



## **REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

### **Re: Adv Anthony Brink**

#### 1. Background

On 12 July 2010 Advocate Anthony Brink wrote to the CEO expressing his concern with regards the delays in the finalisation of the recruitment process for the senior litigator position at our Pietermaritzburg Justice Centre. Adv Brink was an applicant for this position and he was interviewed by our regional selection panel. He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted interview panel.

This nationally constituted panel did not however sit to consider applicants recommended for the second stage of interviews. Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts. Adv Brink was subsequently informed of this decision.

This resulted in him generating numerous requests for information in terms of PAIA, arising from his discontent with not being appointed to this post. He also wrote several lengthy letters to various individuals and organisations, including to the Chairperson and other Directors of the Board of Legal Aid SA. In his letter to the Board, Adv Brink also made allegations relating to multiple contraventions of the PFMA, including the presentation of false financial information in our 2009/10 Annual Report.

#### 2. Adv Brink's discontent with non-appointment to Senior Litigator Position

From the many letters received from Adv Brink, it is clear that he believes that he was not appointed because of a racial and political bias against him resulting in a conspiracy to exclude him from Legal Aid SA. The conspiracy he alleges relates to his political views against the use of anti-retro viral drugs for HIV AIDS and also discrimination against him as a white male. He incorrectly believes that the second round of interviews was simply a confirmation process where he appears before the Chairperson of our Board who must ratify his appointment. This however is incorrect. All executives involved in this matter have confirmed that this individual was not known to them, nor his political views or publications, and that the first time they came across his name was when his letter of complaint about his non-appointment was received.

The reason for freezing of senior litigator posts was that Legal Aid SA was going through a very uncertain period with regards the provision of funding by the DoJ to finance our OSD phase 1 implementation, which was resulting in an unbalanced budget for 2010/11. As a result various options to make up for the shortfall in our funding, including the freezing of posts, were considered. Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time, as well as contingency measures that we were contemplating to cater for this, including

the freezing of many positions, were shared with Adv Brink in response to his request for information in terms of PAIA.

Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he remains convinced that there is a conspiracy against him. Legal Aid SA, has under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views. He is currently pursuing his requests for further information with the Human Rights Commission and has threatened litigation. We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA. We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act. We copied these responses to the SA Human Rights Commission to confirm our compliance with PAIA.

Adv A Brink subsequently referred a dispute against Legal Aid SA in the CCMA on 20 April 2011. He alleged unfair discrimination on the basis of political conscience, belief and activism on the issue of HIV Aids and to a lesser extent race. He further contended that he held the belief that this alleged unfair discrimination resulted in him not being appointed to the position of Senior Litigator at Legal Aid SA – a position for which he applied and was interviewed. The relief he sought was monetary in the amount of R55 000 per month from January 2011 (he avers to have become aware of the alleged discrimination at this point) to the date of the conciliation which totalled R220 000. The dispute could not be resolved as Legal Aid SA submitted that it believed that it had not directly or indirectly discriminated unfairly against Mr Brink on the basis averred by him or on any other basis. A certificate of non-resolution was thus issued by the CCMA on 20 April 2011 which paved the way for Mr Brink to refer the dispute for adjudication to the Labour Court, a route he has to date not pursued.

### 3. Allegations of multiple contraventions of the PFMA

In Adv Brink's November correspondence to the Board Chairperson and members of the Board, he draws attention to the fact that Table 3 in Section 4.1 at page 106 of Legal Aid SA's Annual Report for 2009/10, relating to executives remuneration, contains incorrect column totals for basic salaries, bonuses, incentives, expenses/allowances and other unspecified payments.

An examination of this table has revealed that these four column totals are indeed incorrect, although the last column relating to total expenditure is correct. It must also be noted that the row totals which show individual executives remuneration is correct. We have since been able to determine that the source of this problem was caused by human error at the time when the annual report was being prepared for printing.

This table is however not a part of the Annual Financial Statements (AFS) nor is it material to the AFS presented later in that section. They therefore do not alter any of the AFS, which do not have any errors. These are the AFS that were audited by the Auditor-General and found to 'present fairly, in all material respects, the financial position of Legal Aid SA as at 31 March 2010...".

The executives' remuneration is also referred to in Note 18.2 of the AFS (page 145 of the Annual Report) in which the total per executive as well as the overall total is indicated. The total per

executive as well as the overall total in Note 18.2 of the AFS is the same as the row totals and overall total in Table 3. This confirms that the material amount included in the AFS was not incorrect and therefore our AFS 2009/10 remain correct.

Given that the AFS remain correct and that the error in Table 3 is not material to the AFS, the allegations by Brink of 'false and misleading figures' being a serious criminal offence and that our Annual Financial Statements in our Annual Report are not a 'true and fair representation' are unfounded.

#### 4. Conclusion

Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems in this matter that Adv Brink would be well advised to approach the courts to ventilate his issues. We are however comfortable that we would be able to show to a court of law that the decisions we took on this matter made good business sense and were in the best interests of our organisation at the time. As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

This report is sent to the Ministry to provide the necessary background to this matter as well as to contextualise and clarify the allegations by Mr Brink re contravention of the PFMA and provides the necessary reassurance that no contravention occurred in this regard.



Chairperson

Legal Aid SA

9 March 2011

Updated with sections in blue font

22 June 2011