrong,[181] is their corrupt motive for dishonestly misleading the Portfolio Committee in their reports, namely to frustrate and defeat the National Assembly's constitutional oversight responsibility imposed by section 55(2)(b)(ii) of the Constitution 'to maintain oversight of ... organ[s] of state' like LASA, and to prevent the National Assembly holding them to account for unlawfully deliberately not filling LASA's three remaining Senior Litigator posts at Pietermaritzburg, Durban and Mthatha: (i) in contravention of the PFMA; (ii) in an illegal unauthorised deviation from LASA's Strategic Plan 2009–12 and Business Plans based on it; and (iii) in contemptuous disregard for both the Minister's and the Portfolio Committee's express wishes that LASA fill its vacant posts, especially critical posts, and that LASA hire Senior Litigators to ensure that the indigent have access to specialist litigation expertise and that LASA's lawyers have experienced litigation lawyers to mentor them.

105. Had chairperson Mlambo JP and the Board and CEO Vedalankar not criminally deceived and defrauded the Portfolio Committee it would have detected (i) their financial misconduct in unlawfully deliberately not filling LASA's three remaining vacant, budgeted and funded Senior Litigator posts, and

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[177] As mentioned in paragraph 60 above, in March 2010 the Kimberly post was abolished and a new post created at Mthatha, with the budget for the former transferred to the latter.
[178] Bundle 1, pages 244–8.
[179] Bundle 2, pages 994–7.
[180] Bundle 2, page 877. To be shown in another part of this complaint to follow, Clark mendaciously and later perjuriously participated in covering up the corrupt, illegal abortion of the Pietermaritzburg and Durban Senior Litigator recruitments.
[181] To be detailed with supporting documents in another part of this complaint to follow.

in not applying the budgeted revenue received for them to the employment of suitably senior lawyers to fill them, and (ii) the multitude of capital transgressions of the PFMA committed in corruptly and illegally cancelling – off the record and without authority – the substantially completed Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments after the selection and recommendation of suitable candidates for appointment to the posts.

106. Chairperson Mlambo JP's and the Board's and CEO Vedalankar's successful criminal fraud perpetrated on the National Assembly, by presenting to it a false and misleading annual report for 2011/12, constitutes a clear-cut 'material irregularity' on multiple scores within the definition given in section 1 of the PAA, including 'non-compliance with, or contravention of, legislation, fraud ... or a breach of fiduciary duty identified during an audit performed under this Act that resulted in or is likely to result in ... the misuse ... of a public resource or substantial harm to a public sector institution or the general public'.

CONCLUSION

107. In the language of section 20(2)(c) of the PAA, LASA's 'reported performance' repeatedly falsely described in its annual report for 2011/12 concerning the employment of Senior Litigators, in which it was alleged that LASA had completed its Strategic Plan 2009–12 and had put 'in place' its planned specialist litigation and professional mentoring capacity, is seriously at odds with 'its predetermined objectives' in this regard set out in the plan.

108. LASA's deliberate failure over the past ten years to fill its budgeted and funded Senior Litigator posts at Pietermaritzburg, Durban and Mthatha, created to provide expert constitutional and other specialist litigation services to the indigent, is a seriously unlawful dereliction of its obligation stipulated in section 20(3) of the PAA to ensure its 'resources [are] procured economically and utilised efficiently and effectively.'

109. This 'serious or persistent material breach of ... uniform treasury norms and standards', per section 216 of the Constitution, every year for the past

decade – 'compliance with' which 'norms and standards ... [t]he national treasury must enforce' – presents a constitutional basis for the Treasury to 'stop the transfer of funds to' LASA as a seriously and persistently delinquent 'organ of state'.

110. Section 5(3) of the PAA empowers the 'Auditor-General ... in the public interest [to] report on' Mlambo JP's, the Board's and Vedalankar's criminal and other contraventions both of the PFMA and of the Powers, Privileges and Immunities Act and to 'submit such a report to the relevant legislature', namely the National Assembly – specifically the Speaker and the Justice Portfolio Committee – 'and to any other organs of state with a direct interest in the matter', namely the Treasury; the Minister; the Department's Director: Third Party Funds; the Public Protector; the Judicial Service Commission; and the National Director of Public Prosecutions.

Signed at Eshowe on 19 February 2020

ANTHONY BRINK

Signed before me at Eshowe on 19 February 2020 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and who affirms its contents to be true to the best of his knowledge and belief.

7186348-6
S. MSHALI CS

COMMISSIONER OF OATHS

Name: Sipiwe Mshali

Address: 73-79 Main Street

Capacity: Constable

SUPPORT SERVICE - SCM
2020 -02- 09
ESHOWE
KWAZULU-NATAL

PART ONE: ADDENDUM

COMPLAINT TO THE AUDITOR-GENERAL
AGAINST:

1. LASA CFO REBECCA HLABATAU, ARISING FROM HER WILFUL DERELICTION OF HER PROFESSIONAL OBLIGATIONS IN REGARD TO LASA'S COMPLIANCE WITH SECTION 53(3)&(4) OF THE PUBLIC FINANCE MANAGEMENT ACT AND SECTION 21 OF THE LEGAL AID SOUTH AFRICA ACT; AND,

2. LASA'S BOARD SECRETARY AND OTHER NATIONAL MANAGEMENT EXECUTIVES OF LASA, IDENTIFIED HEREIN, CONCERNING THEIR SAME WILFUL DERELICTION OF THEIR RELATED RESPONSIBILITIES –

IN EACH CASE A 'MATERIAL IRREGULARITY' WITHIN THE PURVIEW OF SECTION 1 OF THE PUBLIC AUDIT ACT

I, Anthony Robin Brink, affirm:

1. I am an advocate residing at 36 Pearson Road, Eshowe, KwaZulu-Natal, and the complainant in Part One of a complaint to the Auditor-General made in February 2020 and acknowledged in March regarding major ongoing contraventions of the Public Finance Management Act 1 of 1999 ('PFMA') by certain past and current national management executives of Legal Aid South Africa ('LASA'), and multiple acts of serious 'material irregularity' committed by them within the contemplation of section 1 of the Public Audit Act 25 of 2004.

2. Part One of my complaint and proof of dispatch and receipt are accessible online at illegal-aid.co.za/AG.

3. In this Addendum to Part One of my complaint, I show that Rebecca Hlabatau, Chief Financial Officer ('CFO') of LASA, has been deliberately derelict in her professional obligation to ensure LASA's compliance with section

53(3)&(4) of the PFMA, and with section 21 of the Legal Aid South Africa Act 39 of 2014 ('LASA Act'), and that LASA's Board Secretary and other national management executives have likewise been deliberately derelict in discharging their similar obligations, rendering all of them complicit in their national office colleagues' serious non-compliance with the PFMA and other corruption called to their attention. An error contained in footnote 16 of Part One of my complaint is corrected in the Appendix annexed to this Addendum.

4. Hlabatau's and these other top LASA officers' non-compliance with their professional obligations to LASA, thereby enabling to continue unchecked the grave contraventions of the PFMA brought to their attention (detailed in the main body of Part One of my complaint to the Auditor-General), comprise in each case a 'material irregularity' within the definition given in section 1 of the Public Audit Act 25 of 2004 ('PAA'). In a word, had they done their jobs they could have ended (i) the illegal deliberate underexpenditure of LASA's budget in the sum of many millions of rands, (ii) the resulting prejudice to the indigent, and (iii) the massive reputational harm to which LASA now stands exposed.

5. On 8 January 2019, a year before delivering Part One of my complaint to the Auditor-General, I addressed a six-page letter to Hlabatau under the heading, 'LASA'S ONGOING, REPEATED, GROSSLY ILLEGAL BREACH OF THE PFMA INVOLVING IRREGULAR EXPENDITURE OF MANY MILLIONS OF RANDS', in which I pertinently called the matter to her attention.

6. A copy of my letter and proof of delivery by email are annexed marked 'A' and 'B' respectively.

7. As CFO of LASA, Hlabatau is responsible, or at least shares responsibility for ensuring compliance with section 21 of the LASA Act. It provides:

> 21 The funds of Legal Aid South Africa consist of–
>
> (a) money appropriated by Parliament; and
>
> (b) money received from any other source,
>
> and must be budgeted for, managed and accounted for, in terms of the Public Finance Management Act.

8. In an egregious, unlawful failure to comply with her professional duty to LASA, CFO Hlabatau ignored my letter and took no steps to ensure that her delinquent fellow national management executives Chief Executive Officer Vidhu Vedalankar (retired some months later), National Operations Executive Brian Nair, and Human Resources Executive Amanda Clark remedied their non-compliance with section 21 of the LASA Act, by seeing to it that the 'money appropriated by Parliament', 'budgeted for' by LASA, and paid to it by the Treasury via the Justice Department for the employment of nine Senior Litigators at various seats of the High Court is duly 'managed and accounted for, in terms of the Public Finance Management Act' – specifically 'in terms of' section 53(4), requiring that the 'expenditure of [a] public entity is in accordance with the approved budget', and of section 53(3) prohibiting the 'accumulat[ion] of surpluses unless the prior written approval of the National Treasury has been obtained' – by filling all nine of these critical budgeted and funded posts. As the Constitutional Court confirmed in principle in the *Zungu* case, mentioned in my letter, three of these posts at Pietermaritzburg, Durban, and Mthatha* have unlawfully been left vacant for a decade since the selection and recommendation of suitable candidates to fill them in November 2009 and May 2010. (*The budget for the Mthatha post appears to have been restored to the original Kimberley post, still vacant.)

9. As the cc list at the head of my letter to Hlabatau and the cc bar of my covering email show, I copied my letter to then CEO Vedalankar, NOE Nair, and HRE Clark, all implicated in it, as well as to Chief Operations Officer Jerry Makokoane, Internal Audit Executive Sethopo Mamotheti, and Board Secretary Langa Lethiba.

10. In view of his primary role in covering up the pervasive and systemic corruption at LASA detailed in Part One of my complaint (and more will be charged in further parts to follow), I didn't copy Chief Legal Executive Patrick Hundermark. Nor did I copy Legal Executive Thembile Mtati, who until his later resignation had functioned only as Hundermark's ventriloquist's puppet in multiple dishonestly false documents given to him to sign.

11. Being centrally involved in the corruption and its cover-up detailed in my letter to Hlabatau, I didn't expect Vedalankar, Nair, and Clark to respond to my letter copied to them, and indeed they didn't. My purpose in copying them was to confront them squarely, on the record, with the grave illegality detailed in my letter; but also to create an opening for a conciliatory resolution of my claim to my appointment to the Pietermaritzburg Senior Litigator post for which I was duly selected and recommended a decade ago.

12. I was preparing to meet Vedalankar's 'challenge' to me in her letter of 28 January 2011 (quoted below), in which she'd strangely furtively refused for the third time my PAIA request of August 2010 for access to key public records I'd asked for, chiefly regarding her and Nair's cancellation of my recruitment to LASA's Senior Litigator post at Pietermaritzburg (my request was first mutely refused in September by being ignored; then expressly refused in October on spurious grounds, abandoned under SAHRC pressure; then refused again in January 2011 on different spurious grounds, also eventually abandoned under legal pressure):

> You accuse us and persist with your baseless accusations of financial improprieties and misrepresentations to the Portfolio Committees etc. I challenge you to present your investigative results of Legal Aid SA's financial mismanagement; wasteful and fruitless expenditure to the Auditor General.

13. As said, I also copied my letter to Hlabatau to Board Secretary Lethiba, who is responsible (per LASA's annual report 2009/10) for:

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

14. Lethibe's deliberate failure to carry out these specific responsibilities, after receiving my letter copied to him, prevented the Board, and specifically its Audit and Risk Subcommittee, from discharging its oversight function over the executive management of LASA's operations, and prevented it from remedying Vedalankar's, Nair's and Clark's illegal, unauthorised, unrecorded, substantial departure from a key objective of its Strategic Plan 2009–12 and subsequent strategic plans, namely to employ Senior Litigators to render specialist constitutional and other complex litigation services to the indigent in KwaZulu-Natal and in the Eastern Cape to enable them to realise their 'Constitutional rights and socio-economic rights and [to] develop jurisprudence on social justice matters' 'through impact litigation', as LASA's Strategic Plan 2015–20 puts it, which strategic objective Vedalankar and Nair obstructed and frustrated by criminally illegally aborting the substantially complete Pietermaritzburg, Durban and Mthatha recruitments, off the record, without authority, and by illegally leaving these three budgeted and funded critical Senior Litigator posts vacant.

15. I also copied to IAE Mamotheti my letter about Vedalankar's, Nair's and Clark's egregious contraventions of the PFMA, some criminal, and other gross misconduct in trying to cover it up. By rights, Mamotheti should have been appalled and been moved to protect LASA against the tremendous risk to which my letter showed it was exposed. Instead, siding with his corrupt head office colleagues, Mamotheti turned a blind eye to it, did nothing, and allowed the illegality I described to continue unchecked.

16. COO Makokoane's indifference to the corruption I'd brought to his attention, in which he was not directly involved, and his failure to respond to and act upon my letter (like previous correspondence he also ignored), detailing the most serious non-compliance with the PFMA, involving many millions of rands and the obstruction of critical specialist legal service delivery to the poor, evinces his election with Lethibe and Mamotheti to close ranks around their delinquent national office colleagues Vedalankar, Nair and Clark and to make common cause with their unlawful, criminal and other gross misconduct detailed in my letter. As corporate executive attorneys Hundermark and Mtati long ago did.

17. In sum, besides new CEO Mantiti Kola, virtually the entire top management structure of LASA has shown itself to be complicit in the illegality in question; and since Nair and Hundermark are now members of LASA's Board and are certain to misdirect and corrupt its deliberations and decisions, there's scant prospect that LASA's contraventions of the PFMA and the material irregularities detailed in Part One of my complaint will be remedied by the Board, by instituting disciplinary proceedings against the delinquent officers I've identified and by directing that the executing officers delegated by section 8.2.2(b) of LASA's Approval Framework to co-approve selection panels' Senior Litigator candidate recommendations – namely the NOE (Nair, who 'Originates' and has 'Final approval' authority) and the CEO (Kola, who 'Must agree' with him) – carry out their joint responsibility in this regard, so as to put an end to LASA's ongoing contravention of sections 53(3)&(4) of the PFMA in deliberately keeping its remaining three budgeted and funded critical Senior Litigator posts unfilled, in further contravention of section 21 of the LASA Act, to the massive prejudice of critical expert litigation service delivery to the indigent.

Signed at Eshowe on 1 June 2020

ANTHONY BRINK

Signed before me at Eshowe on 1 June 2020 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and who affirms its contents to be true to the best of his knowledge and belief.

0849882 0-5

COMMISSIONER OF OATHS

Name: CLEOPAS MSEMA

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Capacity: Warrant officer

035-4734280

SOUTH AFRICAN POLICE SERVICE
CRIME INVESTIGATION SERVICE
2020 -06- 01
ESHOWE
KWAZULU-NATAL

36 Pearson Road
Eshowe 3815
KwaZulu-Natal
8 January 2019

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

Cc:
CEO Vidhu Vedalankar
COO Jerry Makokoane
NOE Brian Nair
HRE Amanda Clark
IAE Sethopo Mamotheti
Board Secretary Langa Lethiba, for consideration by the Board
Lwazi Bam, Chairperson: South African Institute of Chartered Accountants
Martin Welz, Editor and Publisher: *Noseweek*
And to other national newspaper editors later on

Dear Ms Hlabatau

LASA'S ONGOING, REPEATED, GROSSLY ILLEGAL
BREACH OF THE PFMA INVOLVING IRREGULAR EXPENDITURE
OF MANY MILLIONS OF RANDS

1. Your primary responsibility as Chief Financial Officer of Legal Aid SA ('LASA') is to ensure that your employer and its officers comply with the Public Finance Management Act 1 of 1999 ('PFMA').

2. One year ago our **Constitutional Court** observed in paragraphs 8 and 9 of its unanimous judgment in *Zungu v Premier of the Province of KwaZulu-Natal and Others* [2018] ZACC 1 (22 January 2018) that for an organ of state to allow a budgeted and funded post to be '**left vacant**' constitutes a '**breach of the**

provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position ... vacant.'

3. Since November 2009 – that is, *for nearly a decade now* – CEO Vidhu Vedalankar, NOE Brian Nair and HRE Amanda Clark have deliberately illegally '**left vacant**' LASA's budgeted and funded Senior Litigator posts at Pietermaritzburg and Durban in a flagrant '**breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position[s] ... vacant.**'

4. For almost as long, since May 2010, LASA's budgeted and funded Senior Litigator post at Mthatha – duly transferred two months earlier from Kimberly by resolution of LASA's Legal Services Technical Committee to meet the reported pressing need for it – has been deliberately illegally '**left vacant**' by these management executives in the same flagrant '**breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position ... vacant.**'

5. This is despite the recommendation by selection panels of eminently qualified candidates for the three posts in those months, myself included. NOE Nair has repeatedly admitted on affidavit and in his evidence given in court that no record whatsoever exists to show that any decision was ever duly taken by any competent authority – indeed by anyone at all – to abort the said three Senior Litigator recruitment processes and not to fill the budgeted and funded posts for any reason.

6. The specific '**provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position[s] ... vacant**' and which make it *seriously illegal* for a budgeted and funded post to be '**left vacant**' by the management executives of a public entity, and which '**provisions of the Public Finance Management Act**' also make it a *serious criminal offence* to fail to 'keep full and proper records of the financial affairs of the public entity' – for which the guilty executives can be jailed for five years – are enumerated and discussed with their extreme implications in my founding affidavit in my third of three applications currently pending before the Pietermaritzburg High Court for orders compelling access to certain financial records I duly requested under the Promotion of Access to Information Act 2 of 2000 ('PAIA'), which your

resident legal moron, Chief Legal Executive and deputy information officer Patrick Hundermark, illegally and unconstitutionally refused me in his usual, furtive routine, starting with his advice in 2010 to repeatedly illegally and unconstitutionally refuse my first PAIA request in August, which I made at the outset of my investigation of the corrupt true circumstances in which the recruitments were cancelled. (These finally came to light in April 2016, after Hundermark's total capitulation at court two months earlier to five other PAIA applications I'd previously brought, and his final forced delivery of a crucial record that he'd previously illegally refused repeatedly in 2010, then released in 2011 heavily censored illegally with a black Koki, then illegally refused again in 2015, namely the uncensored, complete recommendation report of the selection panel that picked me, containing the pivotal, long-suppressed information that my rival for the gig was none other than Board chairperson Mlambo JP's long-time former judicial colleague, whom he'd repeatedly appointed as an acting judge of the Labour Court over a period of about six years, while Judge President there before moving on to the Gauteng High Court.)

7. To refresh your understanding of these basic principles of public finance management, namely the *serious illegality* of a budgeted and funded post being '**left vacant**' by a public entity, and the *serious criminality* (jail time) of failing to 'keep full and proper records of the financial affairs of the public entity', I've posted a material excerpt of my said affidavit for you to read. It's accessible online via a list of hyperlinks I've prepared and posted at goo.gl/QEYbwe. My complete affidavit and all the others filed in my three PAIA applications, all set down together for argument in a few weeks time on 15 March 2019, are accessible via the same link.

8. I suggest you make a careful study of the '**provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position[s] ... vacant**' that I cite and discuss in my affidavit, which '**provisions**' make it *seriously illegal* for budgeted and funded posts to be '**left vacant**', and also make it a *serious criminal offence* (jail time) to fail to 'keep full and proper records of the financial affairs of the public entity', such as a record of a backroom decision involving many millions of rands taken in the course of a cover-up of top-level recruitment corruption, especially when this

backroom decision is corruptly motivated, unauthorised, and itself illegal. And therefore obviously unrecorded to dishonestly conceal it.

9. Numerous chopping and changing, radically contradictory, mutually destructive, lying cover-stories have been told to me, to the Justice Minister, to the Justice Portfolio Committee (a crime), to the SAHRC, and to the courts (a crime) to mask the true reason the posts haven't been filled, in illegal breach of the PFMA, namely everyday recruitment corruption in the form of jobs for pals (which corrupt plan I frustrated by insistently pressing for my appointment). The recruitment corruption of which I speak, and Board chairperson Mlambo JP's central involvement in it (he wanted his chum in the post for which I was selected and recommended), and the multiplying, chaotic, now hopelessly disintegrated cover-up that your national office colleagues mounted, is finely particularised with piles of supporting documents in my answering affidavit filed in Pietermaritzburg High Court case 12124/16, which I quickly won *without even being called on to argue* and which LASA (Hundermark) lost on 27 October 2017, at vast wasted cost of many hundreds of thousands if not millions of rands (which amount Hundermark is naturally illegally resisting revealing to me in his characteristic contempt for the information transparency provisions of the Constitution, hence my second PAIA application to the High Court to compel him to open LASA's books to me, to be argued in March). My answering affidavit in the big case that LASA (Hundermark) brought and lost against me is accessible at the above-mentioned link. The recruitment corruption is further described in my founding and replying affidavits in my pending PAIA applications mentioned in paragraph 7, likewise accessible via the same link.

10. Luckily for you, the said recruitment corruption and all the wildly divergent lies told over the years to cover it – including such criminal lies as perjury, lying and false 'confidential' reporting to the Justice Portfolio Committee to successfully pervert an enquiry it instituted, and false and misleading annual reporting – has nothing to do with you, and you're not to blame for it. But as LASA's CFO you're directly responsible for checking and ending Vedalankar's, Nair's and Clark's deliberate illegal failure to apply the many millions of rands in salary budget which the National Assembly has voted year after year to fund the top specialist legal professional posts (created at the special instance of the

National Assembly, expressly concerned about inadequate legal professional expertise at LASA, repeatedly conceded by Mlambo JP and Hundermark), and which LASA has received year after year from the Treasury via the Justice Department's Third Party Funds division, in an ongoing, annually repeated '**breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position[s] ... vacant**', which '**provisions of the Public Finance Management Act**' make it seriously illegal for LASA's budgeted and funded Senior Litigator posts at Pietermaritzburg, Durban and Mthatha to be '**left vacant**' for nearly a decade now, as I said. Even as CEO Vedalankar criminally misled the Portfolio Committee, the Minister, and the public in her CEO report for 2011/12 by falsely claiming in regard to the completion of the Strategic Plan 2009–2012 that 'Senior Litigators employed are working on complex matters in the higher courts.' And again: 'We employed Senior Litigators who are working on complex matters and matters in higher courts.' The same half-truth (= whole lie) was told in the 'Report on Completion of Strategic Plan 2009–2012' included in LASA's Annual Performance Report for 2011/12, signed off as the perfect truth for the true information of the Portfolio Committee, the Minister, and the public by Board chairperson Mlambo JP and CEO Vedalankar: 'Senior Litigators employed are working on complex matters and matters in higher courts' – when in truth and in fact one third of these top posts – six out of nine – had been corruptly 'frozen' off the record, right after suitably qualified and experienced candidates had been selected for them. HRE Clark lied similarly in LASA's 'Business Plan 2011/12': 'No longstanding vacancies' – when in truth and in fact the Pietermaritzburg and Durban Senior Litigator posts at the top of LASA's professional ranks had been vacant for many years since their creation in November 2006, and the Mthatha post since its creation in March 2010. The multiple criminal lies Board chairperson Mlambo JP has told in the matter, strenuously trying this kick away this unwanted dog pursuing him very determinedly, are the subject of several capital complaints against him currently pending before the Judicial Service Commission. They're accessible online, together with his dismal response, and my invited reply to it, via the above-mentioned link.

11. To be copied to the Minister, the Portfolio Committee and other interested parties once I've completed it after the argument of my PAIA applications in March, I have a substantially complete, comprehensive report in preparation for the Auditor General, in which I closely detail the massive illegal financial irregularity and corruption in question and request a special audit of LASA; and I intend including in my report your response or non-response to this letter.

12. Your response or non-response will reveal whether as CFO of LASA you take seriously your professional responsibilities and obligations to your one-and-a-half-billion-rands-a-year public entity, or whether like COO Jerry Makokoane, you've decided rather to make common cause with the lawless, corrupt clique running LASA by looking away from the gross illegality and criminality I've pertinently called to your attention, and would consequently like to end your career sacked and disgraced like former ESKOM CFO Anoj Singh.

13. There's big trouble coming for your colleagues this year, so you need to choose sides wisely. You might even consider asking them: *Wouldn't it be better to start talking to Brink with a view to finding out on what generously compromised terms he's prepared to settle his indisputable claim to his long overdue appointment, as well as all his pending and intended future litigation and all his pending and intended future complaints against us, before this cancerous, suppurating boil finally bursts very publicly, and blows its pus all over the place, including over bystanders like me?*

14. For reporting to the Auditor General, I look forward to your advice of your intentions, by email please.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com

B

Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

ONGOING CONTRAVENTION OF THE PFMA BY LASA INVOLVING MANY MILLIONS OF RANDS

1 message

Anthony Brink <anthonybrink.sa@gmail.com> 8 January 2019 at 17:07
To: RebeccaH@legal-aid.co.za, vidhuv <VidhuV@legal-aid.co.za>, briann <BrianN@legal-aid.co.za>, JerryM@legal-aid.co.za, SethopoM@legal-aid.co.za, AmandaCl@legal-aid.co.za, langal@legal-aid.co.za, saica@saica.co.za, Martin Welz <editor@noseweek.co.za>

Rebecca Hlabatau
Chief Financial Officer, Legal Aid SA

Dear Ms Hlabatau
I attach an important letter for your careful attention and response.
Yours sincerely
Anthony Brink

Cc:
CEO Vidhu Vedalankar
COO Jerry Makokoane
NOE Brian Nair
HRE Amanda Clark
IAE Sethopo Mamotheti
Board Secretary Langa Lethiba, for consideration by the Board
Lwazi Bam, Chairperson: South African Institute of Chartered Accountants
Martin Welz, Editor and Publisher: *Noseweek*

Hlabatau 8.1.19.pdf
52K

Appendix

Footnote 116 of Part One of my complaint to the Auditor General contains an error, identified here in italics:

> 116. The irregular manner in which the selection panel framed its recommendations of the two candidates after duly selecting them will be discussed in another part of this complaint to follow, as will the many unlawful irregularities committed by LASA's national executives in the matter, *inter alia* by unlawfully gerrymandering the qualifying criteria for the posts in a failed attempt to bias the process in favour of one of the applicants, Ngcamu AJ (as he used to be), a long-time judicial colleague of LASA chairperson Mlambo JP, *who was then head of the Labour- and Labour Appeal Courts, and who'd repeatedly got him appointed as an acting judge of the Labour Court over a period of about six years prior to the interviews.* To be discussed in another part of this complaint to follow, this long suppressed, determinedly concealed, critically relevant information was finally forced out of LASA through PAIA litigation in April 2016, years after the trial of and judgment in the misconceived, correctly dismissed labour action mentioned above (LC D529/11), which had been wrongly founded on unfair discrimination.

I've just discovered that I was misinformed about this. Though Ngcamu and Mlambo JP were indeed judicial colleagues in the Labour Court, the latter was only appointed to head the Labour- and Labour Appeal Courts in 2010. The italicised portion of the footnote therefore stands to be corrected by deletion.

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

I, Anthony Robin Brink, affirm:

1. I am an advocate residing at 36 Pearson Road, Eshowe, KwaZulu-Natal, and the complainant in Part One of a complaint to the Auditor-General in February 2020 ('Part One') regarding major ongoing contraventions of the Public Finance Management Act 1 of 1999 ('PFMA') by certain past and current national management executives of Legal Aid South Africa ('LASA'), and multiple acts of serious 'material irregularity' committed by them within the contemplation of section 1 of the Public Audit Act 25 of 2004 ('PAA').

2. An Addendum to Part One ('First Addendum') delivered earlier this month proves the complicity in these contraventions of Chief Financial Officer Rebecca Hlabatau; of two other named national executives; and of the Board secretary. Part One and its First Addendum are accessible online at illegal-aid.co.za/AG.

ARB B. C.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Signed at Eshowe on 29 June 2020

ANTHONY BRINK

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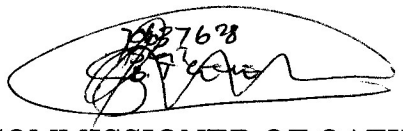
Signed before me at Eshowe on 29 June 2020 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and who affirms its contents to be true to the best of his knowledge and belief.

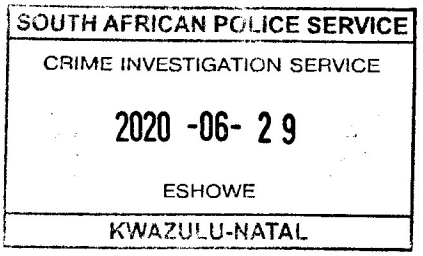


COMMISSIONER OF OATHS

Name: CELE BHEKOKWAKHE

Address: 73/79 MAIN STREET ESHOWE

Capacity: SERGEANT



R58

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

CASE NO: 5239/2018P

In the matter between:

ANTHONY BRINK	Applicant
and	
VIDHU VEDALANKAR N.O. INFORMATION OFFICER LEGAL AID SOUTH AFRICA	First Respondent
PATRICK HUNDERMARK CHIEF LEGAL EXECUTIVE LEGAL AID SOUTH AFRICA	Second Respondent
LEGAL AID SOUTH AFRICA	Third Respondent

RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

PATRICK ROBERT HUNDERMARK

do hereby state under oath that:

1.

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

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

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

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

[redacted]

[redacted]

[redacted]

[redacted]

FACTUAL BACKGROUND

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

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

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

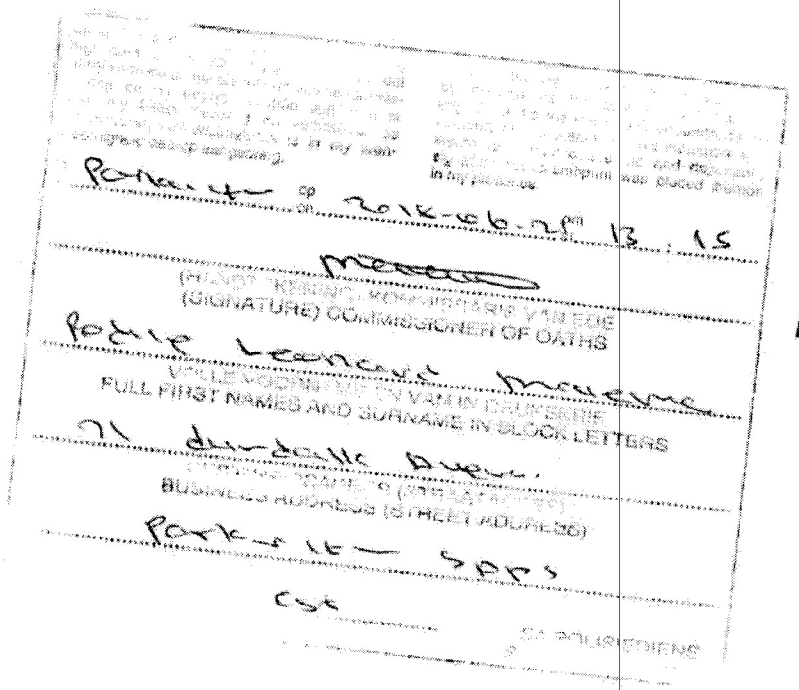
[redacted]

[redacted]

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

7135252-6
Mouleve CST
COMMISSIONER OF OATHS

Full Names: Leonard mouena
Designation: CST
Address: 71 dundalk Ave
Parkview


Parkview op 2018-06-21 13:15
(SIGNATURE) COMMISSIONER OF OATHS
Police Leonard Mouena
FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS
71 dundalk Ave
BUSINESS ADDRESS (STREET ADDRESS)
Parkview Sapd
CSR

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY ROBIN BRINK Applicant

and

LEGAL AID SOUTH AFRICA Respondent

APPLICATION FOR LEAVE TO APPEAL AND TO LEAD FURTHER EVIDENCE ON APPEAL

The applicant hereby applies for leave to appeal to the Labour Appeal Court against the dismissal of his claim, and to present further evidence in that court, on the grounds set out herein.

PART ONE
APPLICATION FOR LEAVE TO LEAD FURTHER EVIDENCE ON APPEAL

1. The applicant applies for leave to lead further evidence of two email records, discovered by the respondent after trial, proving categorically that the respondent's single witness Brian Nair perjured himself in court on two distinct peripheral issues – thus devastating his credibility as a witness generally, and specifically the reliability of his pivotal allegation, which the court accepted and believed as the perfect truth and on which the case largely turned, that he didn't know the applicant's political background at the material time, because he didn't open and read the applicant's CV detailing it and the selection panel's recommendation of him referring to it when these were emailed to him on 26 November 2009 as PDF attachments after the interviews and selection – not until the end of the following year or maybe early the year after that when he decided to read them out of curiosity.

2. At trial Nair testified under cross-examination that (following the applicant's several complaints to the SAHRC about the respondent's persistent unlawful refusals to comply with his requests for records under the Promotion of Access to Information Act 2 of 2000 ('PAIA') probing the reason for the abortion of his recruitment, and the respondent's repeated false reporting to the SAHRC under section 32 to conceal this from the National Assembly in the SAHRC's section 84 annual reports on public body compliance with PAIA):

    (i) he didn't know that the SAHRC had held a special PAIA training workshop for the respondent's national office staff; and,

    (ii) he didn't know that the SAHRC had targeted and audited the respondent for PAIA compliance.

3. After trial, and with a view to gathering further documentary evidence inter alia for Nair's criminal prosecution for his many perjuries in the case – one being his novel claim in court not to have known of the applicant's political background until the end of 2010 or early 2011 when he decided out of curiosity to read the applicant's CV, which new story contradicted his earlier, different story told on affidavit before trial in this regard, telling a totally different story (see Part Two below) – the applicant tested the veracity of these novel, unanticipated, and improbable allegations made in court under oath by the respondent's deputy information officer Nair with a request for records under the Promotion of Access to Information Act 2 of 2000 ('PAIA').

4. Among the records flushed out of the respondent with the applicant's PAIA requests were two emails showing that, contrary to his lies about this under oath in court, Nair indeed:

    (i) well knew that the SAHRC had held a special PAIA training workshop for the respondent's national office staff; and,

    (ii) well knew that the SAHRC had targeted and audited the respondent for PAIA compliance.

5. *Ad the PAIA workshop*: On 26 August 2011 Nair was briefed by one of the respondent's in-house attorneys, Upkaar Mungar, about the SAHRC's intention to hold a special PAIA training workshop for the respondent's national office staff. In a comprehensive, one-and-a-half page email to Nair under the pointed subject-heading 'Training in Promotion of Access to Information Act 2 of 2000', Mungar informed Nair: 'The South African Human Rights Commission is planning a training programme for Legal Aid SA' and asked him to 'indicate the names of staff who you would like to attend the training and who deal with PAIA matters'. Mungar detailed the 'Draft Programme' for the PAIA

training workshop; some 'Reading Materials' on the Act; and the intended 'Outcomes' for attendees, which, in a nut, were their future ability to handle PAIA requests in compliance with the Act.

6. This new evidence shows Nair indeed knew about the SAHRC's special PAIA training workshop held for the respondent's national office staff, and that in denying it he brazenly and contemptuously lied to court under oath, confident that the court would accept and believe any lie he told it.

7. *Ad the PAIA audit*: In its section 84 report on public body compliance with PAIA included in its 2011/12 report for the Minister and the National Assembly, following the applicant's complaints, the SAHRC reported the respondent as a PAIA defaulter. Concerning the failure of such public 'institutions' as LASA to comply with their PAIA compliance reporting obligations, the SAHRC singled LASA out by citing 'A case in point … where a complainant brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA's 2010/11 section 32 report despite the fact that the requests were made in that financial year. … The Commission intends auditing LASA fully in the course of the 2012/13 financial year.' (All records quoted here are in the applicant's trial document bundles.)

8. When on 9 October 2012 Nair and CEO Vedalankar appeared together before the Portfolio Committee to present the respondent's annual report, Committee chairperson Luwellyn Landers MP queried SAHRC's negative section 84 report with them, as did Committee member John Jeffery MP (now Deputy Minister), who voiced the Committee's consternation about the 'report … that stated the South African Human Rights Commission was unhappy with LASA and their cooperation in terms of PAIA' (per the Parliamentary Monitoring Group's transcription of the record of the presentation). 'The Chairperson [of the Portfolio Committee] told the [LASA] delegation that they would arrange for Legal Aid to view the PAIA report.'

9. After viewing the SAHRC's PAIA report of the respondent to the National Assembly as a PAIA defaulter, Nair knew full well of the SAHRC's intentions of 'auditing LASA fully in the course of the 2012/13 financial year'; and indeed he saw them realised: On 14 January 2013 the SAHRC emailed Nair's PA: 'Please find attached a PAIA Audit Questionnaire and Letter for the Information Officer's consideration. The email to be placed before Mr Thembile Mtati and Mr Brian Nair (their respective PAs are cited in the email) as well.' (the words in parenthesis appear in the original, and their PAs are indeed 'cited in the email' address bar)

10. This new evidence shows Nair indeed knew full well about the SAHRC's audit of the respondent for PAIA compliance, and that in denying it he brazenly and contemptuously

lied to court under oath, confident that the court would accept and believe any lie he told it.

11. Besides unequivocally demonstrating Nair to be a perjurer, and so an unconvicted criminal, who evidently lies freely on oath about anything, and whose evidence generally therefore can't be trusted and relied on in any respect, the new evidence of these email records very directly relevantly demonstrates that Nair's denials of knowledge of facts recorded in documents emailed to him can't be trusted – such as his similar denial of his knowledge of the applicant's political background detailed in his CV, and referred to in the recommendation, emailed to him after the interviews by KZN ROE Mdaka.

12. It follows from Nair's proven lies on oath in (i) denying his knowledge of the SAHRC's PAIA training workshop and (ii) denying his knowledge of the SAHRC's PAIA audit, that in similarly denying his knowledge of the applicant's political background at the material time (innately improbable and already contradicted by him on affidavit before trial), Nair lied about this as well, thus committing a fraud on the court, and successfully defrauding it, thereby leading to the failure of justice that resulted from the dismissal of the applicant's claim.

PART TWO
APPLICATION FOR LEAVE TO APPEAL

Introductory Note

13. The applicant records that, to his prejudice, this application has been drawn without sight of the transcript of the trial; that the registrar refused to transmit to the trial judge his written request, telefaxed to court and copied to the respondent, for a directive that the respondent deliver to the applicant the extra copy of the transcript that it long ago printed for him, and insisted that he instead travel to court and make a photocopy of the court's copy at a likely cost of about R3000; and that the respondent's Corporate Legal Manager Solly Sekgota refused to agree to release the extra copy of the transcript sitting idly on a shelf in the respondent's Durban office, remarking that since the applicant had no case and his suit had cost the respondent a lot of money, it had been discussed and decided that the applicant should content himself with listening to the audio recording of the two-week trial on the CD sent him. There was no time for any of this.

14. Consequently, this application is not referenced to the record of the trial by page and line number in the usual course as the respondent intended it to be, in the similar manner that his heads of argument are meticulously and comprehensively footnote-

referenced to the documentary record, pleadings and affidavits. Nor is this application referenced to the latter papers. All references to these herein can be found in the applicant's heads, which likewise contain all references to the contradictions canvassed below between Nair's evidence in court and his and the respondent's different pleaded and sworn versions before trial and yet more different versions advanced in correspondence and reports. The applicant's heads also contain all relevant references to the respondent's Approval Framework and Recruitment code and other documents mentioned herein.

Grounds of Application for Leave to Appeal

15. In summary, the applicant applies for leave to appeal on the grounds inter alia that the court:

- fundamentally misdirected itself in misallocating both the evidential and final onuses;
- wrongly failed to hold the respondent to its pleaded case, and upheld a defence never pleaded;
- cited and relied on irrelevant reported cases as precedent authority for a wrong proposition of law;
- duly found that Nair had not been an honest witness, without identifying any of his many perjuries that it found the applicant had demonstrated, then failed to weigh the implications of this nuclear adverse finding for his general credibility and the trustworthiness and reliability of his core claims (i) as to why he didn't process the applicant's appointment (two successive excuses, one new) and (ii) that he didn't know of the applicant's political background described in his CV and referenced in the recommendation, because he never opened and read them until more than a year after receiving them;
- wrongly failed to assess and reject Nair's evidence in light, variously on different scores, of: its inherent improbability; his contradictory evidence on affidavit before trial; the contradictions between his evidence and the respondent's pleaded and sworn case before trial; and the contradictions between his evidence and the documentary record flatly refuting it;
- wrongly failed to reject Nair's new excuse never pleaded (too busy taking stock of court coverage, and preparing for management and Board meetings), variants of which had been previously alleged (too busy preparing the budget; too busy presenting the budget; and difficulty 'coordinating a meeting time suitable for all

members of the panel' – explicitly retracted by him on affidavit, after the applicant had shown it to be false, then revived by him in court, claiming that his retraction on oath was a mistake, then contradicting this excuse;

- wrongly failed to reject the budgetary insufficiency excuse, indeed pleaded, but flatly contradicted and refuted by the respondent's comprehensive documentary record, concerning its transient budgetary uncertainty for a few months in 2010 and the specific limited measures the record shows it took to meet it;

- wrongly failed to reject Nair's pivotal claim that he was unaware of the applicant's opprobrious and deeply unpopular minority political background at the material time, because he only learned of it more than a year after receiving the applicant's CV mentioning it, along with his recommendation by the selection panel referencing it, when he decided out of curiosity to open and read these documents emailed to him as PDF attachments after the interviews and selections – having regard to the inherent implausibility of this story, and moreover to the fact that he diametrically contradicted it by telling a different story on affidavit before the trial, namely that he'd learned of the applicant's politics much earlier and from a different document, namely from the applicant's letter to CEO Vedalankar in July 2010 describing it;

- wrongly failed to note that Nair's evidence diametrically contradicted and demolished the respondent's version, repeatedly advanced in correspondence, pleadings and affidavits before trial, that (i) budgetary insufficiency at the time the applicant applied for and was interviewed and recommended for the post prevented his appointment, and (ii) the respondent's three vacant senior Litigator posts at Pietermaritzburg, Durban, and Mthatha had to be simultaneously frozen for this reason;

- wrongly failed to apply the principle it duly stated, namely that when an employer lies about its reason for an adverse employment decision, the most likely reason it does so is to cover an illegal discriminatory motive – having regard to the lies Nair told at trial about why he didn't proceed with the applicant's appointment, all unequivocally demonstrated by the applicant;

- wrongly held the applicant had failed to lead evidence to prove an issue that was common cause on the pleadings – that the Pietermaritzburg Senior Litigator post was a critical position – when the applicant nonetheless indeed referred in his heads to several pieces of evidence in the documentary record before court, refuting Nair's false denial in his evidence of this agreed fact; and,

- unfairly and massively prejudiced the applicant by ruling at the outset of trial that he would not be permitted to cross-examine the respondent's officers whom he'd subpoenaed.

Particulars of the applicant's grounds of appeal

16. Ad paragraph 1 of the judgment: The court overlooked the applicant's amended Draft Order, handed up at the close of argument drawn to accord with Mlambo AJA's (as he then was) formulation of the special damages (i.e. lost income) award he made in the Gordon case, also handed up.

17. Ad paragraph 2: The court failed to note the fact that the applicant's pleaded defence version that the three Senior Litigator posts at Pietermaritzburg, Durban, and Mthatha – consistently advanced prior to trial to the applicant in correspondence and on affidavit, and repeatedly to court in pleadings and interlocutory affidavits – was contradicted and wrecked by its single witness Nair, who testified that the cancellation of the Mthatha Senior Litigator recruitment had nothing to do with any budgetary consideration.

18. The court erred in not finding that the comprehensive documentary record before it shows that the respondent's transitory budgetary uncertainty arising on 10 March 2010 and the sole measure taken much later in July 2010 to meet it, namely to temporarily hold recruitment to some lower criminal court public defender posts, had no bearing on its massively accelerated recruitment and new post creation drives across all ranks, including another Senior Litigator recruitment at Mthatha, in the following April to June first financial quarter, which staff recruitment drive otherwise continued in the second quarter July to September 2010 and then peaked in the third October to December quarter, and that *this record diametrically contradicted and refuted as untrue* CEO Vedalankar's claim to the applicant on 18 October 2010 that 'In July 2010' she had frozen the Pietermaritzburg, Durban, and Mthatha posts as a cost saving measure, in that had this been true, there'd have been a record of this alleged management resolution and necessary Board resolution approving this major deviation from its Strategic Plan, which part of it the respondent specifically, but falsely, has reported to the Minister and to Parliament as having been completed.

19. Ad paragraph 5: The court failed to note the evidently abnormal telephonic instruction given that all CVs should be sent up to Nair, including those of the interviewed candidates whom the selection panel had rejected and had 'eliminated' (respondent's word in its pleadings) from consideration for appointment.

20. Ad paragraph 7: The court failed to note the implication of Clark's initial communication with the applicant noted in this paragraph, namely that five months after deciding not to proceed with finalizing the applicant's recruitment, Nair had not informed her as the

respondent's national HRE about this, even as (as LSTC chairperson) he'd invited applications from the regions to motivate for a new Senior Litigator post on 25 February 2010, and, having accepted Mthatha's motivation, had ordered the 'Immediate' recruitment of a Senior Litigator for Mthatha on 24 March 2010, with advertising taking place in April, the same month that the applicant approached Clark, while the finalisation of his recruitment stood halted all the while.

21. Ad paragraph 8: In her affidavit handed in at trial in lieu of oral evidence (she'd failed to remain in attendance), Clark expressly confirmed it was certainly Brijlal; it was not 'probably' him as misstated in the judgment.

22. Ad paragraph 9: The court failed to note the striking change in Clark's animus towards the applicant and her preceding unprofessional, strange avoidance of the applicant's calls, after Nair returned to head office from Cape Town, mentioned in paragraph 8.

23. The applicant will contend on appeal that Clark's change of conduct and newly hostile animus towards the applicant after Nair's return to head office strongly suggests the prejudice the applicant complained of, especially her appalling rudeness; her calculated opacity in response to the applicant's pressing plea for information either way; her false pretence that the respondent's failure to communicate with the applicant for five months since his interview was normal and acceptable business practice (having implicitly conceded in her previous email that the silent delay was untoward), and that his enquiry for information five silent months after his interview was somehow unreasonable; her dishonest concealment of the fact that the applicant had been recommended, by stating he'd merely been interviewed, and her dishonest suggestion that the applicant had an unfounded expectation of being appointed; her dishonest suggestion that the selection panel hadn't made a clear recommendation; her telling proposal that the applicant should withdraw his application for the post; and her radical change of tune in now discouraging him from contacting the respondent again, having previously encouraged it.

24. Ad paragraph 11: The court failed to note the significance of this email, namely that it shows categorically that (a) eight months after the applicant's selection, with nothing done to finalize his appointment, even as the Mthatha recruitment had commenced and concluded on 24 May 2010 with Skibi's recommendation as 'best candidate', Vedalankar knew nothing of the Pietermaritzburg and Durban Senior Litigator recruitments; and that (b) until the applicant's letter to Vedalankar in July, the freezing of Senior Litigator posts had never been discussed and agreed with her as a possible cost-saving measure between 'early this year' and the end of July, as she falsely alleged in her October 2010 letter.

25. Ad paragraph 11: The court failed to note that Skibi, and no other candidate interviewed for Mthatha, was orally told his appointment and transfer had been cancelled. Though the letter Mdaka sent to the applicant indeed conveyed 'an apology for the delay in informing candidates of the outcome of the interview process' (per the judgment), in fact it didn't inform the candidates of the outcome of the interview process, which was that the applicant and Mngadi had been recommended and the two other candidates 'eliminated' (respondent's word in its pleadings).

26. Ad paragraph 12: Section 27 automatically deems as a refusal a failure to respond within the 30 calendar days of the delivery of a PAIA request allowed by section 25. This wasn't the applicant's interpretation of the situation, as the court wrongly suggested here.

27. The court failed to note that Vedalankar strangely initially tacitly (later expressly) refused to provide the applicant with any of the records he'd requested about the circumstances in which his appointment had been aborted, instead of playing open cards with him about this, as someone with nothing to hide would have done, as PAIA and section 32 of the Constitution required of her.

28. Ad paragraph 13: The court failed to note that the budgetary explanation advanced to the applicant was a blatant lie to him: The 'recession' had nothing to do with it, and the respondent's 'baseline budget' wasn't 'cut' at all, even less 'by a significant amount'.

29. The only financial issue the respondent faced in 2010 was when its additional OSD phase 1 allocation would be paid – not if. It had been paid the previous year 2009/10 (during the year, not included in the baseline budget) and was expected to be included in the 2010/11 baseline budget, but wasn't (again it was paid during the year in December 2010).

30. So there was never any serious question in the minds of the respondent's management executives, Nair included, that it would be paid; and this is why recruitment and new post creation soared across all ranks, even after the respondent was 'suddenly confronted' (respondent's expression in its pleadings) with this budgetary issue on 10 March 2010.

31. The court failed to note that the full documentary record shows that, contrary to the lie told the applicant in Vedalankar's letter that 'Since early this year, management has had to identify positions which could be frozen', the first suggestion that any posts might be frozen was in Vedalankar's second letter to the Director General on 13 April 2010, and that the posts she was referring to were lower criminal court public defender posts only, not Senior Litigator posts at the top of the respondent's specialist professional staff establishment.

32. The freezing of recruitment to 56 of these posts to save costs was proposed by Nair to Makokoane, Vedalankar and Clark on 15 July 2010; and on the 16th Makokoane recommended this to the Board for approval. Which measure, a deviation from its Strategic Plan, the Board approved on 31 July 2010.

33. The court failed to note that no record whatsoever exists to vouch that Senior Litigator posts were to be frozen, having particular regard to Cachalia JA's reported observation during the debate of the Presidency's appeal to the SCA in the *Mail and Guardian*'s PAIA case, quoted by the applicant in his reply to the respondent's heads, 'Government is not a glorified spaza shop'. There must 'a paper trail', 'a minute', 'a record' for all its decisions and operations.

34. To the contrary, the extant records contradict Vedalankar's lie to the applicant about this: critical posts, distinguished in Makokoane's report to the Board from the non-critical posts he identified to be frozen, were to be prioritised for filling.

35. The court failed to note that Vedalankar lied to the applicant in alleging that the Senior Litigator posts at Durban and Pietermaritzburg had been frozen for budgetary reasons, and that the Mthatha Senior Litigator post had been frozen for the same budgetary reasons, repeated in the pleadings and interlocutory affidavits – which story Nair disclaimed in his evidence.

36. Ad paragraph 14: The court failed to note that when Vedalankar wrote to applicant on 18 October 2010 claiming that budgetary insufficiency prevented his appointment, the respondent's budgetary uncertainty over when its OSD phase 1 funding would come through had been resolved, not just 'in principle' (per the judgment) but in fact, by inclusion of the outstanding OSD allocation in the national medium term budget in October, as she'd told the Justice Portfolio Committee the week before.

37. Ad paragraph 16: The court failed to note that the fact that the Department had paid the respondent its OSD phase 1 funding the previous year shows that the respondent's real concern was *when* its OSD phase 1 allocation would be paid, not *whether* it would be paid. This is why recruitment took off and spiked in the first quarter April to June 2010, while the respondent's appointment remained halted, off the record, with Clark not told about it before the second half of April 2010 and Vedalankar not told until the end of July, both communications prompted only by the applicant's insistent appeals to Clark for information and then to Vedalankar for the finalisation of his appointment.

38. Ad paragraph 17: The court failed to note the fact that the LSTC was the respondent's operational engine room responsible for the practical implementation of the Board's Strategic Plan, inter alia to recruit Senior Litigators to beef up its professional service delivery capacity; and that Nair had no power, on his own initiative and without Board

approval, to frustrate the implementation of the Strategic Plan and to silently stop the recruitment of duly selected candidates to two of the respondent's most senior professional posts.

39. Ad paragraph 18: The court failed to note that the urgently mandated Mthatha recruitment process shows that budgetary concerns about when OSD phase 1 for 2010/11 would be paid had no bearing on Senior Litigator recruitment, or indeed any other recruitment, whose increase actually spiked, relative to the preceding and succeeding quarter, as recorded in paragraphs 20 and 21 of the judgment.

40. The court failed to note that the dire need for a second Senior Litigator to serve the Eastern Cape, based at Mthatha, pressed by Mtati in his motivation for it – whereas the Northern Cape had reported it had no need for a Senior Litigator at Kimberly – made utter nonsense of Nair's new claim in court that he couldn't persuade Vedalankar of the need for the new Mthatha post and to approve the abolition of the unneeded Kimberly one.

41. Ad paragraph 19: The court failed to note anywhere in the judgment that Vedalankar was referring to public defenders appearing in the lower criminal courts only, not to the respondent's specialist professional posts – as borne out by Nair's and Makokoane's later recommendations in this regard in July.

42. Paragraph 20: The court failed to note that the respondent's massive new post creation drive in the first quarter April to June 2010, after learning on 10 March 2010 that its OSD phase 1 allocation hadn't been included in its baseline budget (just as it hadn't the previous year, and was paid later in the year), did not dampen the respondent's implementation of its Strategic Plan to expand its services in the least. To the contrary this boomed, just as new staff recruitment did. And that this brute fact is inconsistent with and completely discredits Nair's false evidence that he'd stopped the applicant's recruitment on account of budgetary concerns.

43. The court failed to note that the respondent's boom in recruitment in the first quarter refutes as a blatant lie the respondent's repeated, sworn claim to court before trial that it froze recruitment to *all* its vacant posts on account of its uncertainty over when it would get its OSD phase 1 funding.

44. The court also failed to note that by 13 October 2010, the date of chairperson Mlambo JP's sunny public statement quoted in this paragraph, the respondent's budgetary uncertainty about when its OSD phase 1 grant would be paid had ended, and it accordingly resumed recruiting lawyers to fill the lower criminal court posts duly frozen on the record with Board approval, with its energetic recruitment in the third quarter October to December 2010 then peaking for the year.

45. On these uncontested facts, the respondent's claim to have been unable to finalise the applicant's appointment is manifestly insupportable, and the court erred in not making this obvious, objectively indicated finding.

46. Ad paragraph 21: The court gravely misdirected itself by unjustifiably talking down the potent cogency, lethal to the respondent's case, of the hard statistics that the applicant extracted from the respondent's own reports and tabulated for court, which statistics the respondent expressly admitted after the first pre-trial conference, and which shatter the respondent's false budgetary alibi for not concluding the applicant's appointment over the period of April to June 2010 after the March disappointment to learn that the OSD phase 1 allocation hadn't been included in the respondent's baseline budget for the year as promised and repeatedly confirmed in January.

47. On any objective appraisal, these brute statistics exploded the respondent's false budgetary alibi for stopping the applicant's appointment; and the court misdirected itself to the applicant's great prejudice by wetting this dynamite he brought to court, by suggesting, by dint of its unwarranted, repeated insertion of phrase 'appeared to', that these figures were less than rock-solid.

48. Since there's no indication in the judgment that it did so, the court then, after discounting the destructive force of the respondent's own statistics, failed to accord them due consideration and weight in assessing the truth of the respondent's budgetary justification pleaded for aborting the applicant's recruitment.

49. Ad paragraph 22: After duly noting that Skibi was indeed selected and recommended for a lateral transfer to the Mthatha post, the court failed to address the fact that, as shown by the applicant, the respondent's claims that he'd been shortlisted for a second round of interviews was false on both scores, being contradicted by (i) the language of the recommendation that he be appointed directly to the post, without any second interview, and (ii) the respondent's admission that, contrary to its earlier false claim to court about this, no shortlist was drawn for second interviews for the Mthatha post. That is, the applicant showed unequivocally that the respondent had been untruthful in previously alleging to court that a shortlist had been drawn.

50. The court failed to note the obvious contradiction between Nair's evidence, ridiculous on its face and consistently contradicted by the respondent's pleadings and interlocutory affidavits, that all interviewed candidates had to undergo second interviews, including those rejected and eliminated by the selection panel as unsuitable, in that had this been true, there wouldn't have been a shortlist drawn for a second round of interviews for Mthatha, because, according to Nair in court, all interviewed candidates interviewed by the selection panel would have to be interviewed again by his

so-called second round panel – just as he claimed in evidence, all interviewed candidates, including rejected candidates, had been interviewed by his second round panel in all past Senior Litigator recruitment.

51. Ad paragraph 23: The court failed to mention anywhere in its judgment that although the Department didn't have spare funds to *immediately* pay the respondent its OSD phase 1 (and now phase 2) funding, as recorded in the Report to Board of 16 July, the Minister had assured it that provision for payment would be made in the 'mid-year budget adjustments in September/October 2010', and said he didn't want service delivery interrupted.

52. (The court failed to note the likelihood that the Minister's concern that service delivery not be interrupted is why the respondent has concealed from the Minister and Parliament (also concerned that the respondent should fill its budgeted vacant posts) the fact that it has indefinitely frozen its three remaining vacant Senior Litigator posts with no record of this whatsoever. The respondent has repeatedly falsely reported to them that Senior Litigators have been employed in the implementation and completion of the Strategic Plan.)

53. That is, even before Nair proposed to Makokoane to freeze recruitment to some lower criminal court public defender posts, which he explained in his evidence was really just to send a message to spur the Department into paying, the money was assured by the Minister.

54. Ad paragraph 24: The court failed to note that Nair's proposal to freeze recruitment to 56 lower criminal court practitioner posts had no bearing on Senior Litigator recruitment; and that had Nair contemplated further savings by freezing recruitment to the respondent's top three vacant professional posts to save costs, he would have proposed this. These enormously important facts didn't even get a mention in the judgment.

55. The court failed to note that Nair's explicit email subject-heading and the contents of his email very precisely identified the posts he had in mind to freeze: some lower criminal court public defender posts, more of them if necessary and some even lighter paralegal and administrative positions if more savings were still necessary after that.

56. The court failed to note that this refuted Nair's perjury that his identification of posts was not specific and exhaustive. To the contrary, his email shows there was no question of freezing recruitment to any higher level posts, much less at the very top of the respondent's professional staff establishment.

57. Ad paragraph 25: The court failed to note that the record unambiguously shows that the only posts to be frozen for budgetary reasons were some lower criminal court public defender posts, but only temporarily, and that unspent savings from the 2010/11 financial year were to be applied to make up any balance.

58. Ad paragraph 26: With respect, all this is correct. The record referred to here shows there was never any question of freezing Senior Litigator recruitment to save costs. And it shows that any management decision not to implement its Business Plan based on the Board's Strategic Plan to hire Senior Litigators, for which the Department had provided funding, required Board approval. There's never been any. Yet the court failed to note in its judgment (i) the telling absence of any record to support the pleaded defence of budgetary insufficiency preventing the applicant's appointment, and (ii) the glaring irregularity of the wholly off the record unauthorised abortion of the applicant's recruitment to the respondent's top professional post.

59. The court also failed to find and note that according to the LSTC Terms of Reference in the Legal Aid Guide, and the Approval Framework, (i) Nair and Vedalankar didn't have the power on their own to freeze recruitment to the respondent's vacant Senior Litigator posts, and (ii) such a resolution for any operational reason was the prerogative of the LSTC – with Vedalankar and Nair approving or disproving it as executing authorities delegated by the Approval Framework. All on the record, obviously.

60. Ad paragraph 27: The court failed to note that the only posts affected by the OSD uncertainty were 56 public defender posts. All other recruitment carried on normally, thus contradicting Vedalankar's claim to the applicant in her October 2010 letter that 'In July 2010' she and Nair had 'immediately' frozen the Pietermaritzburg, Durban, and Mthatha Senior Litigator posts for want of sufficient budget. About which there's no record whatsoever.

61. Ad paragraph 28: The court misdirected itself on the facts. It was on 3 August 2010, four days after the Board approved on 30 July the temporary freezing of some lower criminal court posts only, that Nair alleged to the applicant that the respondent had decided to put on hold the finalization of its Senior Litigator appointment processes and had now decided not to fill the positions. No records whatsoever exist to vouch this, and the extant records contradict it, as mentioned earlier. On 16 August 2010 the applicant received another letter this time from Mdaka on Nair's instructions, alleging similarly.

62. The court failed to note the tremendous significance of the respondent's studied failure to communicate with the applicant after his selection, and its studied unpleasant communication on 30 April 2010 calculated to drive him away. The court also failed to note the respondent's purpose in not communicating with him (until his letter to

Vedalankar in July forced its hand). In an own-goal scoring question, the applicant was asked in cross-examination why he hadn't concluded from the silence that he'd been unsuccessful and walked away. The question revealed precisely Nair's fraudulent intention at the time, but the court didn't note it.

63. Ad paragraph 29: The court misdirected itself in wrongly stating that the applicant 'changed track and dispensed with' calling the witnesses he'd subpoenaed.

64. The record shows that besides Nair, the three other officers whom the applicant subpoenaed (Vedalankar, Clark, and Board member du Rand) failed to remain in attendance during the trial, and had returned to Gauteng without the court's leave when the applicant wanted to call them.

65. In light of the court's ruling on the first day of the case that the applicant would not be permitted to cross-examine them, he elected to salvage the situation by accepting, in lieu of their oral evidence, affidavits submitted by Clark and Du Rand answering his brief interrogatories. When Vedalankar refused to cooperate in this way like the others, and refused to answer the few neutral written questions he asked her, the applicant declined to call her, expecting in light of the respondent's repeated sworn assurances to court, in the supporting affidavit founding its failed application to quash the applicant's subpoenas, that she was a central witness for the respondent, and that she would testify for the respondent and thereby subject herself to cross examination by the applicant. (But she stayed away to avoid this.)

66. Ad paragraph 30–41: With respect, all this is correct, and it establishes the applicant's reasonably supported apprehension of political prejudice, fortified by the documentary evidence he extracted from the respondent, under persistent, determined, illegal resistance (refusal to comply with PAIA, then refusal to discover), that the budgetary and several other explanations advanced for the abortion of his appointment were fake.

67. Ad paragraph 42: With respect, all this is correct. Indeed the comprehensive financial records – determinedly withheld and very reluctantly discovered by the respondent only following the applicant's repeated appeals to the SAHRC and then his repeated appeals to court (application brought to compel discovery, and two judicially supervised pre-trial conferences at court) – show that its transient budgetary uncertainty for a few months in 2010 never had any bearing on Senior Litigator recruitment generally, as especially evinced by the Mthatha recruitment, and that it was not the reason his appointment was aborted. The court failed to draw this obvious conclusion.

68. Ad paragraph 43: With respect, all this is correct. However, the applicant also testified with reference to the respondent's records that its OSD phase 1 funding had been paid in the previous year, so there was never any genuine apprehension that it wouldn't be

paid at all in 2010/11; the trouble was just that until it was paid, the respondent was operating on an unbalanced budget.

69. The court failed to note that indeed the respondent's certain expectation of its OSD phase 1 funding is evidenced by its massively escalated recruitment and new post creation drives in April to June 2010, which objectively refute Nair's perjury in claiming he'd halted the applicant's appointment in this period out of financial concern.

70. Ad paragraph 44: In fact it's common cause that Mngadi was put off in April/May 2010, i.e. after the applicant began pressing Clark about his recruitment, but the court failed to note the contradiction between this admission and Nair's lying denial that Mngadi was put off at this time. The respondent even volunteered in its answer to the applicant's first pre-trial conference agenda that Nair gave the instruction that Mngadi be put off at this time, and later justified why it did so, and why it didn't tell the applicant the same thing at the time. The court failed to note Nair's clearly demonstrated perjury in court about this.

71. Indeed Skibi was recommended on or about 24 May, but the court failed to note the significance of the fact that only Skibi was told of the cancellation of the Mthatha appointment and no other candidates, which further tends to show that he'd indeed been approved, which is why he was 'ready to start' when his transfer was abruptly cancelled wholly off the record after the applicant asked Vedalankar to finalise his appointment, now eight silent months (besides Clark's second 'Get lost' email in April) after his interview, and Nair needed to contrive a cover story for having aborted it, involving the alleged simultaneous cancellation of the Mthatha recruitment – only to abandon this major leg of the false alibi in court.

72. Indeed the respondent's claims that Skibi was (i) recommended and (ii) shortlisted for a second interview were exposed as lies by the plain language of the recommendation itself and by the respondent's admission that in truth and in fact no such shortlist was drawn, after falsely claiming on oath before trial that one was.

73. Ad paragraph 45: Indeed it's the respondent's own version that no posts were cut – this is not just the applicant's averment. The undisputed facts are that recruitment to some lower criminal court public defender posts were frozen for two months before recruitment to them resumed upon news of the inclusion of OSD funding in the national mid-term budget, and all these frozen posts were then filled '100%' as Vedalankar later reported.

74. Indeed the record shows (it was not just according to the applicant) that Nair didn't propose that cancelling the Senior Litigator recruitments and freezing the remaining posts could achieve further savings. His email spoke only of a number of lower criminal

court public defender posts, more if necessary, and some even lighter paralegal and administration posts if further budget savings were still necessary after that.

75. Nair's email plainly shows that he never stated to Makokoane, Vedalankar, Clark, and CFO Hlabatau that the recruitment process to finalize the appointments to all vacant Senior Litigator posts had already been put on hold for various reasons. The court failed to note the destructive significance of this for Nair's evidence and for the respondent's case.

76. Ad paragraph 46: The court seriously misdirected itself in stating that the applicant's case against the budgetary alibi advanced to him comprised the points listed in the judgment here: a crude mishmash of facts indeed material to discrediting the budgetary alibi, others immaterial to it and relevant to various other unrelated aspects, with other crucial facts on which the applicant relied omitted. The applicant emphasized in oral argument that his case was made comprehensively in his meticulously referenced heads, and that his summary and oral address were no substitute.

77. The applicant's main case against the respondent's budgetary alibi for aborting his recruitment is that the respondent's records comprehensively document the OSD phase 1 funding uncertainty, its resolution in January 2010, its reappearance on 10 March 2010, and its resolution again in October and December 2010; and these records show categorically that the abortion of the applicant's recruitment had nothing to do with any budgetary consideration – as do the complete record of the cost-cutting measures proposed and approved in July 2010, and the respondent's recruitment statistics in 2010.

78. With respect, the first point, '> Mr Nair…', is correct; and this is why, appreciating his decision to block the applicant was gravely illegal and a contravention of the EEA, Nair did not sign his approval or disapproval of the applicant for a second interview, as provided at the foot of the recommendation. (His new story in court about not opening and reading the recommendation and CVs emailed to him, contradicted by him on affidavit before trial, is dealt with below.)

79. The Approval Framework required Nair, in consultation with Vedalankar, to approve or disapprove the recommendation as delegated executing authorities; and the public service codes required him to record his reason for not approving, if he didn't. Nair's so-called second round interview scheme was incontestably illegal for all the many different reasons repeatedly set out by the applicant in court and in his heads with reference to the relevant provisions of the Recruitment code and Approval Framework.

80. In its second point, '> Mr Nair…', the court misdirected itself in stating that Nair was specifically personally prejudiced against the applicant. This was not the applicant's

case, which was that the respondent is institutionally opposed to the applicant's particular political activism. Reciting the applicant's case extensively on this score earlier in the judgment, the court didn't record any reason to doubt it.

81. In oral argument, the applicant illustrated the sort of general prejudice exhibited by Nair by mentioning the analogy of a white loans officer in a bank in a deep Southern town in the US in 1965, approached by a black lawyer or businessman for a mortgage to buy a house in the white suburbs. Racial discrimination in housing and education has just been outlawed by the federal Civil Rights Act of 1964. The loans officer is no seething racist, but because the situation is awkward for him, since racial discrimination was until recently fine and the norm in refusing such applications, he merely pushes the loan application aside, unsigned either way, hoping the applicant will just go away. This was the illegal act of discrimination, no more, no less, and it's essentially what happened in the instant case.

82. It wasn't in issue at trial that the applicant is a member of a constitutionally protected, politically vulnerable, aggressively marginalised and politically ghettoised minority class, and in need of the protection of the Bill of Rights of the Constitution and of the EEA to safeguard his fundamental rights in our democracy.

83. The applicant's apprehension of prejudice was not solely based on Nair's and Vedalankar's repeated appearance on an in-group mailing list of some of the world's leading ARV-drug promoting activists. It was based on much more; and the court misdirected itself in mischaracterising the applicant's apprehension of prejudice in the narrow, reduced and simplistic manner in this paragraph. It had a much broader factual basis, as correctly recited earlier in the judgment.

84. Ad '> In any event…': Indeed the off the record, unauthorised, unapproved abortion first of the Durban and later the Mthatha appointments was contrived to camouflage the abortion of the applicant's appointment. At trial, however, Nair abandoned the Mthatha leg of the cover-story, which means Vedalankar lied to the applicant about it in her correspondence with him; and the respondent, Nair instructing, lied to court before trial in consistently alleging that the Mthatha recruitment was also cancelled for budgetary reasons in its pleadings and interlocutory affidavits. Indeed the budget constraints story in relation to the cancellation of the Senior Litigator recruitments was an afterthought, wholly unsupported and contradicted by the records.

85. The court failed to note Nair's major departure from, and contradiction of the respondent's pleaded case about Mthatha, a story alleged to the applicant right from the beginning and consistently through the respondent's many pleadings and affidavits. The court failed to attach the due weight this radical shift warranted in its assessment of

the veracity of the respondent's defence version and Nair's starkly contradictory evidence about it. The court failed to note the boldly invented and staunchly maintained defence version started falling apart as soon as Nair started testifying.

86. Ad '> There had been…': Indeed the respondent's own statistics, admitted by it after the first pre-trial conference, show a massive increase in staff recruitment in 2010 and a massive increase in new post creation in the April to June first quarter of 2010. The court failed to note the destructive significance of this for the respondent's case.

87. The court failed to note, much less give any weight to Nair's blatant, stupid lie in court, when confronted with the new post creation statistics, that the respondent didn't increase its staff establishment during the year – when the respondent had formally admitted before trial that its own statistics show that in the first quarter April to June 2010 alone it had created almost as many new posts as it did in the whole of the preceding year. The court failed to note Nair's blatant, stupid perjury about this, showing that he'll lie on oath about anything, even in the teeth of the objective hard admitted facts that refute his stupid lies at a glance.

88. And indeed the respondent's December 2010 statistics reflect that the Pietermaritzburg and Durban Senior Litigator posts remained budgeted vacant posts and not frozen as Vedalankar falsely alleged to the applicant on 18 October 2010 for the first time eleven months after his successful interview.

89. The court failed to note, much less give any weight to this incontrovertible fact refuting the lie told the applicant and repeated to court that the posts have duly been permanently frozen. Before trial, Vedalankar and the respondent had alleged that Mthatha had been frozen too. At court Nair changed the story about this completely. The court failed to note this, much less record its destructive implications for the assessment of Nair's honesty or mendacity under oath.

90. Ad '> The next round…': Indeed Nair had no power to create a second round interview process, for all the reasons detailed by the applicant in evidence and recapitulated in argument; and there can be no serious dispute about this. The respondent is not a 'glorified spaza shop'. The conduct of its officers in carrying out staff recruitment is finely and precisely regulated, as in other public entities, to prevent corruption, nepotism, and unfair discrimination. Nair's and other officers' unauthorised deviation from the Recruitment code and Approval Framework was a clear-cut breach of 'the rule of law', which Mlambo JP claims the respondent respects, but which the court failed to note. But the illegality of the second round interview scheme had nothing to do with the falsity of the budgetary alibi, for which reason the applicant never contended it did.

91. Ad '> Mrs Vedalankar's …': Indeed Vedalankar and Nair had no power on their own without (i) an LSTC resolution, (ii) full national management executive committee approval, and (iii) Board approval, to permanently freeze recruitment to three Senior Litigator posts. The employment of Senior Litigators, whom Parliament is specifically concerned should be employed, is part of the Board's Strategic Plan presented to the Minister and Parliament; and the employment of Senior Litigators has been repeatedly been reported in the respondent's reports on its completion of its last Strategic Plan as such, with the off the record abortion of three Senior Litigator appointments and the permanent, off the record freezing of the three vacant posts dishonestly concealed from both the Minister and from Parliament. The court failed to note this scandalous state of affairs, and left it under the carpet.

92. The court failed to note that the provisions of the LSTC Terms of Reference and the Approval Framework show that Vedalankar and Nair acted ultra vires on their own version of how they aborted the applicant's appointment, as alleged in Vedalankar's October letter – which story Nair changed in court, now deleting the Mthatha bit, contradicting the respondent's pleaded case, and implying that Vedalankar lied to the applicant in October 2010 (and in her affidavit in April 2011) to pump up the story, on the time-tested principle, well know to liars, that the grander the lie the more convincing it sounds.

93. Ad '> The respondent's annual …' to the end, '> In short …': All this is incontestably true, and it flatly refutes the story told to the applicant about why his appointment was aborted, yet the court failed to note it.

94. Ad paragraph 47: The court misdirected itself on the facts in stating that Nair placed the bundle of documents he'd received (the recommendation and the CVs) in his drawer, implying he'd printed them. This wasn't his evidence. The expression 'dropped them into his bottom drawer' was the applicant's, an old English idiom meaning to deliberately put a document aside, permanently unattended.

95. The court failed to note, as the applicant pointed out in argument, that there could have been nothing 'premature' about Nair opening and reading the important documents sent to him concerning the respondent's most senior, repeatedly advertised professional posts. Nothing prevented him recording his approval or disapproval of the recommendations – either as he was required to do by the Approval Framework after consulting with Vedalankar to establish her agreement with the appointments or otherwise, or for second round interviews, as the form provided under his home-brewed double interview scheme.

96. The respondent consistently insisted in its pleadings and affidavits that Nair had to sign the recommendation before second round interviews could take place. In court, contradicting the respondent's pleaded and sworn version on this score, Nair denied it.

97. Nair's evidence that he only opened the documents well over a year after receiving them, out of curiosity, which is when he learnt of the applicant's political background stands contradicted by the different story he confirmed on in an affidavit before trial, namely that it was when the applicant wrote to Vedalankar in July 2010, again detailing his political background, that he became aware of it.

98. Ad paragraph 48: The court failed to note that Nair's evidence that all the CVs of the interviewed candidates, including those not recommended and eliminated, had to be given to the so-called second round panel for consideration by him and other mostly legally unqualified officers was a childishly obvious lie, making nonsense of the selection process and rendering futile its considered selections.

99. The whole point of the selection panel was to weed out the less suitable and identify the 'most suitable' candidates for appointment to the Pietermaritzburg and Durban posts respectively.

100. The court failed to note that Nair's suggestion that he, a former schoolmaster now business manager, along with some other business managers in the head office plus the *non-executive* board chairperson, could choose and recommend for appointment somebody found unsuitable and rejected by the selection panel of senior lawyers is too foolish to warrant further argument.

101. The court failed to note that Nair's unbelievably silly new story, which it accepted and believed without demur, is contradicted most recently in the case, and many times before this, by section 4.6 of the amended response: 'the selection panel had to identify candidates who had to undergo a second round of interviews' – from among all the shortlisted, interviewed candidates.

102. The court failed to note that Nair's evidence that there was nothing for him to sign and that provision for his signature was included at the foot of the recommendation report by the regional office by mistake, is exposed as perjury on two counts.

103. First, the form provides for his approval of the recommended candidates for second round interviews, and it's the respondent's consistently repeated, pleaded and sworn version that without Nair's signature, there could be no second round interviews. Nair's new story in court was contradicted and refuted by the respondent's own pleadings and affidavits.

104. Second, provision was duly made for Nair's approval at the foot of Skibi's recommendation, although this time there was no mention of any so-called second round interviews.

105. The court failed to note Nair's obvious perjury about this, and its implications for the credibility of his evidence regarding the central dispute in the case.

106. But most important, the court failed to note the fundamental hard fact that Nair's so-called second interview scheme was illegal for all the reasons stated by the applicant in evidence and in his heads, referenced to the respondent's Recruitment code and Approval Framework.

107. The court failed to note Nair's ludicrous lie in alleging that his so-called second interview panel was free to interview for appointment a candidate rejected as unsuitable by the duly constituted selection panel of senior lawyers. More especially since this contradicted the respondent's pleadings and affidavits about the eliminated candidates being out of the running. And the court failed to note the implications of this lie for the credibility of his evidence about the central dispute.

108. Since it was never the applicant's contention that the so-called second interview panel was 'a rubber-stamp of the first panel', Nair's evidence in this regard was entirely pointless, except to confound the truth and attempt to throw sand in the court's eyes by setting up this non-issue as a distraction.

109. The court failed to note that the applicant showed incontestably with reference to the provisions of the Recruitment code and Approval Framework that he cited, that Nair's unauthorised, legally and practically incompetent second interview panel that he'd devised off the record without the Board's approval, as required, was wholly illegal.

110. Nair's evidence that he and his so-called second round panel could interview applicants including those 'who may have not been recommended for further interviews' is too absurd to require further discussion, more especially since it's contradicted by the respondent's own pleadings and affidavits. The court failed to note this.

111. Forced by the incontrovertible objective recorded facts, Nair conceded that no budgetary problem of any sort prevented the applicant's appointment when he was recommended. This evidence contradicted the respondent's lies to the contrary, repeatedly made in the respondent's pleadings and affidavits, that budgetary uncertainty at the time the applicant applied for the post and was recommended for it prevented his employment.

112. Ad paragraph 49: The court failed to note the transparency of Nair's feeble perjury to justify not looking at and signing the recommendation and acting to finalise the applicant's appointment, namely that January was the busiest month of the year because: (i) the executives had to take stock of coverage under the business plan – in truth and in fact, statistics were compiled monthly, (ii) they had a management executive committee meeting at the end of the month – in truth and in fact this was routine throughout the year, and (iii) they had to prepare for the Board meeting in February – in truth and in fact this was also routine.

113. The court failed to note that the respondent had previously concocted and advanced quite different excuses for not finalising the applicant's appointment, namely that it was too busy preparing its budget, and too busy presenting its budget.

114. The court failed to note that this shows Nair was improvising a pile of lying excuses in court, contradicted by previous lying excuses given.

115. The court also failed to note that Nair had told the Minister and Parliament yet further different excuses, contradicting all these: it was not that the executives on his second round interview panel were too busy doing all these things, it was just that they had difficulty 'coordinating a meeting time suitable for all members of the panel' – except that Clark didn't even know of the selections until April 2010, and being in charge of arranging the second panel, the respondent said before the case, couldn't have asked anyone for dates by then, and when this lie to the Minister and to Parliament was pointed out by the applicant, Nair retracted his lie to them on affidavit as 'an error', 'palpably an error', then in court, again under oath, retracted his sworn retraction as a mistake.

116. The court failed to note that all these different contradictory stories told the applicant, told the Minister and Parliament, and told court (a variety of stories told court before and at trial) about why the applicant's appointment was not promptly finalised meant none could be accepted and believed, and the court erred in not rejecting them all as lies told to cover the real reason.

117. Ad paragraph 50: Nair's evidence in court that he first heard the applicant's name in July but didn't learn of his political background until the end of the year or early the following year, when he decided to read his CV and the recommendation of him out of curiosity, is exposed as perjury by his different story told on his instructions and confirmed by him on affidavit that he learned of the applicant's political background much earlier and in a different way, namely in July 2010 when he read the applicant's letter to Vedalankar that she'd passed to him for reply.

118. It follows that Nair lied under oath in court, as well as under oath before commissioner of oaths before trial, in claiming ignorance of the applicant's political background until at least eight months after receiving the applicant's CV when he read his July letter to Vedalankar (claimed before trial) or more than a year later (claimed in court).

119. The applicant pertinently raised this fatally destructive central contradiction in his heads and during oral argument. The court failed to even mention it, even less note that neither of Nair's mutually destructive contradictory versions given under oath could be accepted.

120. The court also failed to note that Nair's brand-new claim in court that he didn't know of the applicant's political background until more than a year after receiving the recommendation and CV revealing it, when he finally read them, features nowhere in the respondent's many reports, pleadings and affidavits addressing the applicant's complaints of political prejudice.

121. Since Nair repeatedly lied about his knowledge of the applicant's political background at the material time, i.e. late November/December 2009, only, telling different lies on oath about this, his denial built on this false denial that the applicant's political background played no part in the matter could obviously not be accepted and relied on. The court failed to note this.

122. The court failed to note that Nair's false denial in court that the applicant's appointment was immediately aborted is squarely contradicted by the respondent in its very true claim on affidavit (Nair instructing) that the applicant's recruitment was 'aborted immediately' after his interview.

123. Ad paragraph 51: The court failed to note that the only problem at the end of 2009 was that funding for OSD phase 1 hadn't yet been assured for inclusion in the baseline budget for 2010/11 – like in the previous financial year 2009/10, when the money had been paid separately during the year.

124. The court failed to note that in January 2010 the question of OSD phase 1 funding was completely resolved at a meeting with the Department, and confirmed by a subsequent letter from it and another from the Treasury.

125. The court failed to note that Nair's claim in court that about that time, March/April 2010, the executives began to deliberate intensively on the possibility that the department would not fulfil its financial commitments was outright perjury contradicted and exposed by the respondent's records.

126. First, Vedalankar's March and April letters show that the respondent was concerned about the Department's failure to include OSD phase 1 funding in the respondent's

baseline budget as undertaken. And her April letter shows that the only posts contemplated for possible freezing were lower criminal court practitioner posts.

127. Second, there was never any question of the Department not fulfilling its commitment to provide OSD phase 1 funding for the year, as Nair falsely told the court under oath, because it had duly paid this money in the previous financial year, albeit separately.

128. Third, Senior Litigators are not employed to provide 'coverage at courts', but rather, as the respondent states in its advertisements and reports, to provide expert litigation services in major cases in the upper courts, mentor junior staff, and furnish legal opinions as and when required.

129. Fourth, the cost cutting records of July 2010 confirm that the only posts contemplated for freezing in Vedalankar's April letter were lower criminal court public defender posts.

130. And fifth, irrespective of the OSD phase 1 uncertainty recruitment and new post creation boomed tremendously. As Vedalankar (truthfully) told the applicant in her January 2011 letter, the respondent had embarked on these hugely accelerated recruitment and new post creation drives confident the money would come through – despite the discovery that the money hadn't been included in the baseline budget.

131. The court failed to note Vedalankar's contradiction of Nair's perjury that the executives worried that the Department wouldn't honour its commitment to continue funding in 2010/11 the respondent's OSD phase 1 scheme that it had commenced implementing the previous year. Which commitment the Department did honour, after the Minister's assurance recorded in Makokoane's Report to Board of 16 July 2010; and the funding was included in the national mid-term budget in September/October, resulting in the respondent's resumption of recruitment to some of its briefly frozen lower court public defender posts – but not the resumption of the applicant's recruitment to the applicant's top-echelon specialist Senior Litigator post at Pietermaritzburg, frozen off the record. The court failed to note any of this.

132. Ad paragraph 52: The court failed to note that Nair's claim that 'To his mind Senior Litigator recruitment was not an urgent consideration' so didn't have to be achieved promptly was transparent perjury: (i) the Durban and Pietermaritzburg posts had been advertised three times, and twice in 2009; (ii) Nair and his LSTC had designated the recruitment of a Senior Litigator for Mthatha as 'Immediate', meaning it was an 'urgent consideration', and indeed, recruitment for it proceeded briskly; and (iii) the recruitment of Senior Litigators was part of the Board's Strategic Plan, repeatedly reported as such, for Nair and his LSTC to implement, and Nair had no power to decide on his own not to do so.

133. The court failed to note that Nair's claim that 'There was a real possibility that the respondent would not get the money' was transparent perjury. The OSD scheme had been extended to the respondent, and phase 1 implemented; and the money had been paid for the previous year 2009/10, albeit separately from the baseline budget payment, so there couldn't have been any genuine apprehension that the OSD phase 1 funding wouldn't come through for 2010/11, as it had the previous year.

134. The court failed to note that at the same time that Nair claimed to have delayed the finalization of the applicant's appointment 'until clarity on the issue was obtained', the respondent had embarked on massively accelerated recruitment and new post creation drives.

135. The court failed to note that Nair did not have the power to freeze any recruitment envisaged by the Strategic Plan, budgeted by the respondent's management executives, approved by the Board, and funded by the Department, without a resolution of the LSTC, the agreement of the entire management executive committee, and a resolution of the Board approving it.

136. The court failed to note the absurdity of Nair's transparently dishonest claim that there was no need to inform anyone of his decision to silently halt the applicant's appointment (and Mngadi's promotion), even as the Mthatha recruitment commenced. The Justice Centre Executives concerned, the Human Resources Executive, and the Regional Human Resources Manager, all needed to be informed. Equally the successful candidates needed to be informed, especially the applicant (unlike Mngadi, not already employed by the respondent) lest he mistakenly conclude from the silence that he'd been unsuccessful, walk away and make other career plans. (Indeed, that the applicant should walk away under this mistaken impression was Nair's fraudulent intention, betrayed during the applicant's cross-examination on Nair's instructions.)

137. The court failed to note the transparent dishonesty of Nair's childishly feeble claim that he didn't inform the Justice Centre Executives in Durban and Pietermaritzburg because he didn't want to cause panic. They could hardly have been panicked by being told that he'd decided to freeze the appointments of the candidates recommended for appointment as Senior Litigators at their centres until the OSD uncertainty had passed.

138. Ad paragraph 53: The court failed to note the transparent falsity of Nair's claim to have told Vedalankar and Clark that he'd delayed finalizing the Senior Litigator appointments on account of budgetary concerns, considering that he was (i) signing his approval for the appointment of scores of other legal and general staff in the first quarter April to June 2010 – before this in the last financial quarter of 2009/10 and in January to March 2010 too; and (ii) he had overseen the recruitment of a Senior Litigator for Mthatha,

urgently mandated by him and his LSTC in March two weeks after the news of the OSD issue.

139. The court failed to note that Vedalankar did not have the power to advise Nair to freeze the posts without Board approval.

140. The court failed to note that no record whatsoever exists to vouch Nair's claim that it was resolved between Vedalankar, Clark and himself to freeze the Senior Litigator appointments. The court failed to note that had they duly done so in July 2010, as alleged, a record would have existed, for as Cachalia JA remarked during the debate of the Presidency v Mail & Guardian PAIA appeal in the SCA, 'Government is not a glorified spaza shop'; there must be a 'paper trail', 'a record', 'a minute' of all its decisions and operations, and remarking further that even high officers tell lies – like General Colin Powell telling lies to the Security Council about Iraq's so-called Weapons of Mass Destruction – so they can't be believed by a court without substantiating documents for their disputed claims. The court failed to evaluate Nair's evidence in light of this.

141. The court failed to note that the Senior Litigator posts were never abolished and remain fully funded budgeted posts to this day, so Nair's evidence about his and Vedalankar's power to abolish posts on their own is irrelevant; but anyway they can't abolish them without a resolution of the LSTC recommending this, because as illustrated by (i) the abolition of the Kimberly Senior Litigator post, the LSTC decides and Vedalankar and he agree or disagree as executing authorities; and (ii) according to Nair in evidence, Vedalankar would not agree to approve the *LSTC's resolution to abolish* the Kimberly post and create another at Mthatha, despite his and the LSTC's unanimous support for this, based on the recommendation and motivation of the two regions concerned.

142. The court failed to note that Nair's perjury in court that Mngadi was definitely not told in April/May 2010 that the Senior Litigator recruitments had been cancelled, is contradicted and exposed by both the respondent's pleadings and affidavits, in which (i) it's explicitly admitted that Nair instructed that Mngadi be told this at that time, long before July, and (ii) this information given to Mngadi at this time, 'instead of the Applicant', is even justified with a feeble reason.

143. The court failed to note that Nair's perjury that the information of Mngadi about the cancellation of the recruitments definitely didn't originate from him is contradicted and exposed by the respondent's pleadings, drawn on Nair's instructions, in which the respondent actually *volunteers* that 'Mr Nair issued the instruction' that Mngadi be told this in April/May 2010, many months before the applicant was told in August, only after he pressed Vedalankar to finalise his appointment.

144. Ad paragraph 54: The court failed to note that although nothing in the Recruitment code prevents the holding of second round interviews, nothing in the code provides for it either; and that in recruiting staff the respondent's officers are bound to comply with the Recruitment code and Approval Framework, both instruments mandated by the Board, to transparently regulate recruitment and eliminate corruption, nepotism, and unfair discrimination, repeatedly cautioned against in the code.

145. The court failed to note that Nair had no power to devise a second round interview scheme by mostly unqualified administrative personnel with no legal knowledge to second-guess or even supplant the selection panel constituted of senior lawyers.

146. The court failed to note that *non-executive* Board chairperson Mlambo JP's powers in staff recruitment are limited by the Approval Framework to approving or disapproving the appointment of the CEO and NOE – and no other staff – in committee with the rest of the Board, not alone or with any management executives; and his unauthorised involvement in Senior Litigator recruitment, stepping in to interview candidates already comprehensively interrogated by duly constituted selection panels comprised of the respondent's senior lawyers has been ultra vires and unlawful, irrespective of his preeminent legal acumen as senior judge.

147. The court failed to note the ludicrous, transparent dishonesty of Nair's perjury that all the CVs in Senior Litigator recruitments had to be sent to his so-called second round panel, including those of the rejected candidates, and that this panel of his was free to interview for appointment a candidate found unsuitable and eliminated by the selection panel. The court failed to note the implications of Nair's obvious perjury about this for the credibility of his evidence going to the centre of the case.

148. The court failed to note the significance of Nair's special telephonic instruction (it wasn't Clark; she was kept in the dark until April 2010) ordering the KZN RHRM to include the CVs of the rejected candidates, which plainly shows that the rejected candidates' CVs were not sent up in the ordinary course, and obviously so since they were out of the running; and indeed the respondent admits they were out of the running in its pleadings.

149. The court failed to note Nair's perjurious exaggeration in claiming that his second panel had 'often' rejected candidates recommended by selection panels, when in truth and in fact this had only happened once, in the case of the candidate previously recommended by the selection panel for the Pietermaritzburg Senior Litigation post, but rejected by the second interview panel. The court failed to note that even when testifying about a true fact, Nair compulsively perjured himself by dishonestly exaggerating under oath.

150. The court failed to note the contradiction between Nair's allegation in court that all Senior Litigators had been interviewed twice, and the pleadings which alleged that some of them hadn't, and that those who hadn't had proved to be professionally incompetent.

151. The court failed to note the contradiction between this pleaded story about the allegedly incompetent Senior Litigators and Nair's changed story in court, now retracting this false slur on them and testifying that their professional performance wasn't in question, he was just concerned about the type of work they were doing. The court failed to note this clear instance of perjury on Nair's part, since the pleadings were drawn on his instructions.

152. The court failed to note that under cross-examination, contradicting his repeated allegation about this in the pleadings and affidavits, including in the amended response, that the ROE has the final say, Nair admitted that the Approval Framework allows the ROE no role in the approval of Senior Litigator appointments at all, after the recommendations made by selection panels.

153. Ad paragraph 55: The court failed to note that Nair's new lie to the Board in his November 2011 'Report to Board' (after the applicant had refuted the respondent's budgetary-three-posts-frozen-at-once sham in his extensive original statement of claim) that the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitment processes had *failed to attract suitable candidates* is contradicted by the fact that (i) Skibi was already a Senior Litigator, (ii) no question has ever been raised about Durban High Court Unit Manager Mngadi's suitability (he was found suitable by the selection panel), and (iii) after first pretending that the applicant, an admitted advocate for thirty-one years, and widely experienced on both sides of the bar and bench, was under-qualified, he switched to pretending that he was over-qualified, because his experience was predominantly civil, whereas the respondent wanted Senior Litigators to argue criminal appeals.

154. The court failed to note that Nair's dull, changing perjury regarding the work Senior Litigators do – to mainly argue pedestrian criminal appeals – is exposed again and again by the respondent's records describing it very differently.

155. The court failed to note the transparent dishonesty of Nair's claim in court that the applicant didn't meet the qualifying criteria. He did, and the selection panel's note that he had only eight years high court experience was wrong in light of the information about this in his CV. But anyway it was irrelevant, because no record exists to show that the uniquely high qualifying criteria imposed on the second KZN recruitment process in

2009, but not on the Kimberly one in the same year, nor in the Mthatha one the following year, were ever duly authorised.

156. The court failed to note that had Nair honestly believed that the applicant, an admitted advocate of then twenty-five years vintage, with an unusually wide breadth of legal experience was unqualified for the post, he could have recorded this as his reason for rejecting the applicant.

157. The court failed to note that Nair's dissembling in his evidence that the applicant, probably more highly professionally experienced than anyone else employed by the respondent, was unqualified for the post was just more of his endless, easy, casual, mindless, obvious, dull-witted perjury.

158. The court failed to note that Nair transparently perjured himself in pretending that he doubted the truth of the applicant's claims in his CV to have litigated in the Supreme Court of Appeal and Constitutional Court, merely because he hadn't provided the specific case citations, as if he really believed the applicant had lied in his CV about his professional experience in these forums (both cases in fact reported).

159. The court failed to note that Nair's dishonest insinuation that the short-listing and selection of the applicant was in some manner corrupt was not supported by any particulars, and was itself a corrupt and perjurious attempt to deceive and misdirect the court and a fine illustration of his basically dishonest personal character, the truth simply not being in him.

160. Ad paragraph 56: The court failed to note the dull and obvious contradiction between Nair's claims that (i) he intended pending his approval of the Mthatha candidate following his selection until the resolution of the OSD uncertainty, and that once it was resolved he would then finalize the appointment and not have to start again with the recruitment process, and (ii) the frozen appointment process for the applicant could not be revived in the same way on resolution of the OSD uncertainty and the applicant appointed to avoid the respondent having to start again with the recruitment process.

161. The court failed to note the gross improbability of Nair's brand-new story in court about the reason for the cancellation of the Mthatha recruitment, contradicting the respondent's repeatedly pleaded and sworn case about this, and contradicting the different story Vedalankar told the applicant in October 2010, repeated in January 2011, and confirmed before a commissioner of oaths as the perfect truth by her, Nair and Clark in their PAIA affidavits in April 2011.

162. The court failed to note that Vedalankar could have had no reason to disapprove the LSTC's unanimous resolution to abolish the long vacant and redundant Kimberly Senior

Litigator post, where it reportedly wasn't needed, and to create a new post at Mthatha, where it was sorely needed according to then ROE Mtati. As NOE and chairperson of the LSTC, Nair was better aware of the respondent's operational requirement on the ground than Vedalankar was, and he supported the cost-neutral transfer of the budget, and (as he claimed under oath) repeatedly tried to persuade her to agree, but she wouldn't, so the Mthatha recruitment had to be aborted, and the Senior Litigator budget sent back to where it wasn't needed.

163. The court failed to note that any such alleged executive decision by Vedalankar had to be minuted, and Nair admitted he knew of no such minute.

164. The court failed to note that the Mthatha post couldn't have been advertised unless it had been created and approved, because the Approval Framework required that Clark confirm the available budget for it, thus further giving the lie to Nair's rank perjury in court about this.

165. The court failed to note that this brand-new story of Nair's in court about why the Mthatha appointment was cancelled couldn't possibly have been true, and his obvious perjury about it meant nothing he said in court could safely be believed.

166. The court failed to assess the credibility of Nair's evidence about this having regard to its inherent improbability for the above reasons and further to the fact that Vedalankar told the applicant a completely different story in her letter of 18 October 2010 three months after allegedly disapproving the transfer of the budget, which story she persisted with in her January 2011 letter and then under oath in April 2011.

167. The court failed to note the significance of Nair's claim to have ordered the cancellation of the Mthatha recruitment wholly off the record, and that no record whatsoever exists of this.

168. The court failed to note the plainly obvious perjury of Nair's claim that the Eastern Cape selection panel never signed its recommendation of Skibi for Mthatha, having regard to the sworn allegation in the first discovery affidavit that the letter covering its transmission from the regional office in Port Elizabeth to head office in Johannesburg had been 'lost in transit'. It goes without saying that the covering letter wouldn't have been sent without the recommendation it covered. And the recommendation wouldn't have been sent to Nair unsigned, because Nair couldn't have acted on an unsigned recommendation.

169. The court failed to note the likelihood from this and from all the other material facts that Nair indeed received the signed recommendation of Skibi and that he approved it, which is why Skibi had been 'ready to start' and the Mthatha Justice Centre was

expecting him, when his transfer was abruptly cancelled, orally, off the record, itself a glaring irregularity.

170. The court failed to note that the record unequivocally shows that Nair had no reason not to approve the appointment of Skibi following a briskly conducted recruitment he'd urgently mandated, because his 15 July 2010 email proves that he only had in mind to freeze a limited number of lower criminal court posts to trim costs, more if necessary, and some even lighter posts if still necessary after that – not Senior Litigator posts.

171. The court failed to note that Skibi wouldn't have been 'ready to start' had he not been approved by Nair, and told so.

172. The court failed to note that only Skibi was telephoned and told the Mthatha Senior Litigator job was off, not the other interviewed candidates, showing further that Skibi had been selected and approved and was about to begin, when Nair cancelled his transfer off the record.

173. The court failed to note that Nair's manifest perjury that his July email to Makokoane was not meant to be exhaustive is exposed by both the cold print of its subject-heading and by its contents, both of which proposed cutting, i.e. freezing recruitment to 56 lower criminal court public defender posts, more of the same, and some even more junior paralegal and administration positions if still necessary after that to find more savings.

174. The court failed to note that had Nair considered freezing recruitment to any other more senior posts such as Senior Litigator posts, he would have included them in his email to Makokoane and other management executives to agree and for the Board to approve.

175. The court failed to note that before the applicant's letter came in at the end of the month, there was no question of freezing recruitment to any of the respondent's other posts, let alone critical top level professional posts.

176. The court failed to note that although Nair's proposed cuts didn't completely meet the OSD phase 1 shortfall, Makokoane proposed to the Board the following day that this shortfall be accommodated by applying unspent budget savings to the balance to be made up – not freezing senior professional staff recruitment, which the record shows anyway proceeded after July uninterrupted.

177. The court failed to note Makokoane's information to the Board that critical posts would be prioritized for recruitment, implicitly referring inter alia to Senior Litigator posts. (It was common cause on the pleadings that Senior Litigator posts are critical, and the court's mistake about this later in the judgment will be addressed below, as will

Nair's perjury in pretending they aren't critical and that the respondent's bottom-professional-rung lower criminal court public defender posts are – contradicted by the respondent's pleadings volunteering that Senior Litigator posts are critical.) That is, there was no question of freezing critical Senior Litigator posts, and Nair's email to his fellow executives and Makokoane's report to the Board, both in July, prove it beyond serious disputation.

178. The court failed to note the contradiction between Nair's claims to have merely slowed down the recruitment process – absolutely true (for a change) in regard to the recruitment of a limited number of lower criminal court public defenders – with his permanent, off the record abortion of three critical Senior Litigator recruitments.

179. The court failed to note Nair's manifest perjury in claiming that its public defender posts at the bottom of the respondent's professional ranks are critical posts, whereas its top echelon specialists posts, specially created to address Parliament's concerns about inadequate legal expertise within the respondent, are not critical.

180. The court failed to take note of all the many pieces of evidence enumerated by the applicant in his heads that unequivocally show Nair to have perjured himself about this. Also because it's common cause on the pleadings (the respondent actually volunteered the description) that Senior Litigator posts at the summit of its professional ranks are critical.

181. The court failed to note that the Senior Litigator posts have always been budgeted and funded ever since they were created (spare budget was reported available at the time), and the respondent's 'tough times' were no more than some temporary uncertainty about when its OSD phase 1 funding would come through in the 2010/11 financial year, having regard (i) to its payment the previous year, and (ii) to the Minister's undertaking to ensure it would be included in the national mid-term budget in October. There was never any question that it would be paid, as indeed it was.

182. The court failed to note that if any of the respondent's Senior Litigator posts were to be *permanently* done without, for any reason, the Board had to approve this – just as it had to approve, and did approve, executive management's proposal to do without 56 lower courts public defenders, but only *temporarily* until the end of the financial year.

183. The court failed to note that Nair did not have the power to decide on his own to 'do without' Senior Litigators, whose employment was mandated by the Board's Strategic Plan and whose employment was repeatedly specifically reported to the Minister and to Parliament. Nor did he have the power to decide this with Vedalankar. Especially off the record, and then concealed from the Minister and from Parliament in the respondent's reports on its completion of its last Strategic Plan, in the course of the cover-up.

184. The court failed to note the transparent dishonesty of Nair's perjurious dissembling that Parliament isn't especially concerned that the respondent's critical posts be filled, having regard to the fact that the respondent is part of the Justice cluster, and having regard further to Parliament's pointed enquiries about the vacancy rate among the respondent's professional staff.

185. Ad paragraphs 59 and 60: With respect, all this is correct.

186. The court failed to weigh and assess the veracity of Nair's evidence. Instead, the court took everything Nair said on its face, and accepted and believed it, even when it was childishly incredible on its face, contradicted by the records, unsupported by the records, contradicted by the respondent's pleadings and affidavits, and contradicted by his reports to the Minister, to Parliament, to the Board, and by his own affidavits.

187. The court mischaracterised the case as one involving contradictory versions, to the extent that the veracity of the applicant's evidence, objectively supported every leg of the way, was never in question, only the correctness or otherwise of his conclusion from all the objective facts he presented that the respondent had unfairly discriminated against him under cover of a lying budgetary camouflage alibi – advanced to him for the first time nearly a year after his interview under pressure of his repeated enquiries, and finally at the sharp point of a comprehensive PIAIA request, first illegally ignored then repeatedly illegally expressly refused.

188. On the other hand, the veracity of the respondent's elaborate justification for aborting his appointment was squarely in issue, and it accordingly behoved the court to carefully assess the credibility of the respondent's sworn and pleaded claims that budgetary considerations prevented the finalisation of the application's appointment, and that such considerations had resulted in the abortion of the simultaneously recruited Durban post and the subsequently recruited Mthatha post – stories Nair completely changed at trial (i) in conceding there was no financial bar to prevent the applicant's appointment at the time he was interviewed and recommended, and (ii) in admitting that the cancellation of the Mthatha Senior Litigator recruitment had nothing to do with any budgetary consideration, which means Vedalankar lied to the applicant in her letters of 18 October 2010 and 28 January 2011, and perjured herself in her affidavit of 8 April 2011.

189. Ad paragraph 61: The court completely misdirected itself in citing and relying on the Barnard case for direction in determining the applicant's complaint that the respondent had unfairly discriminated against him under cover of a lying budgetary camouflage. The Barnard case involved frank discrimination, which the employer properly justified with

regard to its constitutional imperative to achieve fair racial representivity in its senior ranks.

190. Ad paragraph 62–63: The court's dicta in these paragraphs are entirely irrelevant, as indeed it mentions in the first sentence of its following paragraph 64 (except to suggest that the court surmised undeclared racial discrimination in the instant case).

191. Ad paragraph 64: The court fundamentally misdirected itself in holding that 'the determination of the issue at hand as well as the controlling law should still be the one outlined in Harksen vs Lane and others', because, as in Barnard, the Harksen case involved *frank differentiation* and whether it was justified or not – and not disputed *covert* discrimination under a financial camouflage, as alleged by the applicant in the instant case. The instant and cited cases are totally incomparable.

192. The Barnard and Harksen cases consequently had zero application to the determination of the applicant's complaint, and the court misdirected itself in relying on them.

193. Ad paragraph 65: The court fundamentally misdirected itself by misallocating the onus of proof, and in determining the dispute on the mistaken premise that 'The applicant … carried the burden to prove the existence of the discrimination complained of' and that there was an 'onus resting on him' to do so – irrelevantly citing as authority for this wrong basic premise the Harksen, Kadiaka and Germishuys cases, none of which had any bearing on the issue – and then proceeding to hold that the applicant had failed to discharge this onus.

194. The Employment Equity Amendment Act 47 of 2013 ('EEAA'), assented to by the President on 14 January 2014, was proclaimed under section 30 to be effective from 1 August 2014.

195. Section 6 of the EEAA amended section 11 of the Employment Equity Act 55 of 1998 ('EEA'), which deals with the 'Burden of Proof' in unfair discrimination claims.

196. Through a manifest oversight by the legislature (shown below), section 11 of the EEA had previously been silent regarding the incidence of the onus of proof in *covert* unfair discrimination claims, and had reversed the onus only in *frank* unfair discrimination claims (as in the Barnard case). That is, until the amendment, there was no *statutory provision* in South African labour law governing the allocation of onus in *covert* unfair discrimination litigation in the labour arena (but not outside it; see below).

197. A *covert* employment discrimination complainant naturally has a much harder row to hoe in establishing his claim where the discrimination is denied and the employer's *unspoken mental prejudice* against him must be inferred from the totality of the

circumstantial evidence, than one in *frank* employment discrimination, where it is openly admitted but justified. So for his effective legal protection, such a *covert* unfair discrimination complainant has an even greater need for a reversed onus than a complainant in a *frank* discrimination case.

198. Section 11 used to provide:

> Whenever unfair discrimination is alleged in terms of this Act, the employer against whom the allegation is made must establish that it is fair.

199. The old section 11 made no provision for the reallocation of onus in *covert* unfair discrimination claims, such as the applicant's.

200. Amended, the new section 11(1) provides:

> If unfair discrimination is alleged on a ground listed in section 6(1), the employer against whom the allegation is made must prove, on a balance of probabilities, that such discrimination –
>
> (a) did not take place as alleged, or
>
> (b) is rational and not unfair, or is otherwise justifiable.

201. Whereas section 11(1)(b) restates and refines the original provision reversing the onus of proof in *frank* unfair discrimination complaints, section 11(1)(a) fills the statutory lacuna in regard to *covert* ones and likewise reverses the onus in these cases too.

202. In weighing the evidence and deciding the applicant's claim, the court was bound to apply section 11 as amended. Judgment was delivered many weeks after the amendment of section 11, and the applicant was entitled to the benefit of this amendment and to the decision of his claim under *current* South African labour law as *codified* by the amended section regarding the incidence of the onus of proof in *covert* unfair discrimination claims.

203. It didn't do so, and it wrongly adjudicated the case on the basis that the applicant bore the ordinary onus of proof – such as rests on civil plaintiffs in the ordinary course. This was a fundamental and fatal misdirection vitiating the fairness of the trial.

204. For the several reasons enumerated below, however, even *before* the statutory *codification* of the reallocation of the onus of proof in *covert* unfair employment discrimination claims on 1 August 2014, and in the absence of a statutory provision regulating the incidence of onus in such claims, the respondent nonetheless bore the ultimate onus to prove that it had not unfairly discriminated against the applicant as he'd complained.

205. (The applicant was himself mistaken both at trial and during argument in believing that, prior to the proclamation of the EEAA on 1 August 2014 explicitly shifting the final onus, he bore it – as under US federal law. The McDonnell Douglas framework prescribed by the US Supreme Court in 1973 (mentioned in the applicant's heads), imposes an *evidential onus* on the employer where a grievant makes out a plausible case that he has been unfairly discriminated against, but it doesn't shift the *ultimate burden of proof*, as many countries have done in accordance with progressive international labour law trends reported and recommended by the ILO, given effect either by way of statutory provision or judicial development of the law. The McDonnell Douglas framework was just the first, early, partial move in the development of equitable onus allocation in unfair discrimination litigation, supported by the ILO.)

206. As the Minister of Labour explained during the Second Reading of the Employment Equity Amendment Bill on 24 October 2013:

> The main aim of this bill is to give effect to fundamental Constitutional rights, including the right to equality, fair labour practice and protection against unfair discrimination … and to ensure that South Africa complies with and meets its obligations in terms of the International Labour Organisation standards.[1] … [T]his Bill emanates from the International Labour Organisation, ILO, Convention'.[2] … [South Africa] participated in the standard commissions during the ILO conference.[3]

207. Since the EEA had been silent about the onus of proof in *covert* unfair discrimination claims before its amendment, the Labour Court was bound to look to the equities and to 'the International Labour Organisation standards' of labour jurisprudence in its allocation of the final onus in the applicant's case, agreed to by South Africa's representatives participating in the commissions setting them, and recommended and reported by the ILO.

208. The amendment of section 11 of the EEA, codifying the reversed onus in *covert* unfair discrimination claims, conforms to the ILO's recommendations in this regard, in keeping with South Africa's obligations to apply and comply with the international labour standards it sets in its reports:

> ***Equality at work: The continuing challenge*. Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. Report of the Director-General. International Labor Conference 100th Session 2011**:

[1] Law and case bundle, page 228.
[2] Law and case bundle, page 233.
[3] Ibid.

Provisions maintaining the burden of proof on the claimant in discrimination cases limit the effectiveness of protection in judicial proceedings and the possibilities of seeking remedies for damages inflicted.'[4] (NB: Prior to the amendment of section 11 of the EEA, there were no such 'provisions' in South African law, only a statutory lacuna, now filled in accordance with ILO standards and recommendations.)

Giving globalization a human face. **General Survey on the fundamental Conventions concerning rights at work in light of the ILO. Declaration on Social Justice for a Fair Globalization, 2008. Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution). Report III (Part 1B). First edition 2012:**

Burden of proof
One of the main difficulties in relation to allegations of discrimination in general … relates to the burden of proof. … Provisions introducing a "reversal of the burden of proof" … are among the preventive mechanisms designed to afford protection against … discrimination … in the view of the Committee. … This is also the view of certain national jurisdictions. For example, in Argentina,[457] the National Court of Appeal found that, when a worker considers her or himself to be a victim of discrimination, there must be a shifting of the burden of proof whenever the worker can "provide a reasonable indication" of the employer's hidden reason.'[5]

Fn. 457: National Court of Appeal, Fifth Chamber, Parra Vera Maxima v. San Timoteo SA conc., 14 June 2006, ruling No. 144/05 68536.

HIV and AIDS and Labour Rights: A Handbook for Judges and Legal Professionals Office**. – Geneva: ILO, 2013**

Burden of proof
… Placing the burden of proof on the worker in a discrimination case may present an insurmountable obstacle, particularly when the information and documentation necessary to establish a prima facie case of discrimination is in the hands of the employer, such as in a case of denial of access to employment. [6] … Acknowledging these difficulties, some countries have provided for a shifting burden of proof. For example, in a case alleging discriminatory failure to hire, the burden of proof will shift to the employer to show that there were other reasons for rejecting the candidate – once the complainant has produced plausible or prima facie evidence of discrimination. In Switzerland, section 6 of the Federal Act respecting equality between men and women, which came into force in mid-1996, provides for the

[4] Law and case bundle, page 207, paragraph 65.
[5] Law and case bundle, ILO, Giving globalization a human face, page 212, paragraph 192.
[6] Law and case bundle, HIV and AIDS and Labor Rights, page 220.

presumption of alleged discrimination "as long as the person invoking the procedure makes a plausible case". The CEACR [ILO Committee of Experts on the Application of Conventions and Recommendations][7] has stated that allocating the burden of proof in this way may be a helpful tool to correct a situation that could otherwise result in inequality.**[118]** A number of European countries, such as France, Germany and Italy, have adopted provisions for shifting the burden of proof to the employer in cases of employment discrimination, based on European Directives.[8] … National courts have ruled on the issue of burden of proof in cases involving allegations of HIV-related discrimination in employment. The Brazilian Federal Superior Labour Tribunal has held that, where the employer knows of the worker's HIV status, the burden rests on the employer to show that his or her decision to dismiss the worker was not discriminatory.'[9]

Fn. 118: 'ILO, *Equality in employment and occupation,* ibid, paragraph 231; see also ILO, Giving globalization a human face, op.cit., para. 885.'

209. In the absence of a statutory provision reallocating the onus in covert unfair discrimination claims before the effective date of amendment of section 11 of the EEA, this court had the jurisdiction as a court both of law and of equity[10] to allocate the incidence of onus *equitably*, and to reverse it by placing it on the employer, as courts in Argentina[11] and Brazil[12] have done, having regard to (i) the reversed onus in *frank* discrimination claims stipulated by section 11 of the EEA before it was amended, (ii) the obvious oversight of the legislature, recently remedied, in reversing the onus only in *frank* discrimination claims and neglecting to reverse it in *covert* discrimination claims, all the more necessarily for effective legal protection against unfair discrimination in such cases, (iii) the recommendations and reports of the ILO consistently urging the reallocation of the onus of proof in *covert* unfair discrimination litigation, and (iv) the reversed onus in both *covert* and *frank* unfair discrimination litigation outside the labour sphere under section 13 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ('PEPUDA'), which has stipulated, since its enactment, that in *covert* unfair discrimination litigation the respondent should bear the onus of proving

[7] Law and case bundle, page 209.
[8] Law and case bundle, HIV and AIDS and Labor Rights, page 222.
[9] Ibid, page 224.
[10] Section 151(1) of the Labour Relations Act 66 of 1995: 'The Labour Court is hereby established as a court of law and equity.'
[11] National Court of Appeal, Fifth Chamber, Parra Vera Maxima v. San Timoteo SA conc., 14 June 2006, ruling No. 144/05 68536. (Cited with approval by the ILO.)
[12] Federal Superior Labour Tribunal/Tribunal Superior do Trabalho (TST), Adriana Ricardo da Rosa v. Sociedade de Ònibus Porto Alegrense LTDA – SOPAL, Case No. TST-RR-104900-64.2002.5.04.0022, Judgment of 3 August 2011 (published 2 September 2011) (Cited with approval by the ILO.)

it did not discriminate as alleged by the complainant – evidencing the intention of our democratic Parliament in unfair discrimination claims generally in the democratic era:

> Burden of proof
> 13 If the complainant makes out a prima facie case of discrimination –
>
> (a) the respondent must prove, on the facts before the court, that the discrimination did not take place as alleged; or
>
> (b) the respondent must prove that the conduct is not based on one or more of the prohibited grounds.

210. So as to comply with section 3 of the EEA, requiring the Act to be 'interpreted –

> (a) in compliance with the Constitution;
>
> (b) so as to give effect to its purpose;
>
> (c) in compliance with the international law obligations of the Republic, in particular those contained in the International Labour organisation Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation.

– and to conform itself with international standards agreed by member countries, including South Africa, and reported and recommended by the ILO, the court was bound to shift the ultimate onus of proof and allocate it to the respondent – as courts in Argentina and Brazil took the initiative and did – even had it not been shifted by the proclamation of the EEAA.

211. In sum, the respondent carried the ultimate burden of persuasion; and the court's unfair misallocation of the final onus in deciding the case vitiates its judgment.

212. On appeal, the applicant will show that on a full and proper consideration of the dismal, manifestly untruthful, unsupported, internally contradictory and contradicted evidence given by the respondent's witness Nair – much of which wasn't treated in the judgment, despite having been pertinently pointed up in the applicant's heads of argument and in oral argument – no reasonable court would find on a correct allocation of the burden of proof that the respondent discharged its onus on a balance of probabilities to show that it did not unfairly discriminate against the applicant when it halted his appointment to the post for which he'd been recommended.

213. If the Labour Appeal Court disagrees with the applicant's case concerning onus, and holds that he, and not the respondent, bore the final onus, albeit that the respondent was subject to an evidential onus to justify its failure to appoint (which is why the respondent's application for absolution was dismissed after the close of the applicant's

case, having made out a prima facie case to answer), the applicant will show that the respondent failed to prove its pleaded case and thus to justify its failure to appoint.

214. Ad paragraph 66: In correctly noting that 'in some employment discrimination cases in which an issue of pretext arises the respondents often provide all sorts of seemingly legitimate reasons to justify its behaviour', the court failed to note the wide assortment of different, contradictory seemingly legitimate reasons advanced by the respondent to justify its behaviour: to the applicant, to the SAHRC, to the Minister, to Parliament and to this court before and during trial, one advanced, then retracted by Nair on oath, then revived adjusted, to wit: that the respondent was too busy preparing/presenting its budget to finalise the applicant's appointment (a story repeated, then dropped); that it froze *all* its vacant posts because of its budgetary concerns (a story repeated, then dropped); that the initial reason the second interview of the applicant couldn't proceed was because of difficulty fixing a date suitable to all members of the panel (Clark hadn't even been asked by April; and after the applicant, in his original statement of claim, nailed this lie told to the Minister and Parliament, the respondent (Nair instructing and confirming on oath) retracted it as 'an error', 'palpably an error'; and when in court Nair was reminded of this retraction, he feebly responded that the retraction was a mistake. In court Nair revived the initial delay story, saying he knew the second interviews couldn't proceed until mid-February, thereby contradicting the lying story he'd told the Minister and Parliament about the panel members not being able to meet because of trouble agreeing a suitable date, when the truth of it is that no one had been asked.

215. The court failed to note that even on his own new version in court, nothing prevented Nair from arranging the second interviews in the three-week period between the mid-February and 10 March 2010 when the respondent learned that its OSD phase 1 funding wasn't in its baseline budget; and that Nair's failure to take any action at all, even reading and approving or disapproving the recommendations, stands wholly unexplained. (In March despite the OSD disappointment, (i) he and his LSTC urgently mandated the Mthatha Senior Litigator recruitment, which blows his lie that from then on the OSD issue prevented Senior Litigator recruitment in particular, and (ii) recruitment generally rapidly accelerated in the next quarter, which blows his lie that any recruitment at all was affected by the OSD issue before mid-July 2010.)

216. Ad paragraph 67: The court duly noted the many instances ('a number of facts and circumstances') pointed up by the applicant showing that Nair was 'not generous with the truth', in other words, and put plainly instead of soft-soaping it in the respondent's favour, he'd not been honest with the court on a number of scores, which is to say he'd repeatedly lied to court under oath, meaning he'd repeatedly committed perjury; but the court failed to identify a single instance of Nair's gushing perjury, and failed to weigh

his many demonstrated lies on oath concerning the surrounding issues in its assessment of whether or not to accept and believe his central claims in court that (i) he didn't know who the applicant was and what he stood for at the material time because he didn't open and read the applicant's CV detailing his political background and the selection panel's recommendation referencing it until more than a year after receiving them, when he claimed in court to have opened and read them out of curiosity because he wanted to find out at last who the applicant was and what he stood for; (ii) he and his colleagues had been too busy to interview the applicant a second time until mid-February; and (iii) the uncertainty over when the respondent's OSD phase 1 funding would be paid caused him to halt the applicant's appointment in March and then freeze it at Vedalankar's suggestion in July.

217. The many obvious lies Nair told under oath in court, which the court failed to identify, are identified throughout this application, and two more are proved by the new evidence.

218. The court failed to note (even before mention of the new evidence categorically proving it), that Nair obviously perjured himself in alleging falsely that as the respondent's deputy information officer he didn't know that the SAHRC had conducted (i) a special PAIA training workshop for the respondent's national office staff, and (ii) an audit of the respondent for PAIA compliance.

219. The court failed to note that since Nair lied freely under oath about all manner of things, nothing he says could be trusted and relied on. That is, his evidence was not worthy of credence and couldn't reasonably be accepted and believed.

220. The court failed to note that besides the surrounding countryside of Nair's many lies on oath about many other things, Nair's claim to have first known of the applicant's political background at the end of 2010 or early 2011 is contradicted by him in a different story he told under oath before trial, namely that he first learned of the applicant's political background in July 2010 on reading the applicant's letter to Vedalankar, canvassing it in some detail. That is, he learned much earlier and from a different document.

221. The court failed to note these mutually destructive contradictory versions on oath before and at trial, despite being pertinently pressed in the applicant's heads of argument and again at the oral argument.

222. Instead, the trial court accepted and believed Nair's lie in court about this, describing his evidence about it as standing intact, on the basis that Nair was adamant and unshaken about it, whereas he stood exposed as a perjurer on the point – and on innumerable others as the court obliquely and insouciantly acknowledged.

223. Indeed as the court correctly noted, citing American law laid down by the Supreme Court, proof that an employer has lied generates the highly probable inference that it has lied to conceal an illegal discriminatory motive.

224. The court failed to note that the profusion of lies Nair told about his knowledge of the applicant's political background, why he didn't act to finalise the applicant's appointment, and so many other things, including his different lies to other authorities, reasonably suggested that he lied about all this to cover his real reason for aborting the applicant's appointment.

225. Since race prejudice was eliminated from the case having regard to the Calitz case in Cape Town, mentioned by the applicant in evidence and in his heads, and nepotism too in view of the fact that after three advertisements none of Nair's friends applied for the post, as the applicant mentioned in argument, the court failed, as it ought to have done, to find political prejudice to be the most probable reason for Nair's peculiar, furtive, dishonest conduct in stopping the applicant's appointment.

226. Cross-examined on the fact that Nair had told a different story in his report to the Minister and to Parliament from what he'd told court, namely that he'd learned who the applicant was when reading his July letter to Vedalankar, Nair claimed that he'd stopped reading the letter just at the point where it began detailing the applicant's political background. Which is to say, he only learned of his name in late July. The court failed to note the ridiculous, inherent implausibility of this convenient evidence Nair made up to escape the corner he was in.

227. At the commencement of oral argument, the applicant informed court that he had only received after trial Nair's confirmatory affidavit to Mtati's answering affidavit in the applicant's application for leave to subpoena Board chairperson Mlambo JP, and that Nair had confirmed thereby his instructions to Mtati that he learned of the applicant's political background on reading his July letter – brightly exposing Nair's already improbable perjury in court that he stopped reading the letter at the point it began dealing with the applicant's politics.

228. The court's failure to address this, and its absolutely wrong statement that Nair's evidence stood unshaken and intact regarding when he learned of the applicant's politics, was a fundamental failure of the judgment. In fact, Nair's already obvious perjury about this was smashed to pieces by his earlier contradictory perjury on affidavit.

229. Ad paragraph 68: The record will show that on the very eve of trial the applicant found evidence that Nair had ghost-written Vedalankar's letter of 18 October 2010 illegally refusing his entire PAIA request for 51 specified records and falsely advancing a

budgetary justification for the abortion of his recruitment, and that he'd had ghost-written Mlambo JP's secret reports to the Minister and to Parliament reiterating this lying budgetary justification and concocting a new logistical one, subsequently retracted as 'an error', 'palpably an error', by Nair on affidavit (confirming his instructions to Mtati to retract it as such) only to revive it in it court, and then give evidence contradicting it.

230. The applicant explained why in light of these stunning last-minute discoveries he'd decided to hold Vedalankar and Mlambo JP clear at trial.

231. In his replying argument, and in view of Nair's inculpation/incrimination of Vedalankar and/or Mlambo JP – denying he'd written her letters, and accusing one or the other of them of having added new (false) allegations to the report to Parliament that he'd written for Mlambo JP to sign – the applicant recorded his misgivings about this concession about their involvement, and wondered on the objective evidence whether his decisions to hold them clear of complicity (in the cover-up, not the original unfair discrimination) was justified, having regard to the pointed facts and documents he referred to in his replying argument.

232. The word 'exonerate' was opposing counsel's; was not used by the applicant; and has a different meaning from the expression to 'hold clear'.

233. The court's inadequate recordal in its judgment of the clear uncontroverted reason given on the record by the applicant for his last-minute shift regarding Vedalankar's and Mlambo JP's complicity (he'd just discovered that Nair had written their letters and reports) unjustifiably suggests the applicant was unsure about his core complaint.

234. The court failed to note that Nair implicated both of them in his evidence; and it failed to deal with the extremely grave implications of this.

235. Ad paragraph 69: The court failed to note the striking change of animus exhibited by Clark towards the applicant between her emails of 14 and 30 April 2010, the first after she had consulted Brijlal in Pinetown as to the status of the recruitment and learned from him that the applicant had been recommended, since Nair was in Cape Town on the day or on his way back from briefing the Portfolio Committee, and the second after his return to the office. She'd encouraged him to keep enquiring in her first email, but rudely put him off doing so in her second email after Nair's return.

236. The court failed to note that Clark's palpable hostility towards the applicant in her second email reeks of prejudice.

237. It was never the applicant's case that Clark knew anything about him before his first approach to her on 14 April 2010, and the record of her email later that day vouches

that his call to her was received and followed up in an impeccably professional and friendly manner. Not so her second disgraceful email.

238. Subsequent to the respondent's delivery to the applicant *during the litigation* of the record of Vedalankar's email to Nair calling on him to discuss the applicant's letter to her enquiring about when his appointment might be finalized, the applicant accepted that she knew nothing of him and his recommendation before this, and indeed Nair confirmed this in his evidence. After receiving the recommendation in November 2009, he did nothing to finalize it for eight months, and said he only told Vedalankar that he had decided not to proceed with it when she called him in to discuss the applicant's letter to her at the end of July 2010.

239. It was never the applicant's case that Nair knew of the applicant and of his political background before reading his CV, for there's no evidence that he did. It's always been the applicant's case that Nair learned of the applicant's background when he read his CV.

240. The court gravely erred in finding that 'with the exception of possibly having read the CV of the applicant, Mr Nair did not know of the applicant'.

241. On Nair's own version he read the applicant's CV and learned the applicant's political background from it. Only, he claims to have read it more than a year after receiving it, and only out of curiosity.

242. More importantly, before the trial Nair told a completely different story on oath: he confirmed on oath the instructions he gave attorney Mtati to allege to this court that it was in July 2010 when *he read the applicant's letter to Vedalankar mentioning the applicant's political background*, that he learned of it. The court failed to note this, and that the two stories under oath are irreconcilable and mutually destructive, and neither can stand and be believed.

243. Contrary to Nair's perjury that the recruitment of Senior Litigators for KwaZulu-Natal and Mthatha was a low priority, the KZN post had been advertised twice in 2009 and the recruitment of a Senior Litigator for Mthatha was designated an immediate priority after then ROE Mtati's plea for it in view of the wide distances between the four high courts that the Eastern Cape's single Senior Litigator at Port Elizabeth had to service.

244. The court failed to consider the inherent improbability of Nair's claim that he didn't open and read the recommendations and CVs to find out who the recommended candidates were, in light of the two contradictory and equally perjurious accounts he gave about when he learned of the applicant's political background.

245. Ad paragraph 70: The court failed to note the inherent implausibility of Nair's claim under cross examination – when confronted with and cornered by his claim to the Minister and to Parliament before the trial to have learned who the applicant was in July when he read his letter to Vedalankar – to have stopped reading the letter just at the point where it began to detail the applicant's political background, so he learned only of his name at that point, not his politics.

246. The court failed to find Nair's quick-thinking but hopelessly obvious cunning dodge here to be highly implausible.

247. The record of the oral argument confirms that during his preliminary 'housekeeping' remarks at the outset, the applicant informed court that the respondent had discovered Nair's confirmatory affidavit supporting Mtati's answering affidavit in the application for leave to subpoena Board chairperson Mlambo JP, after the trial. And he recorded that his cross-examination of Nair would have been quite different had Nair's affidavit not been withheld, and had it been given him before trial. (No dispute was raised by the respondent's representatives that Nair's affidavit was indeed delivered to the applicant only after the trial.)

248. The colossal implication of Nair's affidavit for the decision of the case is that Nair confirmed on oath Mtati's statement (as attorney) made on Nair's instructions that it was when the applicant wrote to Vedalankar in July 2010 that they all became aware of his political background. That is, Nair gave two completely different versions on oath about when and how he learned of the applicant's politics.

249. The court failed to weigh the veracity of Nair's claim not to have read the applicant's CV on receiving it by email attachment and only to have read it more than a year later out of curiosity, in light of his many perjuries, either manifestly obvious on their face, or categorically established having regard to his affidavits, the documentary record, and the respondent's pleadings and affidavits contradicting and exposing his perjuries.

250. Before he began testifying, Nair solemnly swore an oath before court 'to tell the truth the whole truth and nothing but the truth'.

251. The court's finding, set in insupportably euphemistic and forgiving language, that in multiple respects the applicant showed Nair to have been 'less than generous with the truth' means Nair was shown to have repeatedly violated the oath he took to be completely open and honest with the court, and that he repeatedly perjured himself, as indeed he certainly and uncontrovertibly did, manifestly so on the very face of what he said, or exposed by his previous contradictory evidence on affidavit, by the respondent's contradictory affidavits and pleadings drawn on his instructions, and by the documentary record against him.

252. The court failed to record directly, instead of obliquely and indulgently, that it found Nair to have lied on oath on numerous aspects of his evidence, and that his central evidence about not knowing the applicant's political background at the material time – innately improbable and contradicted by him in his reports to the Minister and to Parliament and his interlocutory affidavit in the Mlambo JP application – consequently couldn't be trusted, and fell to be rejected.

253. In light of its vague general finding that as a witness under oath Nair was not entirely honest, the court ought to have assessed the credibility of Nair's claim not to have opened and read his email correspondence after the KZN interviews with the greatest caution and circumspection, more especially because it's elementary that a witness found to have lied on oath on any aspect obviously can't be trusted on any central disputed claim he makes.

254. (Like in the applicant's biggest criminal case on brief: 9 counts of murder, another 7 attempted, in an AK47 attack on a jam-packed taxi during the Inkatha/UDF war. A front seat survivor was *adamant* it was the accused, was *unshaken* under relentless cross-examination, and his evidence stood *intact*. The Judge President's friendly questions and interjections indicated he believed him. Then the applicant asked a peripheral question: What were the conditions in the area at the time of the attack? Perfectly quiet and peaceful, he replied. But the investigating officer called to testify during the defence case told court that just before the taxi attack things were so tense that the police were out in force every night patrolling the area to prevent further killings, and people were sleeping in the forest in terror of being slaughtered in their beds. With the state witness's peripheral lie on oath exposed, his central identification evidence was accordingly found untrustworthy and unreliable, and the innocent accused was rightly acquitted.)

255. After allowing (in paragraph 67) that 'the applicant pointed out a number of facts and circumstances in the case of the respondent to suggest that Mr Nair was not generous with the truth', the court failed to canvass all Nair's clearly established lies and their implications for his general credibility.

256. As said, subsequent to the trial the applicant extracted further records from the respondent by dint of another PAIA request, and they prove categorically that Nair committed perjury in court on two other peripheral scores concerning the respondent's persistent, repeated illegal withholding of records duly requested by the applicant under PAIA for the purpose of interrogating the truth of the budgetary justification fed him for not proceeding with his appointment.

257. The court's finding that Nair's claim not to have read the applicant's CV when he received it 'stands intact' is insupportable. It bears repeating that Nair was equally 'adamant' and 'unshaken' in regard to several other obviously false allegations that he made, such as that all rejected and eliminated candidates were to be interviewed for possible appointment by his so-called second round panel, whereas the respondent repeatedly contradicts this in its pleadings and affidavits; and such as his claim that he didn't have to sign his approval of the recommended candidates for second interviews, also repeatedly contradicted and refuted by the respondent's own pleadings and affidavits, drawn on his instructions, and even confirmed by him on affidavit.

258. As said, and very importantly, Nair's brand-new story in court that he didn't open and read the recommendation and accompanying CVs for more than a year after receiving them features nowhere in any of the respondent's correspondence, reports, pleadings and affidavits before trial, all addressing the applicant's complaint that his appointment was blocked on account of political prejudice and giving different explanations for why the applicant wasn't appointed. The court failed to note this.

259. Ad paragraph 71: The respondent advanced completely different stories before trial for why it did not process the applicant's appointment promptly after receiving the recommendations. On Nair's instructions, it also repeatedly lied that all posts had been frozen, whereas the record shows exactly the opposite: recruitment spiked and new post creation exploded in the 2010/11 first quarter after the respondent was 'suddenly confronted' (its pleaded expression) with budgetary issues on 10 March 2010, on learning that its OSD phase 1 allocation hadn't been included in its baseline budget as undertaken and confirmed in January.

260. On any reasonable evaluation of Nair's claim about this, there could have been nothing 'premature' about opening reading and approving or disapproving the recommendations for the second round of interviews on receiving them. Had he disapproved the candidates recommended, as he was entitled to do in consultation with Vedalankar as executing authority delegated by the Approval Framework for such senior appointments, he wouldn't have had to bother asking Clark to arrange the so-called second round interviews; there would have been none to arrange. His 'premature' evidence was plainly perjury.

261. The court misdirected itself in incorrectly recording that Nair 'merely placed the bundle of documents he had received in his drawer without reading and scrutinizing the recommendation.' This wasn't his evidence. In court Nair claimed, for the first time, that he never opened and read the recommendation and CV for over a year after receiving them.

262. The court insupportably found there was nothing 'unusual or out of the ordinary which would attract his curiosity to the bundle with the email such that I should find that he probably read the applicant's CV'.

263. The documents were necessary to finalize the respondent's recruitment to its two long-vacant, critical, top-echelon, repeatedly advertised most senior professional posts in KwaZulu Natal, which Nair and his LSTC had to fill in their implementation of the Board's Strategic Plan.

264. The court's finding that these were the sort of routinely sent documents that Nair didn't have to open and read is manifestly insupportable on any reasonable objective appraisal; the court was wrong to find this; and the Labour Appeal Court will undoubtedly agree.

265. The court failed to consider the implication (not argued in court) of the *special telephonic instruction* Nair (Clark wasn't yet involved) gave the regional office in Pinetown to send him all four CVs, including those of the rejected, eliminated candidates. Had this been routine, as with the previous Senior Litigator selection process, Nair wouldn't have needed to specially call for all CVs to be sent to him.

266. The court failed to note that Mdaka sent the documents to only Nair, not to Clark as well, despite Brijlal's email to Mdaka stating that the documents were to be sent to both Nair and Clark, consistent with the respondent repeated statement in its correspondence, pleadings and affidavits that Clark was in charge of arranging the second interviews. The court failed to note that, contradicting this and perjuring himself, Nair denied she was in charge of arranging the second interviews.

267. The court failed to draw the necessary conclusion from Nair's telephone instruction that *he knew even before receiving the documents that there'd been a problematic selection*, that he'd had his finger on the pulse all along, and that he was scheming from the start to appoint a candidate rejected by the selection panel instead of the applicant.

268. The court failed to note Vedalankar's and the respondent's repeated blatant lie to the applicant, Parliament (to Hon Schäffer MP), and court that the applicant was not the only candidate selected for the post he'd applied for, and that others had been recommended for it too.

269. The court massively misdirected itself in stating that from February to July 2010 'Mr Nair was then preoccupied with a deficient budget of the respondent until he received an email from Ms Vedalankar enquiring about the applicant'.

270. First, the uncontested and incontrovertible brute evidence flatly contradicts this completely insupportable finding. The record shows that despite the respondent's

uncertainty arising on 10 March 2010 about when its OSD phase 1 funding would come through for 2010/11 (when, not if), the respondent embarked on a massively accelerated recruitment and new post creation drive, overseen by Nair as NOE and chair of the LSTC. It was not until mid-July that the respondent decided to spur the Department into paying up by resolving to freeze recruitment to a limited number of lower criminal court public defender posts, but only temporarily until the end of the year, and in the result for just two months. That is, recruitment wasn't disturbed in the least by the 'deficient budget' issue.

271. Second, the record shows that Vedalankar's letters in March and April, and meetings with the Department and Minister in July, were the sum total of the respondent's agitation to get its OSD phase 1 funding paid, and NOE Nair wasn't involved in this end of the respondent's business at all.

272. Third, there were no 'deficient budget' concerns before 10 March ('from February', per the judgment) when Vedalankar recorded in her letter to the Department that contrary to assurances given, the respondent's OSD phase 1 allocation had not been included in its baseline budget. So nothing precluded Nair from finalising the applicant's appointment in the second half of February and the first 10 days of March (or even after that, as recruitment boomed).

273. The court's finding that 'the applicant has not succeeded in showing that Mr Nair probably read his CV around the time of its receipt' is fatally incorrect both on the probabilities and as a matter of law, where the court has lumped the applicant with an evidential onus he doesn't bear.

274. To the contrary, the onus lay on the respondent to prove that Nair never read the recommendation and CVs sent to him, until more than a year after receiving them.

275. The court erred in not finding that all the applicant had to do here was show that Nair received the documents, and that he did so by presenting the evidence of Mdaka's email to Nair covering them. That Nair got the documents buy email wasn't in issue at trial.

276. It wasn't for the applicant to prove that Nair examined the documents as was required of him by the Approval Framework, delegating him executing officer with final approval power, subject to Vedalankar's agreement. There was no onus on the applicant to prove Nair read what was sent him; it was the other way round.

277. The court fundamentally and fatally misdirected itself in misallocating the onus in this regard, and holding that the applicant failed to prove that Nair read the documents sent

to him for his consideration and approval of the recommended candidates, on his version, for second round interviews.

278. The applicant will argue on appeal that it's highly material to consider that the respondent determinedly withheld Mdaka's email to Nair transmitting the recommendation and CVs.

279. The record before the court shows that, first requested by the applicant under PAIA in August 2010 and repeatedly demanded in the litigation thereafter, the respondent only surrendered it three years later, just a couple of weeks before trial, but only after the applicant had applied for and been granted a second judicially supervised pre-trial conference at court to force the discovery of this and other withheld documents – hence the change from the applicant's amended statement of claim, when he couldn't show Mdaka had sent the recommendation and CVs to Nair, to his intended second amended statement of claim, when after finally receiving Mdaka's email, he could, and pertinently pleaded the date Mdaka did so.

280. The applicant will argue on appeal (this was not argued in court) that until it was forced out of him a few weeks before trial, following the second pre-trial conference at court in June 2011 to compel full and proper document discovery, Nair intended denying having received the recommendation and CV – just as he denied receiving Skibi's recommendation for Mthatha, with its covering letter to him claimed, on oath on his instructions, to have been 'lost in transit', which at least, even on this version, means it was signed and sent (in court Nair claimed it wasn't signed), since it obviously wouldn't have been sent if not signed.

281. The applicant finally disgorged Mdaka's email to Nair covering his transmission of the recommendation and CVs with the greatest difficulty. Relying on this evidence, the applicant was finally able to prove Nair received the recommendation and his CV, detailing his politics, so as to refute the story Nair told the Minister and Parliament that he only learned who the applicant was in July when he read his letter to Vedalankar.

282. The court was wrong to hold that Nair could so easily defeat this hard-won evidence, exposing his lie to the Minster and to Parliament, by simply claiming not to have opened and read the important documents Mdaka sent him after the recommendation had been signed by all members of the selection panel, *more especially because Nair had especially phoned for all the CVs to be sent up with it*, including those of the rejected, eliminated candidates.

283. The court failed to note the respondent's first discovery affidavit was obviously perjurious and a transparent attempt to defraud the court, in alleging the covering letter for Skibi's recommendation was 'lost in transit'.

284. Ad paragraph 72: The court's finding that Nair needed to read the applicant's CV to know about his political background at the material time, namely when he decided to halt his recruitment, is not in contention.

285. It was never the applicant's case that Nair had any prior knowledge of him, but the overwhelming probabilities support the different finding that Nair indeed learned of the applicant's political background on reading his CV when he got it in November 2009 and not from reading the applicant's letter to Vedalankar in July 2010 (as he confirmed on affidavit before the trial) nor from reading the applicant's CV at the end of the year or maybe early the year after that (as he testified differently at trial).

286. The court was wrong to hold, totally irrelevantly, that he was not 'meted with any different treatment that was given to the recommended candidates for Durban and Mthatha'.

287. First, this was not his complaint for trial. Second, as a matter of recorded fact the Durban and Mthatha candidates were indeed treated differently from the applicant. Whereas the applicant was kept in the dark and given discouraging, dishonest, opaque, mixed messages by Clark in her second email of 30 April 2010, after Nair had returned to his office in Johannesburg, it's the respondent's own pleaded case that Mngadi was informed, on Nair's instructions, in April or May 2010 that the recruitment had been cancelled. This different treatment 'meted out' is even justified in the respondent's affidavits. And whereas after the applicant's appeal to Vedalankar to see to the finalization of his appointment, he was sent not one but two vague letters pretending that it had been resolved not to fill the vacant Senior Litigator posts (no record whatsoever exists to vouch this) so as to create a patina of legality, Skibi got no more than a phone call to tell him that his hoped-for transfer to Mthatha close to his home at Bizana had been cancelled. But this by the way; as said, this different treatment was not the applicant's complaint.

288. The respondent's justification advanced to the applicant and to this court before trial was that the applicant's recruitment was not preceded with for budgetary reasons. This was its pleaded defence and the respondent was bound by its pleadings at trial.

289. At trial however, Nair came up with a new story that featured nowhere in the respondent's correspondence, pleadings or affidavits, namely that it was not possible for practical reasons to convene the so-called second round interviews until mid-February 2010. A closely similar excuse was given by Nair to the Minister and Parliament. When the applicant exposed this practical excuse as a lie in his first statement of claim and in his application for leave to subpoena Mlambo JP (before his discovery on the eve of trial that Nair had ghost-written his reports), Mtati, on Nair's

instructions, and confirmed by Nair on affidavit, retracted this explanation as 'an error', 'palpably an error'.

290. So it was never the applicant's pleaded case for trial that any practical obstacles prevented the prompt finalization of the applicant's appointment. Its case for trial was that budgetary insufficiency prevented the applicant's appointment.

291. The court was therefore wrong to accept Nair's new practical excuse for not proceeding with the recruitment, never pleaded, and indeed retracted by him on oath before the case.

292. The pleaded defence was budgetary. As late as the morning of the trial the respondent repeated on affidavit in its failed application to quash the applicant's subpoenas that budgetary constraints *at the time the applicant was interviewed and recommended prevented his appointment*.

293. This lie also told earlier, and repeatedly, is blown to pieces by the hard documentary record. This record unquestionably exposes the budgetary defence as a false pretext advanced to camouflage the true reason for halting the applicant's appointment, and the court was wrong not to find this.

294. Ad paragraph 73: The court agreed with Nair's evidence in court that he didn't have to sign his approval or otherwise (with reasons if negative) of the selection panel's recommendations at the foot of the recommendation report emailed to him. But since Nair's evidence about this is repeatedly contradicted by the respondent's own pleaded and sworn case before trial, the court was wrong to accept Nair's evidence radically at odds with the respondent's own pleaded and sworn case.

295. What's more, the recommendation form provided for Nair to approve or disapprove, with his signature in this box or that one, the recommended candidates *for second round interviews*, and on the respondent's own repeatedly pleaded and sworn version Nair had to approve or disapprove the recommended candidates for second round interviews (under Nair's illicit, unauthorised, incompetent second round interview scheme that he'd devised, whereas the Approval Framework read with the Recruitment code required Nair to record his approval or disapproval of the recommendations, with Vedalankar's agreement).

296. The Recruitment code and Approval Framework do not permit legally unqualified persons like Nair, Clark and Makokoane to re-interview Senior Litigator candidates duly selected and recommended by selection panels of the respondent's senior lawyers in KwaZulu-Natal.

297. Indeed, as the judgment very rightly suggests, it's perfectly absurd that Nair should have to first approve the recommended candidate for his so-called second round interview; then approve him again in committee with the so-called second round panel (excluding Vedalankar); and then approve him a third time (now with Vedalankar).

298. Nair's second round interview scheme was plainly illegal; and although embarrassing, the court ought to have recorded its finding that Board chairperson Mlambo JP's participation in this illegal scheme, as a non-executive director whose only power in recruitment is limited to approval of the appointment of the NOE and CEO, has been unlawful, whatever his fine intentions.

299. The court failed to note the further gross irregularity of Nair's second round interview scheme in not keeping minutes and recording the proceedings – as in the case, admitted by the respondent, of the applicant previously selected for the Pietermaritzburg Senior Litigator post, but rejected off the record by the second panel; and therefore probably also the case with the candidate that the second panel approved for Port Elizabeth, re-interviewed on the same day as him. (They were the only candidates re-interviewed, not the eliminated candidates too, as Nair lied in court; but this is for the police.)

300. Ad paragraph 74: The court failed to address itself to the substance of the applicant's attack on the illegal second round interview scheme, namely that it was ultra vires, incompetent, and unlawful for all the many reasons he gave in evidence and repeated in argument; and the court was wrong not to adjudicate this ancillary issue pertinently raised by the applicant in his amended statement of claim, and find for all the reasons he set out that Nair's unauthorised, off the record, second interview scheme was illegal and therefore no lawful prerequisite to the finalization of the applicant's appointment.

301. Indeed the applicant never suggested that Nair's second round interview scheme violated Section 6(1) or the EEA, as correctly stated in the judgment, but this was irrelevant to the decision of his unfair discrimination complaint.

302. The court wrongly found that the applicant's demonstrations that Clark, Vedalankar and Nair all lied to him about the reason his appointment had not been finalised did not lay the basis for his claim that he'd been unfairly discriminated against under cover of a lying budgetary pretext falling foul of Section 6(1) of the EEA. The court failed to apply settled law in this regard.

303. The court wrongly suggested that the applicant's proper remedy was to take the matter on review. Quite the contrary, he perfectly properly referred his unfair discrimination complaint brought under the EEA to the CCMA for conciliation, as the Act required of him, and thereafter, upon the issue of a certificate of non-resolution, referred it to this court for trial, as the Act further required of him. The court wrongly

suggested that the applicant shouldn't have wasted its time referring his claim to it under the Act, but should rather have gone seeking justice somewhere else in a different sort of case.

304. The court wrongly rejected the applicant's evidence that the Pietermaritzburg and eight other Senior Litigator post at various seats of the High Court around the country are critical posts. It was common cause at trial that the top echelon Senior Litigator posts were critical, because the respondent duly categorised them as such in its own pleadings.

305. Nair's obvious perjury that the respondent's most junior professional posts are critical – whereas its most senior specialist Senior Litigator posts, specifically reported to the Minister and to Parliament as having been filled in completion of the Strategic Plan, are not critical – had only to be stated to be rejected.

306. Yet like Nair's many other obvious dull lies, the court accepted and believed his evidence about this, even as it was contradicted by the record and by the respondent's own pleadings.

307. Since it was common cause on the pleadings that the Pietermaritzburg Senior Litigator post was critical, the applicant wasn't required to present evidence to prove it was. But invited by the respondent's counsel early in the applicant's evidence to refer to the vast documentary record in his heads of argument rather than walk the court through it all, the applicant did show it was critical (even though this fact had already been admitted – actually volunteered).

308. Likewise the applicant again unequivocally showed in his heads, with reference to the respondent's records, that Nair's ridiculous allegation that the respondent's most junior professional posts were critical, not its most senior ones, was a blatant lie told under oath. The court was accordingly wrong to find the applicant never proved the post in question is critical.

309. Ad paragraph 75: The court's costs order against the applicant was unfair and at odds with legal precedent in unsuccessful suits to vindicate fundamental rights. After painstakingly carefully and very thoroughly interrogating the respondent's budgetary justification for the abortion of his recruitment by way of three successive requests for records under PAIA, and then finding this budgetary story unsupported and contradicted by the respondent's records extracted from the respondent in the face of considerable sustained resistance, causing him much lost time and hardship, the applicant finally referred his claim to this court for trial more than a year-and-a-half after the occurrence of the unfair discrimination he complained of.

310. A substantial part of the costs incurred in the case then arose on account of the respondent's fully documented consistent failures and refusals to discover documents duly requested by the applicant for trial, calculated to hinder the applicant establish the true facts, and the trial court ought to have marked its disapproval of the respondent's deplorably corrupt conduct in the litigation this regard, calculated to pervert the true and just determination of the applicant's claim on a full ventilation of all available relevant evidence.

311. The court should have likewise marked its disapproval of the further extraordinarily dishonest manner in which the respondent conducted its defence of the action, stooping to telling the foulest blatant lies about the applicant on affidavit (abandoned at trial) to cast him in the worst possible light and to poison the court against him before the trial began.

312. That is, the respondent corruptly defamed the applicant to prejudice the court against him in order to defeat the ends of justice (for precisely which criminal conduct US President Richard Nixon's special counsel Charles Colson was convicted and jailed). Yet all this went unremarked in the judgment.

313. The court accepted that the applicant made out a prima facie case for unfair discrimination, as evinced by its dismissal of the respondent's application for absolution at the close of his case, i.e. the court implicitly held that the respondent had a case to answer. As in the Barnard case. So the court ought to have made a costs order in accordance with the precedent followed in the said case, in which no orders for costs were made against the applicant for any of the litigation commencing in the Labour Court, proceeding through the LAC, the SCA, and finally the Constitutional Court, where she ultimately lost her bona fide unfair discrimination claim.

314. As a court of law and equity, the court had no good reason to annihilate the respondent in costs for bringing a carefully considered and prima facie well-supported claim to vindicate his fundamental right to political equality guaranteed by section 9 of the Constitution, after decades of oppressive political prejudice and repression during the apartheid era.

315. Punishing bona fide grievants embarking on such difficult litigation to vindicate their fundamental rights has the negative effect of chilling and deterring others whose rights have been violated and are contemplating approaching the courts for justice. It's established law (the Biowatch case) that such costs orders run contrary to the spirit and intent of our Constitution, and are contrary to public policy.

316. In the situation, the applicant respectfully contends that the LAC is likely to find differently from the trial court and uphold his claim, and that he has accordingly made out a sound, triable case for appeal.

317. On appeal, the applicant will argue that the court massively prejudiced him in the presentation and proof of his claim by wrongly and unfairly holding at the outset that he would not be permitted to cross-examine the respondent's officers whom he'd subpoenaed for trial. And that because he appreciated that they were already hostile when he subpoenaed them, he wouldn't be able to have them declared hostile for this purpose.

318. No good reason in fact or principle existed for the court's substantial hindrance of the applicant in this manner. In the U.S., for instance, Rule 607, 'Who May Impeach a Witness' under Article VI: 'Witnesses' contained in the 'Federal Rules of Evidence' provides: 'Any party, including the party that called the witness, may attack the witness's credibility.' Citing a wide range of supporting state evidence codes and reported decisions, the 'Notes of Advisory Committee on Proposed Rules' explain: 'The traditional rule against impeaching one's own witness is abandoned as based on false premises. A party does not hold out his witnesses as worthy of belief, since he rarely has a free choice in selecting them. Denial of the right leaves the party at the mercy of the witness and the adversary.'

319. Precisely, and the court ought to have ruled accordingly. If there's been such an old rule in South African law, it's manifestly unfair, stale, and wrong; and as a court of law and equity, this court should not have invoked it against the applicant to his immense disadvantage, hugely limiting the bounds of the enquiry and impacting hard on the fairness of the trial.

320. Well appreciating that the applicant was not calling the respondent's officers to the witness stand as friendly witnesses to support his claim, but rather had subpoenaed them so as to drive them out of their offices and force them into the hard light of a high court to be examined before a judge on oath under penalty of imprisonment for perjury, the court ought to have allowed and not hampered the applicant in his bid to prove his case, by prohibiting him from attacking their credibility, given that their honesty in their several written communications with him was very much in issue, as was clear to this court from the applicant's pleadings and founding affidavits in his interlocutory applications.

321. It was hugely important to the ventilation of the truth and to the just decision of the case – arising from an allegation of illegal camouflaged *prejudice* – that the applicant should have been permitted to cross-examine HRE Clark on the reason for her sharp,

palpable, radical change in animus towards the applicant from cheerfully solicitous in her telephone conversation and first email to the applicant on 14 April 2010 after speaking to KZN Human Resources Manager Baboo Brijlal about the status of the recruitment process five silent months after the interviews, to snarlingly hostile, discouraging, disingenuous, dishonest, opaque, and off-putting in her second email on 30 April, after National Operations Executive Brian Nair had returned to their Johannesburg head office. And why she failed to communicate with him again, as she ought to have done, knowing from Nair that he was the recommended candidate, who – all things being equal – the respondent wouldn't have wanted to lose.

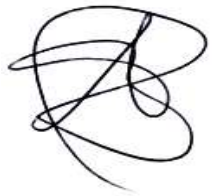
322. It was even more important to the ventilation of the truth and to the just decision of the case that the applicant should have been permitted to cross-examine CEO Vedalankar inter alia on (i) why she unlawfully disregarded and thereby tacitly refused, and then expressly refused the applicant's entire PAIA request for 51 specified records in August probing the circumstances in which his appointment had been aborted, under cover of a fake quotation from a reported judgment claimed to justify her refusal, in which words were attributed to the judge that she never wrote, whereas her actual reported dicta squarely confirmed the applicant's entitlement to the records he'd requested; and persisted in illegally refusing his PAIA requests in her second letter; (ii) her false claims concerning the respondent's budgetary issues, falsely linking them directly to the abortion of the Pietermaritzburg, Durban and Mthatha Senior Litigator appointments, (iii) her concealment from the applicant in October 2010 of her information to the Portfolio Committee a week earlier that the respondent's budgetary uncertainty had passed, but which the full record anyway shows never had any bearing on Senior Litigator recruitment, and her repeated lies to the applicant in her January 2011 letter that the respondent was still under financial pressure and faced a deficit, when, after the December 2010 OSD payment, it wasn't and didn't. Quite the contrary, the respondent reported a huge budgetary surplus in 2010/11, and in 2011/12 too. And (iv) her faking of Mlambo JP's letter on her own computer, pasting in a scanned image of his signature at the end of it (admitted in the pleadings), tersely dismissing the applicant's complaint to the Board about her illegal refusal to comply with his PAIA requests and the indications that the abortion of his recruitment had been illegally motivated.

323. The applicant respectfully craves directives that:

(a) this application not be disposed of in chambers in the ordinary course, but that the applicant be afforded an oral hearing in open court on the record at which to argue it; and,

(b) the respondent be ordered to hand over to the applicant the transcript of the trial record it has printed for him, so to enable him to argue his appeal application on level ground with the respondent, where necessary precisely reciting the evidence with reference to the transcript page and line numbers.

Signed at Eshowe on 3 October 2014.



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(Ref: Mr Thembile Mtati)

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

In re: Case D529/11

In the matter between

ANTHONY ROBIN BRINK — Petitioner

and

LEGAL AID SOUTH AFRICA — Respondent

PETITION FOR LEAVE TO APPEAL AND TO LEAD NEW EVIDENCE ON APPEAL

To: Judge President Basheer Waglay, Labour and Labour Appeal Courts of South Africa, and to the judges designated to consider this petition.

And to: Legal Aid South Africa
c/o Durban Justice Centre
332 Anton Lembede Street
Durban
(Mr Ngcamu)

The petitioner, Anthony Robin Brink, applies for an order granting him leave (i) to appeal to the Labour Appeal Court against the dismissal of his unfair discrimination claim with costs by Cele J in the Durban Labour Court on 18 September 2014, his application for leave to appeal and to present further new evidence on appeal having been refused on 27 November 2014, and (ii) to present further new evidence on appeal.

The petitioner's supporting affidavit under rule 4(1) of the Labour Appeal Court Rules is annexed hereto.

Signed at Eshowe on 7 December 2013

ANTHONY ROBIN BRINK
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IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

In re: Case D529/11

In the matter between

ANTHONY ROBIN BRINK — Petitioner

and

LEGAL AID SOUTH AFRICA — Respondent

SUPPORTING AFFIDAVIT

I, Anthony Robin Brink, affirm:

1. I am an adult male, 55, an advocate of the High Court of South Africa of three decades standing, currently resident at 1 Boast Street, Eshowe, KwaZulu-Natal, where I'm based as an acting magistrate on short-term renewable contracts pending the correct decision of this most important case; and I am your petitioner. This affidavit sets out my case for your leave to appeal, and present further new evidence on appeal, in the form prescribed by LAC rule 4(1). To comply with the stricture imposed by rule 4(3), I've limited it to just 50 paragraphs, so it can't be and isn't exhaustive. For concision, I'll refer to the respondent as 'LASA'; to my main heads of argument as 'my heads'; to the judgment in the case as 'the judgment'; to my application for leave to appeal as 'my application'; and to the judgment refusing it as 'the refusal'. These documents will be bundled with this petition. My considered specific approach in preparing this affidavit has been dictated by the wider public dimensions of the case to be mentioned.

2. As I'll show, this is an extraordinarily serious matter with colossal implications extending way beyond my personal interest in its just resolution. It concerns the personal and professional integrity of a sitting judge president, formerly of this court, and that of the most senior management executives of a major public entity. I speak of the perversion of separate Ministerial and Parliamentary enquiries by dint of multiple, objectively demonstrable lies, and different lies told variously to me, to the LASA Board, to the SAHRC, and to court (different lies told in the pleadings and interlocutory affidavits, and

then at trial), and of the gross breakdown of proper corporate governance and the rule of law at LASA, all of which the trial judge looked past in his seemingly clear and definitive, but in fact deplorably inattentive, glib, crude, and perfunctory judgment, riddled with the most basic legal and factual misdirections, omissions and non-sequiturs, and characterised by his failures over and over again to consider the radical contradictions and the ludicrously improbable, manifestly untruthful, and objectively contradicted evidence of LASA's single witness at trial, National Operations Executive Brian Nair.

3. I'll advert later in this affidavit to the capital misconduct and massive and pervasive corruption to which I allude here, as well as to the judge's own gravely prejudicial misconduct in the case that thwarted a full and proper ventilation of the issues that I looked to him and trusted him to try.

4. In his refusal the judge didn't treat the clear-cut new evidence surfaced after trial showing unequivocally that Nair had lied to him on oath in two respects.[1] To the judge, Nair's categorically proven repeated mendacity in court made no difference to his assessment of the credibility of his evidence. Your lordships can hardly agree.

5. The judge elliptically conceded[2] his fundamental legal misdirection, identified in my application,[3] that in deciding the case he'd misallocated the final onus of proof, which he'd placed on me[4] instead of on LASA. He then sought to avoid the fatal ramifications of this radical error by two means:

6. First by stating that the Employment Equity Amendment Act, which reversed the onus of proof in unfair discrimination claims by legislation, was only proclaimed in August 2014, after the trial and argument of the case, and didn't have retrospective effect – failing to note that the amendment merely codified the international jurisprudence on the point, supported by the International Labour Organisation and therefore prescriptive and binding on him.[5] That is, the onus was reversed and lay on LASA, even before the amendment of the Employment Equity Act. I treated this crucial, foundational aspect

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[1] Application for leave to lead further evidence (Part One of the application). I'm confident that several pending PAIA requests that I filed after the case, testing novel, surprising claims Nair made at trial – unanticipated by the correspondence, reports, pleadings and interlocutory affidavits, and at odds with them – will yield further cold print evidence of Nair's prolific perjuries at trial, and of his successful fraud on the judge. I'll seek leave to lead this new evidence on appeal, once it's to hand.

[2] Refusal, paragraph 5.

[3] Application, paragraphs 191–211.

[4] Judgment, paragraphs 65 and 67.

[5] EEA, section 3, law and case bundle, pages 16–17.

extensively in my application, quoting the authorities chapter and verse.[6] The judge's response was to silently look away.

7. And second by asserting that even if I was right about the incidence of onus, irrespective of where it lay his decision wouldn't have been any different – notwithstanding that LASA relied entirely on the mere say-so of its single witness Nair, unsupported by any records, and indeed contradicted by them, a witness the judge acknowledged I'd shown to have been 'not generous with the truth'[7] on numerous scores.[8] Instead of considering the implications of this for Nair's credibility as a witness, he took him at his word,[9] mechanically reciting his evidence as gospel, without any endeavour to assay its veracity. It seems to have been inconceivable to the judge that such a high public officer could be a practised, confident, spontaneously inventive, unctuous, bare-faced, abject liar.

8. In his refusal, the judge failed utterly to address and deal with the rest of my attack on his judgment in my application, in which I demonstrated all his basic errors, too many to recite here, including the huge prejudice he caused me by refusing to allow me to cross-examine LASA's officers I'd subpoenaed for the purpose,[10] thus depriving me of some major artillery I'd lined up; and he swept the whole thing – all 59 pages and 323 paragraphs – off the table in a single dismissive paragraph.[11]

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[6] Application, paragraphs 204–11.

[7] Judgment, paragraph 67. I'm currently preparing perjury charges for the criminal prosecution of Nair and other officers for their numerous lies told under oath in this matter to date, and collecting further evidence for this purpose using PAIA. Predictably, nearly all my first three PAIA requests filed after trial were illegally refused on legally spurious grounds, and three applications I've brought to compel are currently pending. I'm awaiting responses to four subsequently filed further requests. I've just discovered from the SAHRC that LASA has once again failed to report its refusals in its 2013/14 report as required by section 32 of the Act, and has concealed its reliance on entirely irrelevant and incompetent sections of it. Despite having been previously censured by the SARHC and taken to task by the Portfolio Committee for this (record, page 472, lines 4–25 to page 477, lines 1–7), it's now the third time that LASA has falsely and deceptively reported to the SAHRC for the misinformation of the National Assembly in turn, to conceal its illegal refusal of my PAIA requests to suppress documentary evidence of corruption in executive management.

[8] Ibid.

[9] Judgment, paragraph 69, last sentence for instance. (By the way, contrary to the judge's misdirected and irrelevant finding here, it was not my case that Nair knew of my background other than from my CV, and later my letter to Vedalankar in July 2010 detailing it further – the first he pretended not to have read until more than a year after receiving it (record, page 416, lines 19–25 to page 417 lines 1–2), and the second he pretended to have stopped reading at precisely the point it began dilating on my political background (record, page 460, lines 3–25 to page 461, lines 1–5); but this latter lie is exposed by his different story to the Minister and to Parliament in the reports to them that he wrote for Mlambo JP to sign and submit to them, which he later repeated even more precisely on affidavit: heads, paragraphs 153–7.)

[10] Application, paragraphs 317–322.

[11] Refusal, paragraph 5.

9. My contentions on the law of costs in unsuccessful constitutional litigation brought to vindicate a fundamental right likewise went completely ignored. That matter alone is eminently fit for appeal, particularly because the judge gave no reasons for condemning me in costs.[12] Which is to say to penury for the rest of my life.

10. Notwithstanding the mountain of papers[13] and the duration of the trial,[14] the case was really quite simple to anyone paying attention.[15] Pared to the bone, here it is:

11. In November 2009 I was interviewed for LASA's top professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg (there's a twin post at Durban) – repeatedly advertised, and twice in the year that I applied for it. Five strangely silent and glaringly unprofessional months later, I telephoned LASA's national Human Resources Executive Amanda Clark to ask the result. (Nair was out of head office the day I phoned.) She replied she knew nothing about me or the recruitment, helpfully undertook to expedite it, and cheerfully encouraged me to contact the provincial HR manager for updates. I did, but on later finding him no wiser, I reverted to Clark. (Nair was now back.) This time she avoided and didn't return my repeated calls made over several days, with messages left for her. So at last I emailed her, pleading for information about the upshot of the interviews one way or the other, as I needed to settle my plans. She answered stunningly rudely[16] and with studied disingenuity and opacity, and in as many words told me to get lost and not to contact LASA again. Her insolent proposal that I withdraw my application for the post back-handedly confirmed to me that I'd been selected for it, but announced

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[12] In view of his criticism of Morris and Fourie in their case against LASA he'd recently decided (law and case bundle, pages 94–7), in which he'd deprived them of part of their damages, I pertinently enquired of the judge during oral argument whether there was anything about my conduct in the litigation that he thought remiss, so that I might address it and defend myself before he made any possible adverse finding about it. There was nothing. In awarding costs against me, seemingly in line with the general rule that costs ordinarily follow the result, the judge parroted the language of the costs order made in the Germishuys case (Case 10 in LASA's List of Authorities, and cited in footnote 15 of the judgment) – a very different case from mine, in which some disgruntled white woman thinking herself better than a black candidate selected for a post complained of unfair race discrimination without any evidence of it at all. In contradistinction, the judge extensively enumerated (his paragraphs 30–41) all the objective indiciae pointing to unfair discrimination in my case – in the absence of a convincing non-discriminatory reason proved by LASA for aborting my appointment. He accepted I'd made out a prima facie case for such a finding, which is why he dismissed LASA's application for absolution after my evidence. See further, record: page 480, lines 1–25 to page 482, lines 1–22 (Nair clearly dissembling in reply).

[13] Heads, paragraph 6: all the papers in the case are described and catalogued here.

[14] Nine days, 23 July to 2 August 2013.

[15] See paragraph 47 below.

[16] The redacted excerpts quoted in the judgment don't fully convey her snarling tone. The full email is included in my trial document bundle, at page 256.

that I wasn't wanted – especially in light of the exceedingly unpleasant tone of her email, a total reversal of her initial open, impeccably professional, friendly one. Plainly, something seriously improper was afoot.

12. After three further strangely silent months I wrote to CEO Vedalankar, pressing for the finalization of my appointment. Nair answered on her behalf, baldly alleging that it had been decided not to fill LASA's Senior Litigator posts. Now naturally, had LASA duly taken this decision – not to fill one third, 3/9, of LASA's most senior specialist professional positions – there'd have been a record of this, for as Cachalia JA has pithily observed:

> 'Surely there's a letter of appointment, there's a note, there's a minute. Government does not operate like a glorified spaza shop ... In the absence of any paper trail must we just accept that [officials in the Presidency] are people of standing and they will never mislead, just like [then US Secretary of State] Colin Powell never misled the Security Council [over Iraq's alleged possession of "Weapons of Mass Destruction"]?' – 'State grilled over "secret" Zimbabwe report', *Mail & Guardian*, 26 November 2010.

13. So I tested Nair's claim with a comprehensive request for records under PAIA. It was refused in toto, under cover of a fake misquotation from a reported judgment claimed to justify this, and another bogus ground, later abandoned. And here we reach the point:

14. In her letter illegally refusing my request, Vedalankar justified the cancellation of my recruitment on the basis that:

> '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. ... Therefore the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.'

15. Advanced to me nearly a year after my interview, as I was closing in with PAIA, this was LASA's forced justification for aborting my appointment: budgetary insufficiency, affecting not just mine, but two other equivalent posts.

16. It was an audaciously grand, impressively detailed and ostensibly convincing story. And uttered by none other than the CEO, who would disbelieve it? Again I tested it with another searching PAIA request. Again it was illegally refused; Vedalankar even rejected

my prescribed request fee. But annexed to her letter refusing my second request, she put up some documents claimed 'to demonstrate' her story, and intended to put me off for keeps. Only, they didn't. They flatly contradicted it. This is what they revealed:

17. In January 2010 the Department of Justice and Constitutional Development (as it was then called) had confirmed to LASA that funding for phase 1 of the OSD scheme for professional staff salary increases would be included in its baseline budget for 2010/11. The Treasury confirmed it too. But on 10 March LASA learned that it hadn't been. So Vedalankar wrote to the Department a week later, raising LASA's concern about this and noting that since it had already commenced implementing OSD phase 1, LASA would be running an unbalanced budget without this funding: R23.8 million in the red – prohibited by the PFMA. She sent a reminder the following month, warning that unless the money was paid, LASA would have to reduce court coverage, causing backlogs and delays.

18. Vedalankar was referring to LASA's public defender posts serving the lower criminal courts at the bottom of LASA's professional staff establishment – not any other higher professional posts and certainly not Senior Litigator posts at the very top of it – and she and other management executives, Nair included, were explicit about this later on. (She meant reduce in the sense of not fill all the budgeted lower court posts; it's common cause no posts were ever cut.)

19. To interpose: LASA's annual and performance reports to Parliament which I independently sourced and analysed showed that its concern about when its OSD phase 1 funding for the year would be paid made zero difference to its recruitment of legal and other staff. Quite the contrary, this spiked in the April to June 2010 first quarter,[17] and masses of new posts were created.[18] And the reason this boom in new staff recruitment and new post creation occurred in the implementation of the Strategic Plan was because, contrary to Nair's lie in court about it[19] – he later reversed himself[20] and then again[21] (the judge didn't notice) – there was never any question that LASA's OSD phase 1 funding would be paid; the only question was *when* – because it had been paid in the previous financial year, also separately from the main budget transfer, and

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[17] Record, page 423, lines 3 – 25 to page 425, lines 1–9. Nair waffles uselessly trying to evade the sharp point.

[18] Record, page 370, lines 17–18 and page 371, lines 6–8. Lying stupidly in the teeth of LASA's own statistics, confirmed and admitted by LASA before trial, which showed that in the first quarter alone almost as many new posts were created as in the whole of the previous year, Nair repeatedly denied that LASA's staff establishment had increased during the year, and claimed it hadn't changed.

[19] Record, page 344, lines 14–16.

[20] Record, page 420, lines 23–5 to page 421, lines1–3.

[21] Record, page 464, lines 17–20.

afterwards. And the Minister had assured LASA that it would be provided for in the mid-term national budget later in the year, as indeed it was. That is, the money was on its way, and no doubt about it.

20. The OSD uncertainty arising on 10 March 2010 made zero difference to Senior Litigator recruitment specifically: I later found out that two weeks later, while my appointment lay in the deep-freeze, Nair and his Legal Services Technical Committee (LASA's operational engine-room)[22] resolved to recruit a Senior Litigator for Mthatha, and ordered that the budget for it be transferred from Kimberly and that the new post be advertised immediately. As it was:[23] the post was advertised in April, and a recommendation was made in late May – six months after my recommendation the year before and nothing done to finalise my appointment.

21. As the records Vedalankar supplied me show, by July 2010 the OSD phase 1 money wasn't yet in, so Nair suggested to her, the COO, CFO and HRE that recruitment to 56 lower criminal court public defender posts be frozen, more of them if necessary and some even lighter paralegal and administration posts if still necessary after that to meet the shortfall. Not any senior posts. They agreed, and proposed to the Board via the COO[24] that public defender coverage of the lower criminal courts be temporarily limited, in other words that recruitment to some of these vacant posts be frozen – but not any other posts, and certainly not any critical ones. Quite the opposite: they specifically proposed to the Board that as a cost-saving measure the filling of critical posts be prioritized.[25]

22. To interpose again: Contrary to the judge's flat wrong finding that I hadn't shown Senior Litigator posts were critical,[26] this was common cause on the pleadings.[27] Nonetheless, in view of Nair's unbelievably foolish dissimulation at trial – he was a pathetic liar[28] – contradicted by the documentary record and by LASA's pleaded case, that LASA's entry-level lower criminal court public defender posts were critical, and not its top

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[22] Record, page 334, lines 5–16.

[23] Record, page 456, lines 4–6.

[24] Record, page 383, line 19.

[25] Record, page 375, lines 1–4.

[26] Judgment, paragraph 74. C.f: record, page 481

[27] Pleadings bundle, original response, page 170, paragraph 48.9 and pre-trial conference bundle, answer to agenda, page 57, paragraph 43.1, and page 58, paragraph 52.1. (The respondent then contradicts itself in the same pleading: page 63, paragraph 79.1.)

[28] The judge, formerly a criminal court magistrate, didn't remark generally on Nair's repeated immaterial and redundant loquacity as a device to avoid answering my questions, and his constant evasiveness throughout my cross-examination of him.

professional echelon specialist Senior Litigator posts,[29] I showed at trial[30] and called the judge's attention in my heads to all the manifold evidence that Senior Litigator posts are indeed critical, and that the bottom-rung lower criminal court posts can't possibly be and aren't.[31] The judge evidently didn't read that far.

23. At its meeting at the end of July 2010, the Board approved national executive management's proposal to temporarily freeze recruitment to some lower criminal court practitioner posts until the end of the year, and to make up the balance of the deficit at that time (arising from the delayed transfer of LASA's OSD phase 1 funding) from unspent savings. I later discovered that recruitment to other posts continued normally in the second quarter July to September 2010; and that the effect of the approved freeze was to dampen the overall increase in staff recruitment, as compared with the preceding and succeeding operating quarters.

24. All this is fully and comprehensively documented in the records Vedalankar supplied me in January 2011. And what they unequivocally show is that she lied to me in October 2010 about the reason my appointment was aborted. That is, to camouflage the true reason, she'd fed me a false cover-story, as very smooth and convincing as it sounded. But as I probed and tested it relentlessly, it came undone in light of the extant documentary record and the non-existence of records that would have existed had the budgetary story given me been true. The lies then multiplied chaotically in all directions in the classic dynamic of a disintegrating cover-up.[32]

25. At trial I mentioned my conclusions from the evidence I'd just found of this[33] that Nair had ghost-written Vedalankar's letters,[34] and Board chairperson Mlambo JP's subsequent false reports to the Minister and to Parliament to pervert their enquiries into my

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[29] Record, page 373, lines 21–5 to page 374, line 1; page 375, lines 10–11; and page 480, lines 19–24.

[30] Record, page 481, lines 2–22.

[31] Heads, paragraphs 229 and 160. A pending PAIA request I've filed for a list of all LASA's critical posts, both filled and vacant, the sum of which (there are only about two hundred or so) LASA reports annually to the Minister and to Parliament, will further clinch the issue and expose yet another of Nair's obvious lies on oath at trial, which the judge accepted and believed.

[32] Heads, paragraphs 142 and paragraphs 205–6; and record, page 502, lines 11–24. After trial, Nair's confirmatory affidavit surfaced, in which he'd confirmed the lie told by Corporate Services Executive Thembile Mtati on his instructions: application, paragraph 227; and record, page 393, lines 18–25 to 394, lines 1–22.

[33] Heads, paragraphs 233–4.

[34] After trial, I noticed the evidence that junior counsel drafted Vedalankar's second letter, having been briefed to deal with my PAIA requests (per Mtati on affidavit, confirmed by Nair). I've PAIA'd his fee-notes and expect they'll confirm it. But there's little doubt on the evidence that Nair ghostwrote Vedalankar's first letter, and lied to the judge in denying it, just as he eventually admitted (initially disputed) ghostwriting Mlambo JP's reports to the Minister and to Parliament.

complaints, and that for this reason I held them both clear. But in his evidence, Nair denied any hand in Vedalankar's letters to me;[35] and although in evidence he ultimately admitted[36] writing Mlambo JP's reports, he could 'only assume the Judge personally wrote that'[37] (having first insinuated it might have been Vedalankar[38] and then again)[39] i.e. that Mlambo JP had amplified the report for the Minister before sending it to Parliament, with its further lies added about LASA's compliance with my three PAIA requests, and the nature and scale of my claim I'd just referred to the CCMA for conciliation.[40] (It's quite clear that Nair lied to the judge about this, and that he, not Mlambo JP, amplified the report with these additional lies.)[41] This is to say, after I'd told the judge that I held them clear (more about this below), Nair went on to directly implicate Vedalankar and Mlambo JP in lying to me, to the Minister and to Parliament.

26. True to the Minister's assurance, the OSD money was indeed included in the mid-term budget in October 2010, as Vedalankar informed the Portfolio Committee on the 12th – but not me, from whom she concealed this hotly material fact in her letter to me six days later, the better to maintain her pretence that LASA was still too skint to hire me.

27. Recruitment to the limited number of temporarily frozen lower criminal court posts then resumed in the third quarter October to December 2010, and all 100% of the posts were filled; and the increase in new staff recruitment generally then peaked for the year. But my appointment remained permanently frozen off the record, as well as the two other vacant Senior Litigator posts at Durban and Mthatha – although the irregular circumstances in which the appointments to these posts were aborted, also off the record, were quite different.[42]

28. LASA received its OSD money on 15 December 2010. In her second letter to me in January 2011, illegally refusing my second PAIA request testing her financial alibi for the abortion of my appointment, not only did Vedalankar conceal this payment from me, she positively lied to me, again and again, that LASA was still in a financial jam.[43] In fact, with

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[35] Record, page 442, lines 5–25 to page 445, lines 1–24.

[36] Cross-examining me, LASA's counsel persistently disputed Nair's authorship of the false reports signed and submitted by Mlambo JP. I don't yet have the complete record to refer to herein, only a photocopy of Nair's evidence made for me as a favour by the registrar. I've now applied for a copy of it under PAIA.

[37] Record, page 355, line 1.

[38] Record, page 354, lines 1–3.

[39] Record page 482, lines 18 – 25 to page 483, lines 1–21.

[40] Heads, paragraph 234.

[41] Heads, paragraph 235.

[42] Heads, paragraphs 178–9 and 188–204.

[43] Heads, paragraph 29.

the payment of its OSD allocation, LASA enjoyed a very substantial budgetary surplus that year.[44] (And Vedalankar, Nair and other national management executives took home magnificent, unprecedented bonuses.)

29. In March 2011, responding to my third PAIA application, Vedalankar, Nair and Clark all confirmed the lying budgetary excuse on affidavit. That is, LASA's CEO, NOE and HRE all swore the lie was true.

30. Even though it was already obviously false, the financial alibi was inadequate to cover and explain Nair's inaction in finalising my appointment in the initial three-and-a-half month period between the date he received my recommendation on 26 November 2009 and when the OSD uncertainty arose on 10 March 2010. So to patch the gap he concocted another story – later twice retracted by him on affidavit[45] as an obvious error, and consequently nowhere pleaded or alleged in any interlocutory affidavit,[46] then revived by him in court on the basis that his sworn retraction had been a mistake,[47] then contradicted with a different story he told the judge.[48] Who didn't think to note any of this dismal shambles in his judgment.

31. Repeatedly pleading for the Board's intervention in Vedalankar's persistent illegal refusal to comply with my PAIA requests, and the then already clear indications that my appointment had been aborted irregularly, I copied my third petition to the Board in February 2011 to the Minister and to Parliament. Both the Minister and the chairperson of the Portfolio Committee demanded explanations from chairperson Mlambo JP. He referred the matter to Vedalankar, who passed it to Nair. In his reports written for Mlambo JP to sign and submit to pervert the ministerial and parliamentary enquiries I'd initiated, Nair now claimed that what initially held up the alleged next step in my recruitment – a so-called second round interview – was difficulty encountered in coordinating a date suitable for all members of this panel to meet. Another smooth and ostensibly convincing story. After I exposed and refuted it as an outright lie in my original statement of claim, Nair retracted it on oath as 'an error ... palpably an error' that

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[44] Heads, paragraph 30.

[45] By way of a confirmatory affidavit supporting Mtati's affidavit claiming this on his instructions.

[46] LASA's several interlocutory affidavits all essayed into the merits of the main case.

[47] Record, page 477, lines 23–5 to page 478, lines 1–6.

[48] Record, page 339, lines 18–25 to page 341 lines 1–25.

Mlambo JP had made.[49] Except that Nair himself was the author of this brazen lie to the Minister and to Parliament; it was not Mlambo JP's 'error'.[50]

32. But Mlambo JP knew full well that this new story was false, because as a member of this so-called second round interview panel he'd never been contacted for a date. At trial Nair claimed, quite absurdly, that he never opened the recommendation and CV email attachments that he'd specially telephoned for, not until more than a year later, when he did so out of simple curiosity. (The judge found this perfectly credible, even though Nair had told a different story on affidavit before trial, which destructive contradiction I pressed in my heads.[51] The judge didn't note this, and accepted and believed[52] Nair's childishly obvious, self-contradicted new lie told in court, which had featured nowhere in any correspondence, report, pleading or affidavit before trial, all justifying LASA's failure to proceed with my appointment. This was one of the fundamental failures of the judgment.)

33. Fact is, Nair took no steps to set up the so-called second round interview. So, contrary to his lie told to the Minister and Parliament in Mlambo JP's name about this, there was no difficulty fixing a date for it because no attempt was ever made to do so. As said, when I telephoned Clark, also a member of the so-called second round interview panel, in April 2010, five months after my successful interview, she still knew nothing of me and my recommendation or of the KZN Senior Litigator recruitment process. Which means, like Mlambo JP, Nair hadn't approached her for a date either. So Mlambo JP knew full well that the report, which Nair had written for him to sign and to give the Minister and the chairperson of the Portfolio Committee to put down my complaints and pervert their independent enquiries contained a flagrant lie about why no steps were taken to finalise my recruitment in the first few months before the OSD uncertainty arose several months after my selection.

34. Mlambo JP also knew full well that the budgetary justification Vedalankar had fed me to cover the true reason my appointment had been aborted, which Nair repeated in the reports he drew for him, was another lie, because he'd chaired the meeting of the Board in July 2010 at which it approved executive management's proposal to trim costs by temporarily freezing recruitment to some lower criminal court posts only. Not abort three substantially concluded Senior Litigator recruitments and permanently freeze the

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[49] See footnote 37, and the footnote below for particulars.

[50] Heads, paragraphs 143–4.

[51] Heads, paragraphs 153–7.

[52] Judgment, paragraphs 67 and 70–2.

budgeted, funded posts. Mlambo JP knew full well that the Approval Framework required Board approval for any change to the Business Plan, which is why Board approval had been sought to temporarily freeze recruitment to some lower criminal court posts. He knew full well that no lawful decision had been taken to permanently freeze three Senior Litigator posts for budgetary reasons, because the Board he chaired would have had to approve this. It's common cause on the pleadings that it never did, and that the Board has never even been informed that LASA's three remaining vacant Senior Litigator posts, for whose budgeted salaries LASA applies to the Department and is granted funding every year, have been frozen by Vedalankar and Nair for alleged financial reasons. It's common cause that there's no record of this major alleged decision by executive management whatsoever.[53] Deceptively silent about it, Vedalankar repeatedly falsely reported LASA's Strategic Plan 2009/12 to have been implemented and completed as regards the employment of Senior Litigators in her CEO report for 2011/12 to the Minister and the National Assembly.[54]

35. My discovery on the eve of trial of the evidence that Nair had ghost-written Vedalankar's October 2010 letter to me and Mlambo JP's reports to the Minister and to Parliament[55] felt like a condemned man's reprieve: having to implicate Mlambo JP in my evidence at trial was a mortifying prospect.[56] My discoveries about Nair's authorship led me to inform the judge on the first day that I held them clear, and that I held Nair solely responsible for the lies these documents contained.[57]

36. In his chambers on the second day, when I told the judge I still had a lot more evidence to lead, having already blown the fake budgetary pretext to pieces on the facts set out in my Timeline, he warned me: 'I don't want to tell you how to run your case, but don't make the mistake of throwing your net so far out that you catch more than you can bring in.' These were his exact words, spoken off the record, but contemporaneously recorded that evening in emailed reports of the court day to my family and friends. I understood the judge was giving me an indication, as we lawyers say, and a severe indication at that, namely to limit the spray of my case, and keep it fixed on Nair alone, as I'd indicated I intended doing at commencement, and not present any further evidence implicating the big fish; for if I dared make the dangerous mistake of doing so, this would be too much, and it would doom my prospects of succeeding in his court with my claim. It seemed clear

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[53] Record, page 427, lines 6–14; page 433, lines 2–9; and page 433, lines 2–25 to page 434, lines 1–2.
[54] Heads, paragraph 84.
[55] Application, paragraph 229; heads, paragraphs 223–4.
[56] See paragraph 48.
[57] Application, paragraph 230.

to me that the judge wanted the evidence contained. He did not want me to lead more evidence pointing beyond the smaller fry. But as said, Nair himself went on to directly implicate his bosses. He dropped them right in the middle of it.

37. Besides the false claim that LASA didn't have the budget to employ me, Vedalankar, Nair and LASA's Corporate Services Executive and lead in-house attorney Mtati (on instructions) told a colourful variety of other different stories about why my appointment wasn't proceeded with.[58] Among these:

38. After I'd discredited the budgetary pretext fed me for not appointing me, and then the initial delay pretext fed the Minister and Parliament for not immediately proceeding with my appointment, Nair cooked up and fed the Board two brand-new, totally different stories to justify his failure to finalise my appointment at Pietermaritzburg, an internal candidate's promotion at Durban, and another internal candidate's transfer to Mthatha, namely 'recruitment challenges' encountered in filling the posts, and alleged uncertainty that the six incumbent Senior Litigators were up to professional scratch.[59] Both lies.[60] Waffling feebly,[61] Nair was unable to support his first new story[62] and radically changed his second,[63] before which it was repeatedly exposed as a lie by LASA's records.[64]

39. The judge didn't see any significance in all the chopping and changing stories advanced for not finalizing my appointment, to which I called his attention in my heads, for he didn't note them in his judgment. The Labour Appeal Court is sure to.

40. Unlike the judge who didn't note this either, the LAC is likewise certain to point up the destructive implications for LASA's pleaded defence of Nair's abandonment of a major leg of the story initially fed me; confirmed in his, Vedalankar's, and Clark's PAIA affidavits; and repeated in the pleadings and interlocutory affidavits in the case, namely that for budgetary reasons the Mthatha Senior Litigator post was frozen simultaneously with the

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[58] Heads, paragraphs 142, 205 and 206; and record, page 502, lines 11–24. But in his confirmatory affidavit surfaced after trial, Nair had confirmed the lie.

[59] Record, page 359, lines 17–25.

[60] Heads, paragraphs 213–15 and 224–5.

[61] Record, page 360, lines 1–15.

[62] Record, page 398, lines 11–25 to page 399, lines 1–22. And there's never been any suggestion anywhere at any time that the internal candidate selected for promotion to the Durban post wasn't qualified and a good fit for it. As for my qualifications for the post (not a pleaded issue for trial), Nair first dishonestly pretended I'm under-qualified, then dishonestly pretended I'm over-qualified: heads, paragraphs 99–101 and 221; record, page 360, lines 16–25 to 361, lines 1–22. The judge didn't note this.

[63] Record, page 435, lines 9–19. Changing it to pretending that he and the ROEs were concerned that 'we are achieving out purpose with that position' – but being untrue, naturally 'No ... record of this'.

[64] Record, page

Pietermaritzburg one.[65] In court Nair told a completely different story, namely that despite his repeated attempts to persuade her, Vedalankar refused to approve the creation of the post at Mthatha,[66] where it was reportedly sorely needed,[67] after the entire LSTC had unanimously resolved to create it and to transfer the budget from Kimberly, where there was reportedly no need for it,[68] and after the new Mthatha post had been advertised, interviewed for, and a candidate selected for it. It was a risible new lie, sharply contradicting LASA's pleaded and sworn version before trial, unsupported by any record,[69] not alleged in any affidavit or pleading,[70] and contradicted by LASA's recruitment/vacancy statistics for June 2010.[71] But Nair's new lie in evidence made no impression on the judge; as said, he didn't mention it.

41. The LAC is also certain to treat an important aspect of the case, entirely disregarded by the judge[72] (notwithstanding his fine grasp of the specifics of public service appointment procedure displayed in his Baxter judgment),[73] namely Nair's incompetent and illegal so-called second round interview scheme for Senior Litigator candidates – unauthorised by the Board's Recruitment code and inconsistent with its Approval Framework.[74] Unlike the judge, the LAC is certain to remark on the disgraceful breakdown of lawful recruitment procedure at LASA, in blatant disregard of the Board's said regulatory instruments which precisely govern this, and on Mlambo JP's participation in a grossly irregular, prejudicial, and unlawful recruitment practice.[75]

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[65] Heads, paragraphs 188–193.

[66] Record, page 365, lines 10–25 to page 366, lines 1–9.

[67] Record, page 401, lines 7–12.

[68] Record, page 363, lines 8–25 to page 364, lines 1–9 and page 402, lines 3–9.

[69] Record, page 436, lines 8–19 and page 490, lines 6–24.

[70] Record, page 490, line 25 to page 491, lines 1–8.

[71] Record, page 399, lines 9–21.

[72] Judgment, paragraphs 73–4.

[73] Law and case bundle, pages 94–7.

[74] Heads, paragraphs 90–8.

[75] The LAC is also likely to remark on the shocking irregularity of Mlambo JP allowing Vedalankar, the very subject of my complaint to him and the Board about her illegal refusal to comply with my first PAIA request and the indications that her budgetary pretext was false, to fake a letter from him on her own computer while he was abroad, dismissing my 59-page petition in a single sentence, with an scanned image of his signature pasted below it (with his consent, LASA pleaded). Looking the other way as I protested and showed my fundamental rights were being violated. Then, when I petitioned the Board again, insultingly showing me the road and telling the rest of the Board to ignore my further communications. Then defaming me to the chairperson of the Portfolio Committee, in his letter covering his lying report, when I petitioned the Board for the third time, now copying the Minister and Parliament.

42. His lies proliferating in court as he was trying to shore up his collapsing story about why he never signed his approval (or disapproval) of my recommendation by the selection panel as the Approval Framework required of him, and as provided at the foot of the document (with its legal nonsense, at his instance, about a further interview), Nair claimed in court that he didn't have to – a lie repeatedly and squarely contradicted by LASA's pleadings and interlocutory affidavits.[76] The judge didn't note this; again the LAC is sure to.

43. Unlike the judge who accepted and believed it, the LAC is also sure to find stupidly ridiculous and manifestly false Nair's evidence, building on his just-mentioned lie, but again explicitly contradicted by LASA's pleadings and interlocutory affidavits,[77] that all candidates interviewed by the selection panel were eligible for interviews by his so-called second round interview panel, including those rejected and eliminated by the selection panel, and that a candidate rejected by the selection panel could properly have been appointed instead of me[78] – stultifying the whole purpose of the selection process by the selection panel comprised of LASA's most senior lawyers in the region: to identify the most suitable candidate for appointment, as the Recruitment code puts it.[79]

44. The LAC is certain to find Nair's evidence to have been obviously untruthful just about whenever he opened his mouth. On a proper allocation of the final burden of persuasion to LASA, therefore, the LAC is certain to find that LASA failed to justify its abortion of my appointment to the Pietermaritzburg Senior Litigator post for which I'd been unanimously recommended. It failed to do so, because its various explanations given were obviously untrue. So what?

45. Pioneered by the U.S. Supreme Court, there's a finely developed body of international labour jurisprudence, supported by the ILO, and therefore binding on our labour tribunals, regarding what inference may properly be drawn where it's been shown that an employer has lied (or its explanation is not worthy of credence) about its reason given for not hiring a job applicant belonging to a constitutionally protected class (racial, political, etc). Copying and pasting from my heads, the judge very ably set this law out in his

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[76] Record, page 502, line 25 to page 503, lines 1–25; heads, paragraphs 146–7.

[77] Heads, paragraph 148.

[78] My manuscript note of Nair's evidence on which I relied for the above-mentioned paragraph of my heads was off; Nair alleged that all candidates were eligible for his so-called second round interviews, not that all would necessarily be interviewed again: record, page 349, lines 7–15 and 21–3; page 350, lines 10–11; page 407, lines 13–17; page 408, line 25 to page 409, lines 1–25 to page 410, lines 1–2 and 10–12; and page 450, lines 7–10.

[79] Heads, paragraphs 90–8.

judgment.[80] Doing the same, he also accurately set out the facts I presented placing me in such a class.[81] He didn't demur at my evidence that in applying for the post I'd been vulnerable to unfair political discrimination.

46. But instead of applying the law that he'd enunciated, and proceeding to draw the due inference indicated by the evidence – the known facts and the exposed and obvious lies – the judge dismissed my claim to have been unfairly discriminated against on political grounds as 'mere speculation'.[82] As if I'd not set up a plausible, prima facie case for it – all I was required to do under international and local unfair discrimination law – answered with one lie after another. Yet during oral argument, the judge took my point and taxed LASA's counsel with it: that an employer's mental prejudice against a job applicant is rarely announced, precisely because it's unconstitutional and therefore gravely illegal, and must therefore invariably be inferred from a conspectus of all the available evidence, weighed with the probabilities.[83] Besides the pivotal evidence I presented that the various justifications advanced for not appointing me were false and pretextual, the judge entirely failed to consider all the other evidence indicating unfair discrimination reviewed in my heads.[84]

47. To conclude: In bringing my claim against LASA I was aware I was breaking three basic rules: never sue a corporation, never represent yourself, and never sue from principle. But I thought the principle extremely important in our post-apartheid order – that a job applicant should not be prejudiced by his political activism, driven by his moral and social conscience, no matter how opprobrious his cause is generally perceived to be – and that my case was so clear that any attentive judge would grasp it. I did not expect the judge to

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[80] Judgment, paragraph 66.

[81] Judgment, paragraphs 30–41.

[82] Refusal, paragraph 5.

[83] I should disclose that documents that came to hand after the trial, considered with others I already had, point at possible corruption in the selection process; in that although I'd been formally, unanimously 'identified' in the recommendation as 'the most suitable candidate for appointment', as the Recruitment code puts it, it may have been intended to appoint a rejected candidate instead: a former Labour Court judge. And this is why my appointment was quietly iced, until I walked away, making way for his appointment in my place. (Recruitment corruption at LASA is commonplace: the previous recruitment for the same post had also been irregularly aborted off the record after the due selection of a suitable candidate by the selection panel; and I've uncovered corruption in other recruitments I've looked at, including the Mthatha Senior Litigator one, a sham for the books.) I'm investigating this possibility with a pending PAIA request, but I'm not optimistic that the records it will elicit will be decisive. So I'm not charging that the selection process was corrupt, and that my appointment wasn't proceeded with for the reason that the said rejected candidate had been favoured for appointment behind the scenes instead of me, because the evidence I have suggesting this is currently too light. If this changes, the LAC will certainly be told.

[84] Heads, paragraphs 246–7.

be nodding off during the afternoon sessions,[85] and finally claiming perversely, but revealingly as to his negative animus, that I ought rather to have taken LASA's abortion of my appointment 'on review'.[86] As if I shouldn't have come bothering him to deliver the justice I craved, and had laboured bitterly year after year before trial to achieve, in the face of every obstacle corruptly placed in my way,[87] viciously defamed all the while, contemptuously redoubled when I complained of it.[88] In a matter of such enormous importance, and with so much on the line extending far beyond my personal interest in the case, and with so much fact to traverse and complex argument to present, including relevant, applicable international labour jurisprudence mentioned in my opening address, I did not expect the judge to prescribe that our heads shouldn't exceed a manifestly insufficient 'fifteen to twenty pages',[89] suggesting that he'd already made up his mind to toss my case. I did not expect that five months after I filed my replying argument,[90] the judge hadn't even troubled himself to read our heads,[91] and was hearing our oral

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[85] I have an audio recording of the trial on DVD, capturing my repeated unnatural pauses as I waited, horrified, for the judge to reopen his eyes and come to. He was literally half-asleep at times. I dared not risk offending him by asking him to take a coffee break to wake up.

[86] Judgment, paragraph 74. I had no cause of action for any review, and duly referred my complaint to the CCMA and then the Labour Court in compliance with the procedural prescripts of the EEA.

[87] Heads, paragraph 256.

[88] Heads, paragraphs 260–5; record, page 485, lines 4–23. Reckless of their professional obligations as officers of court, LASA's counsel themselves put the boot in, wantonly lying to the judge in their answering heads that my precisely accurate CV was 'grossly inflated', which is to say I'm a liar guilty of CV fraud. (Mokoena SC, who argued the case in court, came into the matter after all heads had been filed, and did not draw the answering heads; and he's consequently innocent of this final defamation of me by LASA's counsel, calculated to defeat the ends of justice by prejudicing the judge against me with more lies to make me appear dishonest and therefore an unreliable witness.)

[89] At the end of the trial, the judge asked for heads of argument comprising four sections, 'background, evidence, analysis and conclusion', i.e. in the form of a draft judgment, so he could 'copy and paste from them', 'to expedite judgment production': a fine idea. But he stipulated not more than 15–20 pages: a hopelessly inadequate, improper and prejudicial limitation imposed on me after such a long and important trial with so much oral and documentary evidence and local and international unfair discrimination jurisprudence to canvass and discuss. Unpicking and refuting LASA's many outright lies and tricky half-truths and cataloguing all the contradictions was an immense job, as will be apparent from a look at my heads. After drawing them, as finely detailed as necessary, comprehensively and meticulously referenced to the documentary record, pleadings, affidavits, to the evidence (my notes), and to my law and case bundle, I prepared an unreferenced summary of 20-pages as directed; but I emphasized both in its head-note and at the oral argument that it was no substitute for my heads. From his several mistakes in the judgment identified in my application in regard to several simple facts dealt with in my heads, it seems the judge didn't read them through.

[90] On or about 6 December 2013 (date of signature).

[91] In his chambers before oral argument on 28 May 2014, the judge said jocosely: 'I think you can assume I'm literate and will read your heads.' The oral argument was set down for three days, 28–30 May, but on the basis just quoted the judge asked us to merely outline our main points; and in the result the oral argument wasn't

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argument without having prepared for it[92] ten months after the evidence, and relying only on his fading and defective memory of it[93] presented in the course of a nine-day trial concluded the best part of a year earlier. In giving judgment, I did not expect the judge to misstate my case, omitting critical facts and including irrelevant matter, [94] and portray as maladroit and whimsical my precisely considered tactical and strategic decisions taken,[95] wrongly forced by him on the record[96] and improperly pressed by him off it.[97] I did not expect the judge to sugar Nair's lies for his judgment, by stretching and exaggerating them to help them go down.[98] And that besides getting the final onus wrong, he should also have placed on me an impossible, pivotal, evidential onus I very obviously didn't bear and couldn't possibly have discharged.[99] And finally after the trial trucking with LASA without my knowledge in unfavourably disposing of my plea for his directive that it hand over the extra copy of the trial record transcript it had printed for me.[100]

48. As said in the beginning, the stakes in this case are massive, and the implications vast. Professional and personal networks and loyalties being what they are in the real world, I appreciated from the outset that I was up against very long odds, and that notwithstanding his oath of office it would be no easy thing for a judge to impeach the conduct of his own (then) court president, and now president of the biggest, most

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long. I repeatedly emphasized during argument that my case was made in my heads, drawn in the form of a draft judgment, as he'd unambiguously implied after the trial he'd wanted. And that my barest sketch of it in oral argument was no substitute. Besides proof of pretext, the further evidence I relied to generate the inference that I was unfairly discriminated against, canvassed in paragraphs 246 –7 of my heads, wasn't recited in the judgment. Its paragraph 46 sets out a wrong, crude mishmash instead.

[92] At the end of the trial, the judge asked us to file written argument, saying that once it was in, he would want to ask us questions. I understood him to mean he'd read our heads, and question us on them. This didn't happen at all.

[93] As evidenced by the judge's many basic factual mistakes, identified in my application.

[94] Judgment, paragraph 46. Besides proof of pretext, the further evidence I relied to generate the inference that I was unfairly discriminated against, canvassed in paragraphs 246 –7 of my heads, wasn't recited in the judgment; its paragraph 46 sets out a wrong, crude mishmash instead.

[95] Judgment, paragraphs 29 and 68.

[96] His refusal to allow me to cross-examine Vedalankar, Clark and Board member du Rand, stated during the debate of LASA's failed applications on the first day to quash my subpoenas of them. On why I ultimately elected not to call Vedalankar, Clark and du Rand, and settled for affidavits by the latter two in lieu of their oral evidence, see heads, paragraphs 103–4.

[97] His veiled warning in chambers not to go after the big fish (paragraph 36 above).

[98] Application, paragraphs 269–72 and 262–7.

[99] Application, paragraphs 273–82; judgment, paragraph 67.

[100] Per Mtati's wrongly dated letter in October 2014, received on the 13th: 'Cele J, through his office, suggested that the Respondent accommodate the Applicant by providing him with the electronic copy of the record which the Respondent did.'

important high court in the country, and thereby trigger a gargantuan scandal. But the truth must out, and justice needs doing fearlessly.

49. The Judicial Services Commission's response to my complaint about Mlambo JP's perversion of Ministerial and Parliamentary enquiries into my complaints was that it was no concern of theirs, on the technical basis that it didn't involve judicial misconduct per se. My complaints to the Public Service Commission were passed on to the Public Protector, but in view of the then approaching trial my file was closed; and with the dismissal of my claim, there's small chance of it being reopened. These official doors having closed on me for setting matters to rights, your lordships' correct decision of this petition is tremendously important for the ventilation of the truth, and for law and justice in our country. An unattended[101] splinter, so easily removed,[102] has led to widespread gangrene at the top of a major public entity, generally perceived to be the jewel in the crown of the Justice cluster, and a model of good governance. The matter has reached a pivotal moment.

50. Having regard to the profusion of contradictory lies that have spewed out of LASA, including to the highest authorities, in the cover-up following the illegal abortion of my appointment, to get away with and escape accountability for it – successfully so far, like Nixon nearly did after Watergate – your lordships can expect absolutely any lie from LASA in its answering papers, any subterfuge to persuade you to shut down further enquiry into this matter by refusing this petition. Since in-house attorney Mtati acting on instructions[103] can offer you no more than hearsay about the case,[104] and hasn't stinted at committing the most grotesque, poisonous perjury on affidavit on Nair's instructions to prejudice me in the court's eyes before trial;[105] and since the judge found Nair to have

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[101] I petitioned the Board five times in all, plus individual members, plus the Board secretary, all to no avail.

[102] I repeatedly pleaded for a timely, conciliatory resolution before the thing escalated unnecessarily.

[103] Record, page 390, lines 16–21; heads, paragraph 135. When conversing amicably at court before the delivery of judgment, I urged Mtati to seek a personal exit strategy in view of the several false interlocutory affidavits he'd made on Nair's instructions, replete with lies, he shrugged: 'I'm only an agent.'

[104] Record, page 390, lines 6–11. Mtati was appointed Corporate Services Executive in LASA's national office as from 1 July 2010. It's common cause he wasn't party to any decision-making about the abortion of my appointment, and has no direct knowledge of it.

[105] Heads, paragraph 268. Mtati: 'The most disturbing, reprehensible, unprofessional and brazen act of disrespect came recently when the Applicant left the KZN province and attended unannounced and without warning at the office of [Mlambo JP] at the South Gauteng High Court. [He] did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is represented this amounts to professional misconduct.' This lying defamation of me was the pure invention of a deeply cunning criminal mind, contrived to poison the court against me, in a bid to defeat the ends of justice (see further: application, paragraph 312). Which foul lie Nair supported with a confirmatory affidavit, surfaced after trial, only to meekly retreat from it

been untruthful under oath on any number of scores,[106] I respectfully entreat your lordships to require CEO Vedalankar, and not the former discreditable and unreliable persons, to depose to any answering affidavit under LAC rule 4(6) in regard to why I should be denied leave to argue my case before three senior, experienced, and attentive judges of appeal. At the centre of the case is the truth or otherwise of the budgetary insufficiency justification[107] for the abortion of my appointment to LASA's most senior professional position in KwaZulu-Natal, and it was Vedalankar who twice advanced it to me in her letters.[108] The prospect of being jailed for perjury may chill any inclination she might have to repeat under oath to your lordships the lies she told me. Like a helicopter, the unwelcome truth must eventually land, somewhere; and if you'll allow it, the proper place for it will be the Labour Appeal Court.

Dated at Eshowe on 7 December 2014.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on 7 December 2014 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he affirms its contents to be true to the best of his knowledge and belief.

SOUTH AFRICAN POLICE SERVICE
STATION COMMISSIONER
2014 -12- 07
ESHOWE
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATHS

Name: Jabulani Dlamini

Address: Eshowe SAPS

Capacity: Policeman Lt 0613427-1

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in court when I disputed it, pointing out that I'd never seen or met Mlambo JP, had never set foot in the South Gauteng High Court, and didn't even know where it was: record, page 485, lines 20–25 to page 486, lines 1–17.

[106] Judgment, paragraph 67.

[107] Heads, paragraph 5.

[108] In her letters of 18 October 2010 and 28 January 2011 (trial document bundle, pages 101–7 and 210–58). Vedalankar is also well placed to deal with Nair's new story in evidence blaming her for aborting the Mthatha Senior Litigator recruitment, diametrically contradicting the reason she gave me in her letters and later confirmed on affidavit. She can also deal with Nair's denial in court that he was responsible for authoring her letters to me (writing or instructing), and his claim that he had no hand in them, despite all indications to the contrary. And that she or Mlambo JP, not him (Nair), added the further new lies inserted into the report to the Minister before it was submitted in 'updated' form to the chairperson of the Portfolio Committee some months later. The look of it is that Nair used Vedalankar in his cover-up. The time's arrived for a division, and the isolation of the rogue(s).

REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Reportable

Case no: D529/11

In the matter between

ANTHONY ROBIN BRINK **Applicant**

and

LEGAL AID SOUTH AFRICA **Respondent**

Heard: 28 May 2014

Delivered: 18 September 2014

Summary: Claim based on unfair discrimination under section 6 (1) of the Employment Equity Act ('EEA') - the applicant sought an order that failure to appoint him to the post of Senior Litigator was unfair discrimination on prohibited grounds namely his conscience, belief or political opinion - applicant said he was an acutely unpopular and widely reviled leading dissident activist in the most politically inflamed AIDS treatment controversy – circumstantial evidence – principles of equality- in discrimination cases creating an inference that the employer lied can give rise to the extremely important inference that lying was for a particular reason such as to cover up a discriminatory purpose – act of discrimination not proved.

JUDGMENT

CELE J

LABOUR COURT

Introduction

[1] This is a claim based on unfair discrimination brought under section 6 (1) of the Employment Equity Act[1] ('EEA'). The applicant sought an order declaring that in aborting his appointment to the post of Senior Litigator, Pietermaritzburg, following his recommendation by a duly constituted selection panel, the respondent unfairly discriminated against him on grounds prohibited by section 6 (1) of the EEA, namely on grounds of his conscience, belief or political opinion. Upon such a declaration he then sought an order in the following terms:

1. to direct the respondent to appoint him to the post, retrospective to 1 January 2010;

2. to pay him damages for lost income in a sum equivalent to the salary he would have earned had he been appointed to the post on that date;

3. to compensate him for *iniuria* in the sum of R1 million;

4. to pay him *mora* interest at the prescribed rate on his damages for lost income, computed month to month from this commencement date to date of payment, and on his compensation award from date of judgment to date of payment;

5. to publish the order made in the case once in the *Sunday Times* newspaper and for a period of one year on the respondent's website in the 'About us' tab; and

6. to pay his costs on the scale as between attorney and client.

[2] The respondent denied having discriminated against the applicant. It pleaded in its amended response to the applicant's amended statement of claim that budgetary insufficiency caused it to simultaneously abort its recruitment of Senior Litigators for its Pietermaritzburg, Durban and Mthatha Justice Centres.

[1] Act Number 55 of 1998

LABOUR COURT

Factual Background

[3] While there are contradictory versions in the evidence led by the parties, there are many respects where their evidence was not in dispute. I shall accordingly allow myself to be guided by the parties' approach in briefly outlining the evidence of what turned out to be a lengthy trial. To them, I am indebted. The respondent created a number of posts which were then approved by the its Board of Directors on 24 November 2006 at the instance of the respondent's Management Executive Committee to remedy the respondent's lack of professional staff that were senior enough to take on cases of a highly complex nature.It was proposed that the respondent would 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 other High Court staff. In KwaZulu-Natal, the respondent issued an advertisement for two of such posts for Durban and Pietermaritzburg. After the simultaneous advertisement of the nine new Senior Litigator posts in October 2007, six were filled. A Kimberley post was re-advertised in May 2009 while the Pietermaritzburg and Durban Senior Litigator posts were re-advertised in June and again in August 2009. The applicant, an advocate, was one the applicants. He was successful in securing an interview in the recruitment for the Pietermaritzburg post.

[4] On 12 November 2009, the applicant was interviewed with other shortlisted candidates for the respondent's Senior Litigator post at Pietermaritzburg. Duly constituted under the respondent's Policies and Procedures on Recruitment, Induction, Probation and Relocation ('Recruitment code'), the selection panel comprised the respondent's senior lawyers in the region. In November 2009, the selection panel unanimously recorded its recommendations of the applicant and Durban High Court Unit Manager Mr Bongani Mngadi. The recommendation report does not specify who was recommended for which post, but the respondent admits that the applicant was selected for Pietermaritzburg and by implication Mr Mngadi for Durban. The selection was cast as a 'Recommendation for Next Round Interviews'. Provision was made at the foot of the recommendation for the National Operations Executive (the

LABOUR COURT

NOE) Mr Nair to approve or reject the selections, by signing in either the 'Recommendation accepted' or 'Recommendation not accepted' box.

[5] On the same day that the panel signed the recommendation, KwaZulu-Natal Regional Human Resources Manager (the HRM) Mr Baboo Brijlal emailed it as a scanned attachment to the KwaZulu-Natal Regional Operations Executive (the ROE) Mr Vela Mdaka for transmission to Mr Nair and to the National Human Resources Executive (the HRE) Ms Clark, along with the CVs attached of all interviewed shortlisted candidates, including the CVs of the two persons who were not recommended in that selection process for the second round of interviews. The reason why Mr Brijlal also sent Mr Mdaka for transmission to Mr Nair the CVs of the candidates not recommended was because he had received telephone instructions so to do.

[6] On 26 November 2009, Mr Mdaka forwarded the recommendation and CVs to Mr Nair, but not to Ms Clark. On receiving the recommendation Mr Nair neither recorded his approval nor his disapproval of the applicant and Mr Mngadi by signing the recommendation either way. His reason for not doing so forms the central issue of the case. On 3 December 2009, the applicant telephoned Mr Brijlal to ask for the interview results. Having chaired the interview, taken the minutes, and co-signed the recommendation of the applicant, Mr Brijlal knew the results but his response was that he was not free to disclose them and instructed the applicant to wait.

[7] On 14 April 2010, now five silent months since his interview, the applicant telephoned Ms Clark for information about the state of affairs. She responded that she had not heard of him before and knew nothing of the pending recruitment process but undertook to enquire further, and within a couple of hours of the applicant's call, reverted by email:

> 'I have looked into this matter and can confirm it is still in progress and has not been concluded. I will endeavour to expedite the process in which I am not directly involved at this stage. … Thanks for your keen interest. We hope to conclude the matter soon.'

LABOUR COURT

[8] Ms Clark invited the applicant to contact Mr Brijlal for updates. Mr Brijlal was the probable source of her information, because Mr Nair and the Chief Executive Officer (the CEO) Ms Vidhu Vedalankar were out of the Braamfontein National office, having just briefed the Parliamentary Portfolio Committee in Cape Town on the respondent's Strategic Plan 2009–2012. On about 19 April 2010 the applicant telephoned Mr Brijlal for updates, but he had none to give. Over the next few days thereafter and following Mr Nair's and Ms Vedalankar's return to office, the applicant repeatedly tried reaching Ms Clark by telephone again, but was unable to get through, and despite his messages left requesting that she return his calls she did not do so.

[9] On 22 April 2010, the applicant emailed Ms Clark, stating his pressing practical reason for needing to know the upshot of the recruitment process one way or the other. Ms Clark's response on 30 April 2010 was, inter alia, that:

> '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 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.'

[10] On 12 July 2010, which was eight months since his interview, the applicant wrote to Ms Vedalankar enquiring when his appointment might be finalised, mentioning his conclusion from Ms Clark's invitation that he 'withdraws' from 'the process' that he had indeed been selected and recommended by the selection panel, and not eliminated. On or about 27 July 2010, Ms Vedalankar read the applicant's letter and emailed Mr Nair about it on 29 July 2010 saying:

> 'I am not sure what is happening with these senior litigator appointment [sic] but we need to finalise the process and advise the persons interviewed of the

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outcome. Please will you look into this and discuss with Mandi [Clark] and then discuss with me.'

[11] On 3 August 2010, having been asked by Ms Vedalankar to provide a response to the applicant's letter to her, Mr Nair wrote to the applicant saying that the recruitment process to finalize the appointments for all vacant Senior Litigator posts was put on hold due to various reasons. He said that he could then confirm that they would not be proceeding with the filling of any of those posts. He was to request the HR department to send out regret letters to all persons who were interviewed during the first round of interviews. Indeed, on 16 August 2010, Mr Nair instructed Mr Mdaka to inform his HR section to regret all persons who attended senior litigator interviews for both Pietermaritzburg and Durban. On 23 August 2010, Mdaka sent such letters in identical terms to the applicant and to Mr Mngadi, and to one of the unsuccessful applicants, Mr van Wyk, but not to the other, Mr Ngcamu. There was an apology for the delay in informing candidates of the outcome of the interview process.

[12] On 30 August 2010, the applicant delivered a request to Ms Vedalankar qua the respondent's information officer under section 11 (1) of the Promotion of Access to Information Act 2 of 2000 ('PAIA') for 51 specified records concerning the Pietermaritzburg Senior Litigator recruitment and its cancellation, or sworn certification under section 23 (1). By the end of September 2010, Vedalankar had not responded within the 30-calendar-day timeframe prescribed by section 25, read with section 4 of the Interpretation Act 33 of 1957, which the applicant took to be amounting to a deemed refusal under section 27. At the applicant's request the PAIA Unit of the South African Human Rights Commission ('SAHRC') came in and elicited an undertaking to do so.

[13] On 18 October 2010, Ms Vedalankar expressly refused the applicant's entire request for records pertaining to the abortion of his recruitment, alleging a budgetary justification for freezing the appointment by averring, inter alia, that:

'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

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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. Therefore the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.'

[14] On 11 October 2010, Ms Vedalankar had informed the Justice Portfolio Committee that the respondent's budgetary uncertainty had already been resolved in principle saying that:

'the Minister did get involved and he had assisted .['the OSD money'] was in the mid-term adjustment ,we are on track on all components of our Business Plan and we are confident that we will deliver this Business Plan in this financial year also. So we don't have any problem areas that we would like to report on. We do have challenges in terms of some of the funding issues like OSD but at the moment we are in the process of fixing it. In fact the Minister has been involved in that which relates to OSD Phase 1 and Phase 2 funding.'

[15] In her second letter to the applicant of 28 January 2011, refusing his first PAIA request again, as well as his second in December 2010 for further records to test the veracity of her budgetary justification for cancelling his appointment, even refusing and returning his compulsory request fee prescribed by section 22 – Ms Vedalankar reiterated her budgetary explanation for aborting the applicant's appointment saying that:

'the explanation furnished by me to you on 18 October remains valid and will be clarified and added to where possible. I, and the Legal Aid SA under my watch, have never sought to make any decisions regarding the Senior Litigator posts on any ground other than the budget constraints which you have rejected.'

Occupational Specific dispensation (OSD) and Respondent's financial standing

[16] Effective from July 2007, the Department of Justice and Constitutional Development (DoJ&CD) introduced the Occupational Specific Dispensation

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(OSD), a salary incentive scheme aiming to assist, recruit and retain specialists in the legal profession who had gained at least 10 years active legal court experience and who were still actively involved in litigation or court work. The OSD was subsequently extended to the respondent. In November 2009, the respondent had already commenced implementing OSD phase 1, and it received funding for this during the 2009/10 financial year as per its annual report for 2009/10 which recorded that the OSD phase 1 shortfall of R23million in the 2009/10 financial year was received from the DoJ&CD. The 'shortfall' had arisen because funding for the implementation of OSD phase 1 in 2009/10 had not been included in the respondent's baseline budget for 2009/10 as expected, having regard to a written assurance by the Director General of the DoJ&CD given on 5 February 2009 in which he had committed himself to adjust the baseline of the respondent in the Adjustment Budget with R69, 6million, inter alia, to cover the implementation of the OSD. As the annual report recorded, funding for OSD phase 1 for 2009/10 was paid by the Department later in the year.

[17] On 25 February 2010, the respondent's Legal Services Technical Committee (LSTC), chaired by Mr Nair, resolved to invite motivations from interested regions for the reallocation of the redundant Senior Litigator budget for Kimberley to another Justice Centre. The Legal Aid Guide ratified by both houses of Parliament explains the LSTC's function within the respondent:

> 'The Board delegates authority to the CEO, the Management Exco, LSTC, other committees and officials through its Approval Framework. The LSTC's collective responsibility is managing the legal services delivery programme, the execution of all Board strategy, policies, programmes and plans relating to the legal services delivery programme of the Legal Aid South Africa'.

[18] According to the respondent's Annual Report 2009/10, the budget for 2010/11 was approved by the Board on 27 February 2010. It included provision for salaries for nine Senior Litigator posts. On 15 March 2010, responding to the LSTC's invitation, the Eastern Cape management region applied for the creation of a new Senior Litigator post at Mthatha. On 24 March 2010, two weeks after a realization by of the budgetary issues that

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suddenly confronted the Respondent on 10 March 2010, the LSTC resolved to abolish the Kimberley Senior Litigator post, to create a new Senior Litigator post at Mthatha, to transfer the budget, and to immediately commence recruitment for it. The LSTC took this decision on the strength of the Eastern Cape ROE Mr Thembile Mtati's pressing motivation for the transfer of the post to Mthatha, where he urged it was sorely needed, for the reason inter alia that they were then having one Senior Litigator who was stationed at Port Elizabeth. He said that it was a huge challenge for one person to provide support to the whole Region. Two weeks earlier on 10 March 2010, on learning that its OSD funding allocation had not been included in its baseline budget, the priority for transferring the budget and recruiting for a Senior Litigator at Mthatha was designated 'Immediate'. The same consideration was not accorded to the finalisation of the Pietermaritzburg and Durban Senior Litigator appointments. The budget for the new post was transferred from the vacant, 'redundant', equivalent post at Kimberley; and, as mandated by the LSTC, the new Mthatha Senior Litigator post was immediately advertised in April.

[19] On 13 April 2010, in a follow-up query to the Director General, Vedalankar now raised the prospect that unless the respondent received its outstanding OSD phase 1 allocation, staff cuts would be unavoidable, saying that:

> 'we will be forced to effect the necessary adjustments to our 2010/11 Budget so as to accommodate the R23 million budget shortfall of OSD phase 1. The primary impact of that will unfortunately have to be on service delivery at courts including increased delays and backlogs as a result of us reducing the number of practitioners that we can make available at courts'.

[20] Quite irrespective of the 'budgetary issues that suddenly confronted the Respondent' on 10 March 2010, the respondent's First Quarter Report for April to June 2010, presented to the Portfolio Committee on 11 October 2010, shows that it created 82 new budgeted posts 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. On 13 October 2010, the day after the

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respondent's presentation of its First Quarter Report, the Government Communication and Information System news agency Bua News quoted Board Chairperson Mlambo JP stating:

> 'The organisation was also on track to achieve its objectives for the period under review by completing the expansion of its national footprint. This included the establishment of six new Justice Centres and 27 satellite offices in the past three years, as well as the launch of a client call centre in June 2010.'

[21] In the first quarter April to June 2010, the respondent appeared to have increased its total number of budgeted establishment posts by 3.3% (2513 to 2595) – almost as many as the 3.9% increase (2419 to 2513) for the whole of 2009/10. Following a nil net 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 appeared to have spiked in the first quarter April to June 2010, increasing by 2.3% (1147 to 1173). In the first quarter April to June 2010, total staff recruitment appeared to have increased by 3.5% (2352 to 2434) – greater than the increase of 3.1% (2281 to 2352) for the whole of 2009/10.

[22] On or about 24 May 2010, Mahikeng Senior Litigator Mr Nzame Skibi was selected and recommended for lateral transfer. However, according to the respondent Mr Skibi was shortlisted for a second round of interviews in Johannesburg. There was no mention of any second round interview for him in the recommendation, nor was any such shortlist drawn.

[23] A report to Board on 16 July 2010 recorded that

> 'On the 14 July 2010 Legal Aid COO [Makokoane] met with both Doj DDG [Deputy Director General of the Department of Justice and Constitutional Development], Mr Vuso Shabalala, as well as Adv Pieter du Rand, Legal Aid SA board member in order to clarify the position of DoJ regarding the outstanding OSD funding of R53.8 million for the 2010/11 budget period, as well as the MTEF baseline. DoJ has indicated that they do not have funds to cover for the R53.8 million OSD shortfall. The Executive Authority [i.e. the

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> Minister] has however in a meeting with the Legal Aid SA Board Chairperson expressed his wish to have Legal Aid SA service delivery maintained and that DoJ should make funds available to cover the OSD shortfall through the mid-year budget adjustments in September/October 2010.'

[24] On 14 or 15 July 2010, Mr Makokoane asked Mr Nair to identify some vacant posts that might be frozen to save on salary costs with a view to mitigating the budgetary deficit that the respondent anticipated as a result. It had budgeted in the expectation of receiving its OSD phase 1 allocation and was paying OSD phase 1 salary increases to its staff, so the Department's failure to transfer this allocation threatened a budgetary deficit. Then on 15 July 2010 and under the subject heading 'Budget cuts – Reduction in Criminal Court Coverage – July 2010.xlsx', Mr Nair emailed Mr Makokoane a spreadsheet, copied to Ms Vedalankar, Ms Clark and Chief Financial Officer Ms Rebecca Hlabatau, in which he identified and motivated thus:

> ' my first cut of 56 practitioner posts at JCs [Justice Centres]. I have not looked for paralegal and admin positions at JCs yet. This amounts to a potential savings of R16m which is much lower than what is required. In terms of this cut, I have ensured that DC will not be lower than 80% coverage whilst RCs will not be lower than 90% coverage. If we need to find more savings from practitioner positions, then we will need to agree lower coverage levels for District and Regional courts.'

[25] On 16 July 2010, Makokoane submitted a 'Report to Board' in which he recommended Nair's proposal to freeze recruitment to 56 vacant practitioner posts serving the lower criminal courts, but not more of them, nor of any lighter 'paralegal and admin positions' which Nair had mooted if needs be. Specifically, 'To provide for the anticipated OSD shortfall funding of R23.8 million', Makokoane recommended in his Report to Board that:

I. Savings from the 2010/11 financial year be used to fund the OSD shortfall;

II. District Court coverage be approximately no lower than 80% coverage, while Regional Court coverage is reduced to no lower than 90%

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coverage, for the remaining part of the 2010/11 budget period. This will derive a saving of about R16 million to cover the shortfall.

[26] Among the measures to mitigate the probable deficit proposed in his 'Report to Board', Mr Makokoane advised that the recruitment process would be reviewed, centralizing the decision of the filling of posts at Executive level, with due regard to the need to prioritise critical positions. Mentioned generically in the 'Report to Board', the Pietermaritzburg Senior Litigator post was 'a critical position'. Since the temporary freeze on recruitment to some public defender posts amounted to a potential savings of R16m which was much lower than what was required i.e. R23.8 million. Mr Makokoane proposed making up the difference with unspent budget savings. On 31 July 2010, the Board agreed with the executives and resolved to approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of the 'Report to Board', namely to temporarily hold recruitment to 56 vacant practitioner posts serving the lower criminal courts, but only until the end of the financial year, and to use savings from the 2010/11 financial year to fund the OSD shortfall. The reason the Management Executive Committee sought the Board's approval was that its proposal to temporarily freeze recruitment to a limited number of public defender posts was a deviation from its Business Plan, also referred to as the 'Annual Performance Plan', based on the Board's Strategic Plan, and section 1.2 of the Approval Framework required that the Board must be consulted before any such change.

[27] Besides the temporary freezing of a number of practitioner posts serving the lower criminal courts, legal staff recruitment otherwise continued in the following quarter July to September 2010, and increased by 1.7% that is 1173 to 1193. For instance, the respondent advertised in August 2010 to recruit a 'Supervisory Professional Assistant' for its Pinetown Justice Centre, and a 'High Court Unit Professional Assistant' for its King William's Town Justice Centre. On 9 July 2011 Ms Vedalankar informed the Access to Justice Conference in her presentation that the respondent had recruited 2489 staff including 1932 lawyers, whereas the First Quarter Report, that is 1 April–30 June 2010, showed 2434 staff including 1855 lawyers, which is a difference of

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77 more. The same figures appear in the respondent's Annual Report for 2010/11. That is, in the nine months following its decision in July 2010 to temporarily freeze recruitment to some practitioner posts serving the lower criminal courts the respondent recruited 77 more lawyers.

[28] Being mindful of the respondent's version that Mr Nair decided on 16 August 2010 to communicate the respondent's decision that the recruitment process to finalize the appointments for all vacant Senior Litigator posts was put on hold due to various reasons, the events of the respondent relating to the recruitment process followed in the subsequent months will not be outlined any further. The only exception is to point out that the financial assisstance that had been promised by the Minister of the DoJ&CD in October 2010 was finally paid over to the respondent on 15 December 2010, some months after the applicant was appraised of the outcome of the recruitement process.

The Applicant's version

[29] The applicant was the only witness for his case. While he initially indicated that there were employees of the respondent whom he wanted to call as his witnesses, he changed track and dispense with them.

[30] The applicant testified that when applying for the post he was mindful of two handicaps, one quite legal, and the other gravely illegal. As a white male he faced the constitutional imperatives of employment equity and affirmative action; but in the result the selection panel duly certified upon a proper demographic analysis of the Pietermaritzburg and Durban Justice Centres that his and Mr Mngadi's appointments to the respective posts would conform to the respondent's employment equity targets. Although he had not been able to eliminate race prejudice as a possible reason for the abortion of his appointment by the respondent's national office, he said that it looked unlikely to him in light of its confirmation of the appointment of a White male as High Court Unit Manager at the Cape Town Justice Centre in the face of protests by other staff of colour that this went against the respondent's employment equity policies, and in light further of the fact that that White male was subsequently promoted to Senior Litigator there. That suggested to the applicant that there

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was not any culture of racism in the respondent's national office; and picking up on this, the respondent's counsel, Mr du Toit made the point in cross-examination that race prejudice as a possibility had been eliminated from the case. That then stood as a common cause ground.

[31] Concerning his second handicap, the applicant testified that he was an acutely unpopular and widely reviled leading dissident activist in the most politically inflamed and morally polarised domestic policy dispute in the democratic era, the AIDS treatment controversy. He testified that he had ignited this with the draft of a book he had written, *Debating AZT*, later published under the subtitle *Mbeki and the AIDS drug controversy* (Exhibit 2A), which he had sent up to government in manuscript in 1999, and which, former President Thabo Mbeki confirmed directly to the authors of two books exhibited by the applicant,[2] had 'sparked' (Mbeki's word) his enquiry into the safety of the drug, announced in the National Council of Provinces on 28 October 1999, and his wider enquiry into the integrity of the American HIV-AIDS paradigm generally.

[32] The applicant quoted some of what he called the many effusively positive commendations of his critique of the drug by high-ranking scientists, most significantly by Professor Richard Beltz PhD, Emeritus Professor of Biochemistry, Loma Linda University School of Medicine, California, US, who first synthesized it in 1961 (and not, the applicant said, Horvitz in 1964, as generally credited), saying:

> 'you are justified in sounding a warning against the long-term therapeutic use of AZT, or its use in pregnant women, because of its demonstrated toxicity and side effects. Unfortunately, the devastating effects of AZT emerged only after the final level of experiments was well underway. Your effort is a worthy one. I hope you succeed in convincing your government not to make AZT available.'

[2] Allister Sparks, *Beyond the Miracle: Inside the New South Africa*, Cape Town: Jonathan Ball, 2003, page 286; and Mark Gevisser, *Thabo Mbeki: The Dream Deferred*, Cape Town: Jonathan Ball, 2007, page 729.

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[33] In court the applicant exhibited a bottle containing a minute quantity of AZT supplied for research use and read from its label: 'TOXIC Toxic by inhalation, in contact with skin and if swallowed. Target organs: Blood Bone marrow. In case of accident or if you feel unwell seek medical advice immediately (show the label where possible). Wear suitable protective clothing.' He also exhibited a bottle of AZT capsules marketed by the pharmaceutical corporation GlaxoSmithKline for deliberate human ingestion, bearing no such warning. The deadly toxic hazard label and Beltz's support for the applicant in his campaign against the drug are quoted on the cover of the applicant's book, *Poisoning our Children: AZT in Pregnancy* (Exhibit 2C).

[34] On the other hand, the applicant cited a collection of vituperative attacks on him in the media and elsewhere over the years, with the *Sunday Times*, for instance, having referred to 'such loathed personalities as Anthony Brink' for 'supporting [Mbeki] at the outset of the AIDS-denial debate'. The London *Guardian* damned 'Anthony Brink the man who is credited with introducing Mbeki to HIV denialism, who has helped cost the lives of tens of thousands of people needlessly deprived of effective treatments.' He cited an article in *Time* magazine repeating the conventional western wisdom that for 'denying citizens life-saving anti-HIV drugs' he 'may have cost 365,000 South African lives, according to a study by Harvard researchers.' Aggressively intolerant general opinion and sentiment against critics and opponents of these drugs was epitomised, the applicant suggested, by a reference in the context of the controversy by a judge of the High Court (before her appointment) to then Health Minister Dr Manto Tshabalala-Msimang as a 'criminal'. Illustrating the intense antagonism against him for opposing AZT, the applicant quoted from a 'Public Health Warning' issued by the Democratic Alliance in October 2005, naming him, he said, like someone named in the Government Gazette as a Communist by the apartheid Minister of Justice, as the 'No.1. Ranking' AIDS dissident in the country, 'so dangerous' that such 'Aids denialists' with their 'false and dangerous views' and natural criminal propensity should be both politically and professionally neutralised:

> 'The DA calls on the media, the public, and professional organisations to, for example, wherever possible exclude these individuals from positions of

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> authority; deny their dissident views publicity; and take vigorous steps to pursue official action in respect of any infringements of the law.'

[35] He said that the public enemies list, headed by him, was reproduced on the Nelson Mandela Centre for Memory website, host of the 'Heart of Hope' archive. The applicant testified that his main political opponents, the Treatment Action Campaign ('TAC'), a political action group promoting ARV drugs, had got him banned by the Advertising Standards Authority from publishing his case against AZT in the print media, and that under the ban no printing-works may reproduce it either.

[36] The applicant pointed out that the extraordinarily heated tenor of the controversy was a fact notorious to the judiciary, and he cited several references to this in judgments of the High and Constitutional Courts: 'In our country the issue of HIV/AIDS has for some time been fraught with an unusual degree of political, ideological and emotional contention.' There is 'deep anxiety and considerable hysteria' about it. There has been much 'discord' in the 'boisterous and, at times, unseemly debate with regard to the efficacy or otherwise of antiretroviral treatment'. To sum it up, as the applicant put it, 'Politically, I stink.'

[37] The applicant referred to an interview with the respondent's Ms Vedalankar on 10 November 2009, two days before his own, in which she held up as the respondent's 'most significant accomplishment' the fact that the respondent had:

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

[38] The applicant said that in her introduction to the respondent's 'Impact Litigation' booklet in March 2011, Ms Vedalankar again singled out for special mention the respondent's financial support for the TAC in the case, and frankly

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underscored its propaganda value to put down the dissenters in the epistemological and political contest between the believers and the recusants:

> 'Not many people are aware that the Impact Litigation Unit funded, amongst others, the challenge brought by the Treatment Action Campaign in the Constitutional Court to make treatment available to those suffering from HIV/AIDS at a time when many were still questioning the link between HIV and AIDS.'

[39] The applicant testified that he had opposed the TAC in the case by way of an urgent amicus curiae application to the Constitutional Court which he drew for the late Professor Sam Mhlongo, bringing to the court's attention the fact that the single clinical study on which the TAC's entire case was based had just been rejected as a worthless shambles by the US Food and Drug Administration; but that, although described by the then Chief Justice Chaskalson in the debate as a 'compelling argument', his application had been dismissed as out of time. The applicant opined that the Constitutional Court's judgment had been 'a disaster'. He produced a copy of his book about the case, *The trouble with nevirapine*, and quoted commendations on its back cover (Exhibit 2B) by Dr Jonathan Fishbein MD, formerly Director of the Office for Policy in Clinical Research Operations, Division of AIDS, National Institute of Allergy and Infectious Diseases, US National Institutes of Health: 'an expertly written piece about this very dangerous drug'; and by Professor Andrew Herxheimer MB, FRCP, Emeritus Fellow of the UK Cochrane Centre, Oxford; tutor in clinical pharmacology and therapeutics at Charing Cross and Westminster Medical School, London University (ret.); advisor to the WHO; founder of *Drug Therapeutics Bulletin*; co-founder of the International Society of Drug Bulletins; and co-founder of DIPEx.org saying:

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

[40] The applicant pointed out that the respondent spent R200 000 a year, and previously twice and thrice as much, on its 'HIV/AIDS Strategy and Roll Out

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Plan' which it prioritised as a 'KEY' operating policy, and that accordingly, it was institutionally aligned with and invested in the conventional HIV-ARV-AIDS paradigm to which he was opposed and which he worked for many years to debunk as a 'profoundly harmful, fundamentally racist error in our time'. He referred to a mailing list he had discovered of some of the world's leading ARV-promoting activists, of which Ms Vedalankar and Mr Nair were members.

[41] The applicant testified that, he was certain that his deeply unpopular minority political engagement in the controversy would be found out with a simple Google search on his name, he disclosed it in his CV submitted in support of his application for the post, and in a Personal and Political History handed in at the interview; and the selection panel's recommendation of the applicant referenced it: 'Candidate demonstrated his capability to undertake high level research. Candidate is a prolific writer/author with many commendations cited on his CV.'

Concern on the justification for aborting the applicant's appointment

[42] In relation to the respondent's budgetary justification for aborting the applicant's appointment, the applicant gave evidence with reference to the respondent's records about some transient budgetary uncertainty for a few months in 2010, seeking to demonstrate that this never had any bearing on Senior Litigator recruitment and the abortion of his recruitment. Most of the evidence, which was statistical in nature, forms part of the factual background as it came across as common cause.

[43] When the applicant was interviewed and recommended for the Pietermaritzburg Senior Litigator post in November 2009, the respondent had already commenced implementing OSD phase 1, and it received funding for this during the 2009/10 financial year. As regards the respondent's settled expectation of receiving the OSD funding which the DoJ&CD had committed to pay, the applicant said that Ms Vedalankar later confirmed to him on 28 January 2011 that in conducting those recruitment processes parallel with the fundraising drive, the respondent acted under the impression that the

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DoJ&CD would honour its promise to extend OSD funding to it which it did in December 2010. He said that on 10 March 2010, however, the respondent learned from a copy of the OSD letter of DoJ&CD to National Treasury received on that day that contrary to confirmed reports by the DoJ&CD, the Department did not recommend a budget baseline adjustment for MTEF 2010/13 for the respondent. That situation was to result in a budget deficit for the respondent in its 2010/11 MTEF cycle, as Ms Vedalankar put it in her query to the Director General a week later on 18 March 2010. That was because the respondent had already budgeted for 2010/11 on the basis of the DG's commitment[3]. He said that the respondent later put it in the pleadings that it was on 10 March 2010 that budgetary issues suddenly confronted it.

[44] He testified that in April or May 2010, and to his exclusion, Mr Mngadi was informally told verbally that the Senior Litigator recruitment was off. He said that on or about 24 May 2010 and following the advertisement and interviews of the shortlisted candidates of the Mthatha Senior Litigator post in April, Mahikeng Senior Litigator Mr Nzame Skibi was selected and recommended for a lateral transfer and he was appointment to it. He said that contrary to the respondent's false denial in the pleadings that the Mthatha candidate was recommended for appointment, the selection panel indeed recorded that he was recommended for that position on the basis that he came across as the strongest candidate, with substantiating reasons duly noted. He again said that contrary to the respondent's false allegation, confirmed by Mr Nair on affidavit, that Mr Skibi was shortlisted for a second round of interviews in Johannesburg, he was not, and there was no mention of any second round interview for him in the recommendation, nor was any such shortlist drawn.

[45] In relation to the 'Budget cuts – Reduction in Criminal Court Coverage – July 2010' he averred that by 'cut' Mr Nair meant freezing recruitment to the vacant lower criminal court posts in question, not abolishing the posts, and that indeed no posts were cut. Contrary to the respondent's allegation in its original response that 'Nair's email to the COO had not been specific about other posts or measures to be recommended for the cost cutting process', the

[3] as Vedalankar recorded in her follow-up letter to the DG on 13 April 2010

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applicant contended that the record both of the contents of Mr Nair's email and its heading 'Reduction of Criminal Court Coverage' showed that Mr Nair had indeed been specific. According to him, Mr Nair did not propose to Mr Makokoane and other management executives that cancelling the Senior Litigator recruitments and freezing the three remaining vacant Senior Litigator posts could achieve further cost savings and that the recruitment process to finalize the appointments for all vacant Senior Litigator posts' had already been put on hold due to various reasons, as Mr Nair alleged to the applicant a couple of weeks later.

[46] The applicant contradicted the version of the respondent that budgetary constraints constituted the reason for aborting the recruitment process. In essence his reasons were, inter alia, that:

- Mr Nair had in November 2009 decided to reject his application after he had read applicant's CV in which the applicant had disclosed his work and literary contributions on the debate around the alleged effect of AZT and or Nevirapine (anti-retrovirals) on HIV positive pregnant women, which he said was his life's work;

- Mr Nair did not agree with applicant's medical opinion on anti-retrovirals and that Mr Nair's name and that of the CEO appeared on an email list of people who promoted Western medicines to treat AIDS in South Africa;

- In any event, the budgetary constraints were resolved in October 2010 by a ministerial promise. In December 2010, the respondent received the additional funds that had been withheld. The freezing of the Durban and Mthatha Senior Litigator posts was a camouflage in order to justify terminating the Pietermaritzburg process and that such budget constrains were an afterthought;

- There had been a marked increase in recruitment of staff by the respondent in 2010 and the respondent's December 2010 recruitment/vacancy/budget statistics reflected that the Pietermaritzburg and Durban Senior Litigator posts remain budgeted

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vacant posts, and not frozen, as Ms Vedalankar falsely alleged to the applicant on 18 October 2010;

- The "next round" of interviews for Senior Litigator was unlawfully instituted in 2008 because Mr Nair had no power to do this.

- Ms Vedalankar's and Mr Nair's claims to have aborted the Senior Litigator recruitments and to have frozen the posts were *ultra vires* and legally incompetent even on their own version. The engagement of Senior Litigators was an integral part of the respondent's Board's Strategic Plan to develop and increase the respondent's capacity to deliver expert litigation services to indigent litigants by creating a pool of specialist professionals to attend to complex matters in specialist and High Courts, including the Supreme Court of Appeal and Constitutional Court. The Strategic Plan was key to respondent's operations and it complied with the National Treasury Regulations.

- The respondent's annual Business Plan for implementation by the LSTC was based on the Strategic Plan; and section 1.2 of the Approval Framework permitted the Business Plan to be changed by the LSTC, provided that (a) the Board was consulted before any such change, and (b) the full Management Executive Committee gave its final approval. The LSTC Terms of Reference prescribed likewise saying that any decision taken by LSTC that was of a policy nature which impacted on the Business Plan was to be referred to management or to the executive body for approval;

- A decision to 'terminate' three substantially completed Senior Litigator recruitments and to indefinitely freeze recruitment to one third (3/9) of the respondent's critical, top-echelon specialist legal professional Senior Litigator posts was a decision to change the Business Plan.

- Where Board approval was required to temporarily hold recruitment to some lower court practitioner posts, as indeed it was, Board approval was all the more required to abort the substantially complete

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recruitments of three Senior Litigators and to indefinitely freeze recruitment to the three critical posts;

- No record existed to show that the Board was consulted before such alleged decision was taken, as it had to be. To the contrary, Mr Nair confirmed on affidavit on 8 April 2011 that the Board was not informed of the decision. No record existed to show that the full Management Executive Committee gave its final approval of any such decision to abort the recruitments and to freeze the posts.

- No record existed to show that Mr Nair duly originated the freezing of recruitment to one third of the respondent's top echelon of critical vacant professional staff posts. No record existed to show that Ms Vedalankar agreed to that, as she had to. No record existed to show that all Committees were informed thereafter, as it had to be done.

- No record existed to show that Mr Nair ever motivated to Ms Vedalankar a change in the organizational structure by dint of the freezing of' Senior Litigator positions, for discussion and finalisation with her, as Ms Vedalankar alleged to the applicant in her October 2010 letter.

- In short, notwithstanding her delegation by the Board for all the responsibilities of the Accounting Officer as provided for in the Public Finance Management Act and her unrestricted authority in managing the respondent, Ms Vedalankar did not have the power under the Approval Framework to deviate from the Board's Strategic Plan. She had no power to change the Management Executive Committee's Business Plan based on it to recruit Senior Litigators, and to decide with Mr Nair off the record without:

  - First consulting the Board;
  - A supporting resolution of the LSTC;
  - obtaining the full Management Executive Committee's agreement; and

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- thereafter informing all committees to abort three substantially completed Senior Litigator recruitments and to indefinitely, and practically permanently, freeze recruitment to one third of the respondent's vacant budgeted critical Senior Litigator establishment.

2 Respondent's version

[47] The Respondent called Mr Nair to testify on its behalf. He testified that applicant's claim of discrimination on the basis alleged whether it be political opinion or race was totally untrue. He confirmed that on or about 23 November 2009, he received an email from Mr Mdaka, together with attachments which contained the recommendation of the regional select committee on the recruitment of two Senior Litigator posts for Durban and Pietermaritzburg. Because it was close to the end of the year for the respondent, he knew immediately that the earliest period at which the second round of interviews could be held was in mid-February of 2010. He read Mr Mdaka's covering email on 26 November 2009 but did not open and read the attached recommendation and CVs because this would have been premature. He merely placed the bundle of documents he had received in his drawer without reading and scrutinising the recommendation. It was in July 2010 that he received an email query from the CEO regarding the recruitment process of Senior Litigator posts by the Applicant. It was thereafter that he first opened and read the recommendation with its attachments to find out who the applicant was. By then it was the end of the following year, 2010, or early in 2011. At the time he received the recommendation from Mr Mdaka, the respondent had no budgetary issues preventing the applicant's appointment. The reason the applicant's and Mr Mngadi's recruitment was not proceeded with was because he knew about the two-and-a-half month delay.

[48] He testified that on receiving the recommendation and CVs he did not do anything. There was nothing for him to sign, because he had to pass all the CVs of all the candidates interviewed by the selection panel to the second round interview panel. The regional office mistakenly included provision in the recommendation report for him to sign his approval or disapproval of the selection panel's recommendation. He testified as to the origin, the

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composition and the importance of the next round of interviews. He stated that the second panel, the National panel, was not a rubber-stamp of the first panel in that it also had to satisfy itself from all the applicants who were interviewed, that is, including those who may have not been recommended for further interviews, who it wanted to interview.

[49] He intended setting up the second round interviews the following year. These could not be held before mid-February 2010, because Mlambo JP was on recess and January was the executives' busiest period at the beginning of the last quarter of the financial year when they took stock of coverage under the Business Plan, held their Management Executive Committee meeting at the end of the month, and prepared for the Board meeting in February.

[50] He first heard the applicant's name when his complaint was received in July 2010, but did not know his political views. He had no views of his own on ARVs besides what he read in the media, which was that the roll-out seems to have contained the pandemic facing the country. The applicant's political views played no part in the matter. Neither he nor Ms Vedalankar were aware of these because he did not open the email attachments. The reason the posts were frozen had nothing to do with the applicant's position on ARVs and he was not discriminated against on this basis. He did not immediately abort the applicant's recruitment on receiving the CVs and recommendation.

[51] At the end of 2009 when the Treasury released its budget allocation letter, the respondent learned that expected funding for OSD phase 1 was not included in its budget, despite promises. At its meeting with the respondent in January 2010 the Department confirmed it would provide this funding. Ms Vedalankar's letters to the Department in March and April 2010 showed that at about that time the executives began to deliberate intensively on the possibility that the Department would not fulfil its financial commitments. They immediately realised that the over R23 million shortfall could not be accommodated with minor cuts and that it would impact on staffing and limit coverage at courts, as Ms Vedalankar's April letter mentioned.

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[52] To his mind recruitment of Senior Litigators was not an urgent consideration. There was a real possibility that the respondent would not get the money. He did not think filling the posts appropriate so he decided to delay this until clarity around the funding issues was obtained. There was no need for him to inform anyone. The reason he did not inform the Justice Centre Executives that Senior Litigator posts might be cut was that he did not want to create panic. He had an informal discussion with Mr Mdaka in March or April 2010 and told him of the delay, saying they needed to wait to see how the financials turn out. Mr Mdaka did not tell him then that two candidates had been recommended.

[53] On 29 July 2010, Ms Vedalankar enquired about the applicant's letter to her. He informed her and Ms Clark that he had delayed the recruitment in view of the financial uncertainty, because he did not think it prudent to fill the post while the respondent faced a funding shortfall. Ms Vedalankar then advised that they rather take the decision to freeze the posts so that the recruitment process did not hang in the air. She felt it appropriate to freeze the posts. He concurred. Ms Clark agreed. He then informed the applicant and instructed Mr Mdaka to send regret letters to all applicants. Since Senior Litigator posts are at grade LP10, section 8.2.2 (b) of the Approval Framework empowers him and Ms Vedalankar to abolish such posts between them. He must agree and she has final approval. Mr Mngadi was definitely not told in April or May 2010 that the Senior Litigator recruitment had been cancelled, because the posts were not frozen until July. If such a statement was made to Mr Mngadi, it did not come from him.

[54] Nothing in the Recruitment code prevents the holding of second round interviews. All CVs had to be sent to the second round panel. It would look at all four CVs and consider whether anyone besides a recommended candidate would be interviewed again. It was free to interview whoever it wanted. Previously the second round interview panel did not support a recommendation. It often came to a contrary recommendation. All Senior Litigators had been interviewed twice. The second panel had sat three times. It had interviewed all candidates interviewed by the selection panels again.

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After the second round interview panel makes its recommendation, the ROE decides on the appointment with the NOE and CEO.

[55] He said that he wrote the 'Report to Board' of November 2011. The reason he told the Board that recruitment challenges prevented the filling of the Senior Litigator posts, and not budgetary constraints as alleged to the applicant and to court, was because when he wrote this he was aware that three posts had been vacant for a long period since end of 2007 until frozen in July 2010. They had failed to attract suitable candidates. There was no guarantee that the second panel would have accepted the applicant. Had the second panel sat, he would have had serious problems with the recommendation of the applicant for four reasons. He did not meet the minimum requirements; he had not actively represented clients in the High Court in the previous three to four years; he didn't see any mention in his CV that his Supreme Court of Appeal and Constitutional Court cases had been reported, so assumed he had not practised in those courts; and the weight of his experience was civil whereas the major part of the respondent's services were criminal defences and it wanted Senior Litigators to handle criminal appeals. He could only speculate why the applicant had been shortlisted in the first place.

[56] There had been no demand for a Senior Litigator in the Northern Cape, so they had invited other regions to motivate why they needed such a post. The LSTC approved the transfer of the Kimberley post to Mthatha. He was aware that in giving the Eastern Cape permission to proceed with the recruitment, they were still under financial constraints. He knew that while the Eastern Cape could continue, it would still have to come to his desk, and if funding was not resolved he would delay the process until certainty was obtained. He saw the recruitment as facilitative, so that once the funding issue was resolved they would not have to start again. After the LSTC resolved to recommend transferring the Kimberley post to Mthatha, Ms Vedalankar's approval was needed. They met and she said she would think about it. He supported it, but she did not. They discussed it again. He was unable to persuade her. She finally decided she was not happy. She did not agree. So the transfer was aborted in early July 2010. He knew of no record of Ms

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Vedalankar's rejection of its decision to transfer the Kimberley Senior Litigator budget to Mthatha. The decision to cancel the Mthatha Senior Litigator recruitment had nothing to do with budget considerations. He verbally instructed the Eastern Cape ROE that the Mthatha Senior Litigator recruitment process had to stop. The Eastern Cape selection panel never signed the recommendation and that is why it was never received by the national office.

[57] His email to COO Mr Makokoane on 15 July 2010 was never supposed to be an exhaustive list of posts to be frozen. The cuts he proposed did not result in the respondent acquiring the budget needed to cater for the shortfall. All he did was slow down the recruitment process. His intention was to convey to the Board and stakeholders that the impact of cutting lower court posts would be very significant, because these practitioners take the majority of cases, so the cuts would seriously affect delivery. The lower criminal court practitioner posts are critical posts. No posts are more important than they are. The reason these lower court positions, not High Court positions, are critical posts, is that they are at the coalface, and High Court is a minor part of the workload. Senior Litigator posts are more to assist other practitioners. They are nice to have but can be done without in tough times. Regarding Parliament's concern that all critical posts be filled, this did not apply to the respondent, but only to the Department of Justice and Constitutional Development.

[58] He said that when the government launched the South African National AIDS Council, Ms Vedalankar had been appointed to it. She then delegated the position to him. They later discontinued with it. That is how he thinks his name had got onto the email group. The test for legal aid funding was not based on ideologies but whether a substantial injustice would result. The respondent's funding of the Boeremag defence was evidence of this. The respondent could not be expected to employ the applicant in view of his charges that its officers had lied about the circumstances in which his recruitment had been aborted.

Evaluation

[59] The applicant has brought his claim under section 6 (1) of the EEA. It provides:

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

[60] Section 6 (1) of the EEA has a resemblence to section 9 (3) of the Constitution Act which proves that:

'The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth'.

[61] When paraphrased, the applicant's complaint is that he was not accorded equal treatment which he would ordinarily be entitled to[4] in the processing of his application for a Senior Litigator's post. He said that he was unfairly discriminated against by the respondent. Discrimination or differentiation, to employ a neutral descriptive term, lies at the very heart of equality jurisprudence in general and of the section 9[5] right or rights in particular[6]. In the case of South African Police Service v Solidarity obo Barnard [7] Court sketched out the applicable legal framework within which the principles of equality apply in South Africa and had the following, inter alia, to say:

'[28] Our constitutional democracy is founded on explicit values. Chief of these, for present purposes, are human dignity and the achievement of equality in a non-racial, non-sexist society under the rule of law. The foremost provision in our equality guarantee is that everyone is equal before the law and is entitled to equal protection and benefit of the law. But, unlike other constitutions, ours was designed to do more than record or confer formal equality.

[29] At the point of transition, two decades ago, our society was divided and unequal along the adamant lines of race, gender and class. Beyond these

[4] In terms of section 9 (1) of the Constitution of the Republic of South Africa Act, 1996, (the Constitution Act).
[55] Of the Constitution Act.
[6] See paragraph 23 in the case of *Prinsloo v Van der Linde and Another* 1997 (3) SA 1012 at 1024.
[7] [2014] ZACC 23 handed down on 2 September 2014.

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plain strictures there were indeed other markers of exclusion and oppression, some of which our Constitution lists[8]. So, plainly, it has a transformative mission. It hopes to have us re-imagine power relations within society. In so many words, it enjoins us to take active steps to achieve substantive equality, particularly for those who were disadvantaged by past unfair discrimination. This was and continues to be necessary because, whilst our society has done well to equalise opportunities for social progress, past disadvantage still abounds.

[30] Our quest to achieve equality must occur within the discipline of our Constitution. Measures that are directed at remedying past discrimination must be formulated with due care not to invade unduly the dignity of all concerned. We must remain vigilant that remedial measures under the Constitution are not an end in themselves. They are not meant to be punitive nor retaliatory[9]. Their ultimate goal is to urge us on towards a more equal and fair society that hopefully is non-racial, non-sexist and socially inclusive.

[31] We must be careful that the steps taken to promote substantive equality do not unwittingly infringe the dignity of other individuals – especially those who were themselves previously disadvantaged. The scope of this "visionary and inclusive constitutional structure"[10] was stated in *Fourie*:

> '[T]he founders committed themselves to a conception of our nationhood that was both very wide and very inclusive. It was because the majority of South Africans had experienced the humiliating legal effect of repressive colonial conceptions of race and gender that they determined that henceforth the role of the law would be different for all South Africans. Having themselves experienced the indignity and pain of legally regulated subordination, and the injustice of exclusion and humiliation through law, the majority committed this country to particularly generous constitutional protections for all South Africans'.[11]'

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[8] *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others* 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) at para 76.
[9] *Minister of Finance and Another v Van Heerden* 2004 (6) SA 121 (CC); 2004 (11) BCLR 1125 (CC) (*Van Heerden*) at para 43.
[10] *Fourie and Another v Minister of Home Affairs and Others* 2005 (3) SA 429 (SCA); 2005 (3) BCLR 241 (SCA) at para 25.
[11] Id at para 9.

[62] Commenting on the steps taken to promote substantive equality, the Court proceeded to say that remedial measures must be implemented in a way that advances the position of people who have suffered past discrimination. Equally, such measures must not unduly invade the human dignity of those affected by them, if we are truly to achieve a non-racial, non-sexist and socially inclusive society. It pointed out that restitution measures, important as they are, cannot do all the work to advance social equity. A socially inclusive society idealised by the Constitution is a function of a good democratic state, for the one part, and the individual and collective agency of its citizenry, for the other. Our state must direct reasonable public resources to achieve substantive equality for full and equal enjoyment of all rights and freedoms.[12]

[63] In respect of the Employment Equity Act, which the applicant relies on, the Court said that the mission of the Act is diverse. For now, its important objects are to give effect to the constitutional guarantees of equality; to eliminate unfair discrimination at the workplace; and to ensure implementation of employment equity to redress the effects of past discrimination in order to achieve a diverse workforce representative of our people. The Act expressly prohibits unfair discrimination.

[64] As a point of diparture the present case is not one where there was evidence of remedial measures that had to be implemented so as to promote substantive equality to advance the position of people who suffered past discrimination. Therefore, the concessions which were made at the Constitutional Court on behalf of Ms Barnard[13] which then shaped the nature of the enquiry do not, in my view, find application in the present matter. If my understanding of the Barnard decision of the Concourt is correct, then the determination of the issue at hand as well as the controlling law should still be the one outlined in *Harksen v Lane and Others*[14]which the Supreme Court of Appeal in the Barnard decision paraphrased in the following terms:

[12] See paras 32 and 33.
[13] See para 52 of the judgment.
[14] 1997 (11) BCLR 1489 (CC)

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'The starting point for enquiries of the kind under consideration is to determine whether the conduct complained of constitutes discrimination and, if so, to proceed to determine whether it is unfair.'

[65] The applicant accordingly carried the burden to prove the existence of the discrimination he complained of[15]. Should he be successful, the discrimination is then presumed to be unfair and the respondent has then to rebut the presumption. For purposes of this matter, conscience, belief and political opinion are the grounds on which the case of the applicant can possibly be premised. The applicant testified that he was an acutely unpopular and widely reviled leading dissident activist in the most politically inflamed and morally polarised domestic policy dispute in the democratic era, the AIDS treatment controversy. He said that he had ignited this with the draft of a book he had written, *Debating AZT*, later published under the subtitle *Mbeki and the AIDS drug controversy.* The applicant testified that he was certain that his deeply unpopular minority political engagement in the controversy would be found out with a simple Google search on his name, he disclosed it in his CV submitted in support of his application for the post, and in a Personal and Political History handed in at the interview.

[66] It must now be ascertained whether a failure by the respondent to appoint the applicant to a Senior Litigator position was due to him being an acutely unpopular and widely reviled leading dissident activist on the AIDS treatment controversy. The respondent's denials of the alleged discriminatory practice were described by the applicant as nothing short of a pretext for prohibited discrimination. In some employment discrimination cases in which an issue of pretext arises the respondent often provides all sorts of seemingly legitimate reasons to justify its behaviour. The applicant may fight to discredit these justifications and may prove that the employer acted based on discriminatory and impermissible motive. However, the applicant will rarely, if ever, ferret out any sort of 'smoking gun' or affirmative evidence demonstrating discrimination

[15] See Kadiaka v Amalgamated Beverage Industries (1999) 20 *ILJ* 373 (LC) para 34 and Germishuys v Upington Municipality [2001] 3 BLLR 345 (LC) at para 77.

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by the employer.[16] The question facing triers of facts in discrimination cases is often both sensitive and difficult to discern. Thus, creating an inference that the employer lied can give rise to the extremely important inference that the employer lied for a particular reason such as to cover up a discriminatory purpose.[17] Such are the contentions that have been made by the applicant in this matter.

[67] In this matter the applicant had to surmount an arduous task of discharging the onus resting on him through circumstantial evidence. Circumstantial evidence, it must however, be noted, does not always carry less evidential weight than direct evidence.[18] The applicant could not produce any direct evidence that Mr Nair knew that he was an acutely unpopular and widely reviled leading dissident activist on the AIDS treatment controversy. Relying on circumstantial evidence the applicant submitted that the Court should find that Mr Nair read not only the email accompanying the recommendation but also his CV as forming part of the bundle of documents submitted to him by Mr Mdaka. The applicant pointed out a number of facts and circumstances in the case of the respondent to suggest that Mr Nair was not generous with the truth and therefore that the respondent's version was a pretext which was given by an employer who acted based on discriminatory and impermissible motive.

[68] In his pleaded case and in his initial approach at trial in court, the applicant attributed discriminatory acts against him, on the part of Mr Nair, Ms Clark, Ms Vedalankar and Mlambo JP, the Chairman of the Board. He later exonerated all but Mr Nair, blaming the respondent for not supplying him timeously with the information he had sought from it.

[69] On 14 April 2010, the applicant telephoned Ms Clark for information about the state of affairs of his application. He would have introduced himself to her during that telephone call. He accepted her response that she had not heard of him before and knew nothing of the pending recruitment process as she

[16] See *Reeves v Sanderson Plumbing Products Inc*, 530 US 133, 140 (2000) which relied on *U. S. Postal Serv. Bd of Governors v Aikens*, 460 U. S. 711, 716 (1983).
[17] *Reeves* supra.
[18] See in this regard *Cloete v Birch* 1993 (2) PH F17 (E).

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undertook to enquire further. On 12 July 2010, the applicant wrote to Ms Vedalankar enquiring when his appointment might be finalised and on or about 29 July 2010 Ms Vedalankar emailed Mr Nair about it saying that she was not sure what was happening with the senior litigator appointments but that they needed to finalise the process and advise the persons interviewed of the outcome. From those discussions and correspondence it could be concluded as a probability that neither Ms Clark nor Ms Vedalankar knew of the applicant, at that stage, his belief that he was an acutely unpopular and widely reviled leading dissident activist notwithstanding. Other than from reading his CV, the applicant has also not suggested that Mr Nair knew of him. I conclude therefore, based on Mr Nair's evidence that, with the exception of possibly having read the CV of the applicant, Mr Nair did not know of the applicant.

[70] Mr Nair denied having read the CVs which came with the e mail from Mr Mdaka. While this evidence was challenged by cross examination, it was left intact as Mr Nair was not shaken but remained adamant on it.

[71] He said that because it was close to the end of the year, he knew immediately that the earliest period at which the second round of interviews could be held was in mid-February of 2010. Reading the attached recommendation and CVs would be premature. He merely placed the bundle of documents he had received in his drawer without reading and scrutinising the recommendation. Mr Nair's version must be seen against the nature of the work done by him. He was based at the National office. He would receive recruitment documents from all nine provinces in South Africa for processing and further transmission. He did not just deal with recruitment documents only. He received and worked with various reports and he generated some reports. Essentially and because of his position, he dealt with numerous documents at different times. He received the email from Mr Mdaka as part of the routine correspondence that would come to his office. There is no suggestion at all that there was something unusual or out of the ordinary which would attract his curiosity to the bundle with the email, such that I should find that he probably read the applicant's CV. Upon receipt of these documents he knew what was to be

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done with them at a particular period. From February to July 2010 Mr Nair was then pre-occupied with a deficient budget of the respondent until he received an email of 29 July 2010 from Ms Vedalankar enquiring about the applicant. I hold therefore that the applicant has not succeeded in showing that Mr Nair probably read his CV at around the time of its receipt.

[72] Without reading the CV of the applicant and without having prior knowledge of him, Mr Nair could not possibly have aborted the recruitment of the applicant by discriminating him on the basis of the applicant being an acutely unpopular and widely reviled leading dissident activist on the AIDS treatment controversy. It must follow that the applicant has not shown that he was meted with any different treatment than was given to the recommended candidates for Durban and Mthatha. In my view, the defence raised by the respondent is not a pretext for a discriminatory and impermissible motive. Accordingly the presumption of unfair discrimination does not arise. On this basis alone the claim of the applicant must fail.

[73] There was also the issue of Mr Nair having to sign in support of or at variance with the recommendation. The applicant made a big issue of this matter. I see no reason why. Mr Nair was still to sit as a panellist in the second level interview. It made nonsense of the process if he had to prejudge the issues by confirming or disagreeing with the recommendation. If he signed, he would have to recuse himself from the next step. The provision for signing made sense where there was to be no further interviews and was probably designed for the single interview processes.

[74] While the applicant attacked the second stage interview, he did not suggest that it was a violation of Section 6 (1) of the EEA. The applicant also attacked the various acts of Mr Nair, Ms Clark and Ms Vedalankar in failing to have him appointed. The basis of that attack was never laid as it was never suggested that it also fell within the purview of section 6 (1) of the EEA. It was the choice of the applicant not to seek to review the decision of the respondent in not appointing him. The applicant contended that the senior litigator position was a critical position. How critical these posts were must have depended on different circumstances in various regions of the respondent. In Kimberly for

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instance the post was made redundant. There would have to be evidence to demonstrate in a particular area the extent of a high need for a senior litigator and no such evidence was adduced in this case.

[75] In the circumstances, and having reflected on the law and justice of this matter on the issue of costs, the following order will issue:

1. The application is dismissed.

2. The applicant is to pay the costs thereof.

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Cele J

Judge of the Labour Court of South Africa.

APPEARANCES:

1. For the applicant: In person

2. For the respondent: Adv.P.Mokoena SC and Adv. T.Machaba

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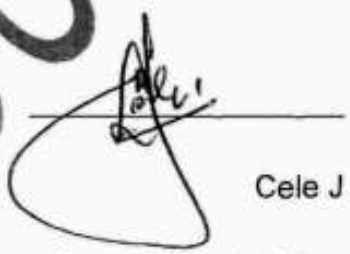

Cele J

Judge of the Labour Court of South Africa.

LABOUR COURT

APPEARANCES:

1. For the applicant: In person

2. For the respondent: Adv.P.Mokoena SC and Adv. T.Machaba

REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Not Reportable

CASE NO: D529/11

In the matter between

ANTHONY ROBIN BRINK — Applicant

and

LEGAL AID SOUTH AFRICA — Respondent

Heard: In chambers

Delivered: 27 November 2014

Summary: Application for leave to appeal – matter concerns a claim based on unfair discrimination under section 6 (1) of the Employment Equity Act – was a failure to appoint him to the post of Senior Litigator unfair discrimination on prohibited grounds namely, his conscience, belief or political opinion – whether applicant has shown reasonable prospects of another court reaching a conclusion materially different from one reached by this court – no prospects - application dismissed.

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JUDGMENT

CELE J

Introduction

[1] Twelve grounds of appeal have been outlined and expatiated upon by the applicant in his application for leave to appeal against a final decision of this court dated 18 September 2014. The applicant further seeks to be granted leave to lead further evidence. The respondent did not oppose this application.

[2] In his introductory note to the application the applicant articulates a difficulty he experienced in obtaining a transcript of the trial. This court had no reason to order one of the litigants before it, the respondent, to supply the applicant with a copy of the trial record free of charge.

[3] In summary, the pleaded case of the applicant when seen against his final version was that, on learning of applicant's identity, Mr Nair exercised his prerogative not to agree with the applicant's appointment by aborting his recruitment by camouflaging the true reason for such refusal as lack of funding.

[4] Through circumstantial evidence the applicant had to prove the allegation that he was unfairly discriminated upon by the respondent[1]. The amendment to section 11 which the applicant refers to in the application for leave to appeal came into effect after all evidence had been led, closing submissions had been made and the judgment was reserved for consideration. The amendment is clearly not retrospective.

[5] The applicant has not succeeded in showing that the Labour Appeal Court is likely to reach a conclusion materially different from the one this court reached in this matter, with particular reference to paragraphs 68 to 72 of the judgment sought to appeal against. In my view, these findings constitute the critical and decisive findings on which the allegations of unfair discrimination depended. To the extent that the onus of proof might be said to have lied on the respondent as contended by the applicant, evidence showed on a balance of probabilities that the respondent discharged the same and such evidence on alleged

[1] In terms of section 11 of the Employment Equity Act number 55 of 1998, the Act.

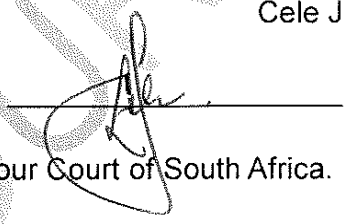
LABOUR COURT

discrimination evinced that the applicant's version was a mere speculation. I consider that the further elaborate submissions of the applicant do not take the matter any further.

[6] The result is that:

1. The application for leave to appeal and to lead further evidence is dismissed.
2. This application was unopposed and so no costs order is made.

Cele J



Judge of the Labour Court of South Africa.

Appearances

For the applicant: in person

For the respondent: Adv. P.Mokoena SC and Adv. T.Machaba

LABOUR COURT

HELD IN
GEHOU IN (DURBAN

R63

ANTHONY ROBIN BRINK

APPEL
APPEL

versus/teen

LEGAL AID SOUTH AFRICA

RESPON

ATTORNEYS/PROKUREURS:

APPELLANT
APPELLANT ..... RESPONDENT .....

ADVOCATE/ADVOKAAT:

APPELLANT
APPELLANT ..... RESPONDENT .....

NATURE OF THE APPLICATION
AARD VAN DIE AANSOEK ..... PETITION

SET DOWN FOR HEARING ON
TE ROLLE GEPLAAS VIR VERHOOR 18/2/2015

Coram: Wallis JP, Davis and Sutherland JJA

Order: 1. The petition for leave to appeal is dismissed with no order as to costs.

R64

Gmail

Anthony Brink <anthonybrink.sa@gmail.com>

Enquiry

3 messages

[redacted]@iafrica.com> 30 April 2021 at 10:11
To: anthonybrink.sa@gmail.com
Cc: [redacted]@mweb.co.za>

Dear Sir,

Case No. 9408/2011, Pietermaritzburg: Andre Grundler v Body Corporate of Lot 2371 et al, was handled by you instructed by Premrajh & Associates.

Do you have contact with Premrajh. We have a similar case. Or are you able to handle with another attorney. Advise.

[redacted]
Professional Accountants

[redacted]

[redacted]
ACIS FCIBM
Managing Director

Tel: 011 [redacted]; 011 [redacted]
Cell: 081 [redacted] / 079 [redacted]
Email: [redacted]@iafrica.com
Web: www.[redacted].co.za
[redacted] Street, Sandown, 2196
P.O. Box [redacted] Braamfontein, 2017

CHARTERED SECRETARIES AND CHARTERED ACCOUNTANTS

Anthony Brink <anthonybrink.sa@gmail.com> 30 April 2021 at 11:51
To: [redacted]@iafrica.com>
Cc: [redacted]@mweb.co.za>

Dear [redacted]
Thanks a lot for contacting me, but for a number of reasons I'm just not placed to take the case on.
I've no contact with that attorney; it was a single brief from him a decade ago.
Since the principles applicable were covered in the judgment, any capable and motivated legal team should be able to handle the matter.
All the best
Anthony Brink
[Quoted text hidden]